

Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No.

RACE RELATIONS

The Race Relations Act 1976 (Amendment) Regulations 2003

Made - - - - 2003
Coming into force - - 19th July 2003

Whereas these Regulations were laid in draft before each House of Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972(1) and were approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to discrimination(2), in exercise of the powers conferred by that section, hereby makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Race Relations Act 1976 (Amendment) Regulations 2003 and shall come into force on 19th July 2003.

(2) These Regulations do not extend to Northern Ireland.

(3) In these Regulations “the 1976 Act” means the Race Relations Act 1976(3).

Transitional provisions

2.—(1) Regulations 40 and 42 do not apply to proceedings commenced before 19th July 2003.

(2) Regulations 41 and 43 apply to proceedings commenced before 19th July 2003, as well as proceedings instituted on or after that date, but do not affect any case in which proceedings were determined before that date.

(3) The amendment made to section 65(2)(b) of the 1976 Act by regulation 47 shall not apply in the case of a question served on a respondent before 19th July 2003.

(4) In paragraph (3) “question” and “respondent” shall be construed in accordance with section 65 of the 1976 Act.

(1) 1972 c. 68.

(2) See the European Communities (Designation) (No. 3) Order (S.I.2002/1819).

(3) 1976 c. 74; as amended by the Race Relations (Amendment) Act 2000 (c. 34).

Racial discrimination

3. In section 1 of the 1976 Act (racial discrimination), after subsection (1), insert—

“(1A) A person also discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in subsection (1B), he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but—

- (a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons,
- (b) which puts that other at that disadvantage, and
- (c) which he cannot show to be a proportionate means of achieving a legitimate aim.

(1B) The provisions mentioned in subsection (1A) are—

- (a) Part II;
- (b) sections 17 to 18D;
- (c) section 19B, so far as relating to -
 - (i) any form of social security;
 - (ii) health care;
 - (iii) any other form of social protection; and
 - (iv) any form of social advantage;
 which does not fall within section 20;
- (d) sections 20 to 24;
- (e) sections 26A and 26B;
- (f) sections 76 and 76ZA; and
- (g) Part IV, in its application to the provisions referred to in paragraphs (a) to (f).

(1C) Where, by virtue of subsection (1A), a person discriminates against another, subsection (1)(b) does not apply to him.”.

4. In section 3 of the 1976 Act (meaning of “racial grounds”, “racial group” etc), in subsection (4), after the words “section 1(1)”, insert “or (1A)”.

Harassment

5. After section 3 of the 1976 Act insert—

“Harassment

3A.—(1) A person subjects another to harassment in any circumstances relevant for the purposes of any provision referred to in section 1(1B) where, on grounds of race or ethnic or national origins, he engages in unwanted conduct which has the purpose or effect of—

- (a) violating that other person’s dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

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

Harassment by employers

6.—(1) In the heading to section 4 of the 1976 Act (discrimination against applicants and employees) omit the words “Discrimination against”.

(2) That section is amended as follows—

(a) after subsection (2) insert—

“(2A) 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.”;

(b) in subsection (3) (exception for employment for purposes of private household), after the words “section 2”, insert “or discrimination on grounds of race or ethnic or national origins”; and

(c) after subsection (4) insert—

“(4A) In subsection (2)(c) reference to the dismissal of a person from employment includes, where the discrimination is on grounds of race or ethnic or national origins, 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.”.

Exception for genuine occupational requirement

7. After section 4 of the 1976 Act insert—

“Exception for genuine occupational requirement

4A.—(1) In relation to discrimination on grounds of race or ethnic or national origins—

(a) section 4(1)(a) or (c) does not apply to any employment; and

(b) section 4(2)(b) does not apply to promotion or transfer to, or training for, any employment; and

(c) section 4(2)(c) does not apply to dismissal from any employment;

where subsection (2) applies.

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

(a) being of a particular race or of particular ethnic or national origins 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.”.

8. In section 5 of the 1976 Act (exceptions for genuine occupational qualifications), in subsection (1), after the words “racial discrimination”, insert “in cases where section 4A does not apply”.

9. In section 6 of the 1976 Act (exception for employment intended to provide training in skills to be exercised outside Great Britain), after the word “employer”, insert “, on grounds other than those of race or ethnic or national origins,”.

Other harassment in employment etc.

10.—(1) In the heading to section 7 of the 1976 Act (discrimination against contract workers) omit the words “Discrimination against”.

(2) That section is amended as follows—

(a) in subsection (3)—

- (i) after the words “racial group”, in the first place where they occur, insert “, or not of a particular race or particular ethnic or national origins,”;
- (ii) after the words “racial group”, in the second place where they occur, insert “or of that race or those origins”; and
- (iii) after the word “qualification” insert “or, as the case may be, that act would be lawful by virtue of section 4A”; and

(b) after subsection (3), insert—

“(3A) It is unlawful for the principal, in relation to work to which this section applies, to subject a contract worker to harassment.”; and

(c) in subsection (4), after the word “principal”, insert “on grounds other than those of race or ethnic or national origins,”.

Meaning of employment at establishment in Great Britain

11.—(1) In section 8 of the 1976 Act (meaning of employment at establishment in Great Britain), in subsection (1), for the words “unless the employee” to the end, substitute—

“if the employee—

- (a) does his work wholly or partly in Great Britain; or
- (b) does his work wholly outside Great Britain and subsection (1A) applies”.

(2) After subsection (1) insert—

“(1A) This subsection applies if, in a case involving discrimination on grounds of race or ethnic or national origins, or harassment—

- (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.”.

Partnerships

12. In section 10 of the 1976 Act (partnerships)—

(a) after subsection (1), insert—

“(1A) The limitation of subsection (1) to six or more partners does not apply in relation to discrimination on grounds of race or ethnic or national origins.

(1B) It is unlawful for a firm, in relation to a position as a partner in the firm, to subject to harassment a person who holds or has applied for that position.”;

(b) in subsection (2), for the words “Subsection (1)” substitute “Subsections (1), (1A) and (1B)”;

(c) in subsection (3), for the words “being of a particular racial group” to the end substitute “section 4A or 5 would apply to such employment”; and

(d) at the end insert—

“(6) In subsection (1)(d)(ii) reference to the expulsion of a person from a position as partner includes, where the discrimination is on grounds of race or ethnic or national origins, 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.”.

Other bodies

13. In section 11 of the 1976 Act (trade unions etc), at the end insert—

“(4) It is unlawful for an organisation to which this section applies, in relation to a person’s membership or application for membership of that organisation, to subject him to harassment.”.

14. In section 12 of the 1976 Act (qualifying bodies)—

(a) after subsection (1), insert—

“(1A) It is unlawful for an authority or body to which subsection (1) applies, in relation to an authorisation or qualification conferred by it, to subject to harassment a person who holds or applies for such an authorisation or qualification.”; and

(b) for subsection (3), substitute—

“(3) Subsections (1) and (1A) do not apply to discrimination or harassment which is rendered unlawful by section 17 or 18.”.

15. In section 13 of the 1976 Act (persons concerned with provision of vocational training), after subsection (2), insert—

“(3) It is unlawful for any person who provides, or makes arrangements for the provision of, facilities for training to which subsection (1) applies, in relation to such facilities or training, to subject to harassment a person to whom he provides such training or who is seeking to undergo such training.

(4) Subsection (3) does not apply to harassment which is rendered unlawful by section 4(2A) or by section 17 or 18.”.

16. In section 14 of the 1976 Act (employment agencies)—

(a) after subsection (1) insert—

“(1A) It is unlawful for an employment agency, in relation to the provision of its services, to subject to harassment a person to whom it provides such services or who requests the provision of such services.”;

(b) at the end of subsection (2) insert “or harassment”; and

(c) in subsection (3), for the words “subsection (1)”, substitute “subsections (1) and (1A)”.

17. In section 15 of the 1976 Act (Training Commission etc), in subsections (1) and (1A), after the word “discriminate”, insert “or to subject a person to harassment”.

Harassment in other fields

18.—(1) In the heading to section 17 of the 1976 Act (discrimination by bodies in charge of educational establishments) omit the words “Discrimination by”.

(2) At the beginning of that section insert “(1)”, and at the end insert—

“(2) It is unlawful for a responsible body, in relation to an establishment falling within column 1 of the table in subsection (1), to subject to harassment—

(a) a person who applies for admission to the establishment as a pupil; or

(b) a pupil at the establishment.”.

19.—(1) In the heading to section 18 (other discrimination by local education authorities), after the word “discrimination” insert “etc.”.

(2) In the headings to sections—

18A (discrimination by Further Education and Higher Education Funding Councils);

18B (discrimination by Scottish Further and Higher Education Funding Councils); and

18D (discrimination by Teacher Training Agency) of the 1976 Act,

omit the words “Discrimination by”.

(3) In each of the sections referred to in paragraphs (1) and (2), after the words “constitutes racial discrimination”, insert “or harassment”.

Public authorities

20.—(1) In the heading to section 19B of the 1976 Act (discrimination by public authorities) omit the words “Discrimination by”.

(2) That section is amended as follows—

(a) after subsection (1) insert—

“(1A) It is unlawful for a public authority to subject a person to harassment in the course of carrying out any functions of the authority which consist of the provision of—

(a) any form of social security;

(b) healthcare;

(c) any other form of social protection; or

(d) any form of social advantage,

which does not fall within section 20.”; and

(b) in subsection (6), after the word “discrimination”, insert “or harassment”.

21. In section 19C of the 1976 Act (exceptions or further exceptions from section 19B for judicial or legislative acts etc.), in subsection (3), for the words “falling within” substitute “excepted by”.

Harassment in provision of goods, facilities or services etc.

22.—(1) In the heading to section 20 of the 1976 Act (discrimination in provision of goods, facilities or services) omit the words “Discrimination in”.

(2) After subsection (2) of that section insert—

“(3) It is unlawful for any person concerned with the provision of goods, facilities or services as mentioned in subsection (1), in relation to such provision, to subject to harassment—

- (a) a person who seeks to obtain or use those goods, facilities or services, or
- (b) a person to whom he provides those goods, facilities or services.”.

23.—(1) In the heading to section 21 of the 1976 Act (discrimination in disposal or management of premises) omit the words “Discrimination in”.

(2) That section is amended as follows—

(a) after subsection (2), insert—

“(2A) It is unlawful for a person, in relation to such premises as are referred to in subsection (1) or (2), to subject to harassment a person who applies for or, as the case may be, occupies such premises.”; and

(b) in subsection (3), after the words “does not apply to”, insert “discrimination, on grounds other than those of race or ethnic or national origins, by”.

24. In section 22 of the 1976 Act (exception for small dwellings), in subsection (1), after the words “do not apply to”, insert “discrimination on grounds other than those of race or ethnic or national origins in either”.

25.—(1) In the heading to section 23 of the 1976 Act (further exceptions from sections 20 (1) and 21) for the words “ss 20(1)” substitute “ss 20”.

(2) Subsection (1) of that section is amended as follows—

- (a) for the words “20(1)” substitute “20”;
- (b) in paragraph (a), after the word “discrimination” insert “or harassment”; and
- (c) in paragraph (b), after the words “section 4 (3)”, insert “, 4A(1)(b)”.

26.—(1) In the heading to section 24 of the 1976 Act (discrimination: consent for assignment or sub-letting) omit the word “Discrimination”.

(2) That section is amended as follows—

(a) in subsection (1), for the words “to discriminate against” to the end, substitute—

“(a) to discriminate against a person by withholding the licence or consent for disposal of the premises to him, or

(b) in relation to such a licence or consent, to subject to harassment a person who applies for the licence or consent, or from whom the licence or consent is withheld.”; and

(c) in subsection (2), after the word “apply”, insert the words “to discrimination on grounds other than those of race or ethnic or national origins”.

Harassment by, or in relation to, barristers and advocates

27.—(1) In the heading to section 26A of the 1976 Act (discrimination by, or against, barristers) omit the words “Discrimination by, or in relation to,”.

- (2) That section is amended as follows—
- (a) in subsection (3), after the words “discriminate against any person”, insert “or to subject any person to harassment”; and
- (b) after subsection (3) insert—
- “(3A) 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.”.

28.—(1) In the heading to section 26B of the 1976 Act (discrimination by, or in relation to, advocates) omit the words “Discrimination by, or in relation to,”.

- (2) That section is amended as follows—
- (a) in subsection (3), after the words “discriminate against any person”, insert “or to subject any person to harassment”; and
- (b) after subsection (3) insert—
- “(3A) It is unlawful for an advocate, in relation to taking any person as his pupil, to subject to harassment a person who has applied to be, or is, a pupil.”.

Relationships which have come to an end

29. In Part IV of the 1976 Act, before section 28, insert—

“Relationships which have come to an end

27A.—(1) In this section a “relevant relationship” is a relationship during the course of which, by virtue of any provision referred to in section 1(1B), taken with section 1(1) or (1A), or (as the case may be) by virtue of section 3A—

- (a) an act of discrimination by one party to the relationship (“the relevant party”) against another party to the relationship, on grounds of race or ethnic or national origins, or
- (b) harassment of another party to the relationship by the relevant party,

is unlawful.

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

- (a) to discriminate against another party, on grounds of race or ethnic or national origins, by subjecting him to a detriment, or
- (b) to subject another party to harassment,

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

(3) In subsection (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 19th July 2003, reference to such an act which would, after that date, be unlawful.

(4) For the purposes of any proceedings in respect of an unlawful act under subsection (2), that act shall be treated as falling within circumstances relevant for the purposes of such of the provisions, or Parts, referred to in subsection (1) as determine most closely the nature of the relevant relationship.”

30. In section 28 of the 1976 Act (discriminatory practices)—

- (a) in subsection (1), after the word “means” insert “(a)”, and

(b) after the words “applying it” insert “or

(b) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision referred to in section 1(1B), taken with section 1(1A), or which would be likely to result in such an act of discrimination, if the persons to whom it is applied included persons of any particular race or of any particular ethnic or national origins, as regards which there has been no occasion for applying it”.

31.—(1) In the heading to section 30 of the 1976 Act (instructions to discriminate) for the word “discriminate” substitute “commit unlawful acts”.

(2) After the words “Part II or III” in that section insert “section 76ZA or, where it renders an act unlawful on grounds of race or ethnic or national origins, section 76,”.

32.—(1) In the heading to section 31 of the 1976 Act (pressure to discriminate) for the word “discriminate” substitute “commit unlawful acts”.

(2) After the words “Part II or III” in that section insert “section 76ZA or, where it renders an act unlawful on grounds of race or ethnic or national origins, section 76,”.

33. In section 34 of the 1976 Act (charities), after subsection (3), insert—

“(3A) subsection (2) (b) does not apply to an act which is unlawful, on grounds of race or ethnic or national origins, by virtue of section 4 or 7.”.

34. In section 36 of the 1976 Act (provision of education or training for persons not ordinarily resident in Great Britain), after the words “a person”, insert “, on grounds other than race or ethnic or national origins,”.

35. In section 41 of the 1976 Act (acts done under statutory authority)—

(a) in subsection (1) for the word “subsection” substitute “section”;

(b) after subsection (1), insert—

“(1A) Subsection (1) does not apply to an act which is unlawful, on grounds of race or ethnic or national origins, by virtue of a provision referred to in section 1 (1B).”; and

(c) in subsection (2), for paragraphs (a) and (b), substitute—

“(a) in pursuance of any enactment or Order in Council; or

(b) in pursuance of any instrument made under any enactment by a Minister of the Crown; or

(c) in order to comply with any requirement imposed by a Minister of the Crown (whether before or after the passing of this Act) by virtue of any enactment; or

(d) in pursuance of any arrangements made (whether before or after the passing of this Act) by or with the approval of, or for the time being approved by, a Minister of the Crown; or

(e) in order to comply with any condition imposed (whether before or after the passing of this Act) by a Minister of the Crown”.

36. In section 43 of the 1976 Act (establishment and duties of Commission), in subsection (1) (a), after the word “discrimination”, insert “and harassment”.

37. In section 47 of the 1976 Act (codes of practice), in subsection (1), after the word “discrimination”, in both places where it occurs, insert “and harassment”.

38. In section 50 of the 1976 Act (power to obtain information), in subsection (2)(b)(i), for the words “discriminatory acts” substitute “acts of discrimination or harassment”.

39. In section 53 of the 1976 Act (restriction of proceedings for breach of Act), in subsection (4), for the words “and (11)” substitute “,11 and (11B)”.

Barristers and office-holders: jurisdiction of employment tribunals

- 40.** In section 54(1) of the 1976 Act (jurisdiction of employment tribunals)—
- (a) omit the words “of discrimination” in both places where they occur, and
 - (b) after the words “Part II” insert “, section 76ZA or, in relation to discrimination on grounds of race or ethnic or national origins, or harassment, section 26A, 26B or 76”.

Burden of proof

41. After section 54 of the 1976 Act insert—

“Burden of proof: employment tribunals

54A.—(1) This section applies where a complaint is presented under section 54 and the complaint is that the respondent—

- (a) has committed an act of discrimination, on grounds of race or ethnic or national origins, which is unlawful by virtue of any provision referred to in section 1(1B) (a), (e) or (f), or Part IV in its application to those provisions, or
- (b) has committed an act of harassment.

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

- (a) has committed such an act of discrimination or harassment against the complainant, or
- (b) is by virtue of section 32 or 33 to be treated as having committed such an act of discrimination or harassment against the complainant,

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.”.

42.—(1) In the heading to section 57 of the 1976 Act (claims under Part III), after the words “Part III”, insert “etc.”.

(2) In subsection (1) of that section—

- (a) omit the words “of discrimination”, in both places where they occur, and
- (b) after the words “Part III” insert “other than, in relation to discrimination on grounds of race or ethnic or national origins, or harassment, section 26A or 26B”.

43. After section 57 of the 1976 Act insert—

“Burden of proof : County and Sheriff Courts

57ZA.—(1) This section applies where a claim is brought under section 57 and the claim is that the respondent—

- (a) has committed an act of discrimination, on grounds of race or ethnic or national origins, which is unlawful by virtue of any provision referred to in section 1(1B) (b) to (d), or Part IV in its application to those provisions, or
- (b) has committed an act of harassment.

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

- (a) has committed such an act of discrimination or harassment against the claimant, or
- (b) is by virtue of section 32 or 33 to be treated as having committed such an act of discrimination or harassment against the claimant,

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.”.

Non-discrimination notices

44. In section 58 of the 1976 Act (issue of non-discrimination notice), in subsection (1), for the words “discriminatory act” substitute “act of discrimination or harassment”.

Other enforcement by CRE

45. In section 62 of the 1976 Act (persistent discrimination), in subsection (1)(b), for the words “discriminatory act” substitute “act of discrimination or harassment”.

46. In section 64 of the 1976 Act (preliminary action in employment cases), in subsection (1), for the words “person discriminated against” substitute “the person concerned”.

Period within which respondent must reply

47. In section 65 of the 1976 Act (help for aggrieved persons in obtaining information etc)—

- (a) in subsection (1), after the words “discriminated against”, insert “or subjected to harassment”; and
- (b) in subsection (2)(b), after the words “reasonable period”, insert “or, where the question relates to discrimination on grounds of race or ethnic or national origins, or to harassment, the period of eight weeks beginning with the day on which the question was served on him”.

Validity and revision of contracts

48. In section 72 of the 1976 Act (validity and revision of contracts), in subsection (2), after the words “unlawful discrimination against”, insert “or harassment of,”.

Collective agreements and rules of undertakings

49. After section 72 of the 1976 Act insert—

“Collective agreements and rules of undertakings

72A.—(1) This section applies to—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by an organisation to which section 11 (trade organisations) applies, or by a body to which section 12 (qualifying bodies) applies, for application to—

- (i) all or any of its members or prospective members; or
 - (ii) all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer.
- (2) Any term or rule to which this section applies is void where—
- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful on grounds of race or ethnic or national origins, by virtue of a provision referred to in section 1(1B);
 - (b) the term or rule is included or made in furtherance of an act which is unlawful on such grounds by virtue of such a provision; or
 - (c) the term or rule provides for the doing of such an act.
- (3) Subsection (2) applies whether the agreement was entered into, or the rule made, before, on or after 19th July 2003; but in the case of an agreement entered into, or a rule made, before that date, that subsection does not apply in relation to any period before that date.
- (4) In this section, and in section 72B, “collective agreement” means any agreement relating to one or more of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992⁽⁴⁾ (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.
- 72B.—**(1) A person to whom this subsection applies may present a complaint to an employment tribunal that a term or rule is void by virtue of section 72A if he has reason to believe—
- (a) that the term or rule may at some future time have effect in relation to him; and
 - (b) where he alleges that it is void by virtue of section 72A(2)(c), that—
 - (i) an act for the doing of which it provides may at some such time be done in relation to him, and
 - (ii) the act would be rendered unlawful on grounds of race or ethnic or national origins by a provision referred to in section 1(1B) if done in relation to him in present circumstances.
- (2) In the case of a complaint about—
- (a) a term of a collective agreement made by or on behalf of—
 - (i) an employer;
 - (ii) an organisation of employers of which an employer is a member; or
 - (iii) an association of such organisations of one of which an employer is a member; or
 - (b) a rule made by an employer, within the meaning of section 72A(1)(b);
- subsection (1) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.
- (3) In the case of a complaint about a rule made by an organisation or body to which section 72A(1)(c) applies, subsection (1) applies to any person—

(4) 1992 c. 52.

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, or body;
 - (b) on whom the organisation or body has conferred an authorisation or qualification; or
 - (c) who is genuinely and actively seeking an authorisation or qualification which the organisation or body has power to confer.
- (4) When an employment tribunal finds that a complaint presented to it under subsection (1) is well-founded the tribunal shall make an order declaring that the term or rule is void.
- (5) An order under subsection (4) may include provision as respects any period before the making of the order (but after 19th July 2003).
- (6) The avoidance by virtue of section 72 A(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself) namely—
- (a) such of the rights of the person to be discriminated against, and
 - (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,
- as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.”

Government appointments outside section 4

- 50.** In section 76 of the 1976 Act (government appointments outside section 4)—
- (a) in subsection (10) for the words “subsection (11) applies” substitute “subsections (11) and (11B) apply”;
 - (b) after subsection (11) insert—
 - “(11A) In subsection (11)(c) reference to the termination of the appointment includes, where the act is committed on the grounds of race or ethnic or national origins, 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 by reason of the conduct of the Minister or the department, as the case may be.
 - (11B) It is unlawful for a Minister of the Crown or government department to subject to harassment a person who has been appointed, or who is seeking or being considered for, the appointment.”;
 - (c) in subsection (12), for the words “contravened subsection (5)” to the end substitute—
 - “contravened—
 - (a) subsection (5);
 - (b) subsection (9);
 - (c) in relation to an appointment falling within subsection (10)(b), subsection (11); or

- (d) subsection (11B),
and may award damages in respect of the contravention”; and
- (d) for subsection (14) substitute—
- “(14) The provision made by subsection (12) in respect of judicial review does not affect the ability, where an act on grounds of race or ethnic or national origins, or harassment, is alleged, to present a complaint to an employment tribunal under section 54A(1).”.

Other office holders

51. After section 76 of the 1976 Act insert—

“Other office holders

76ZA.—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this section applies, to discriminate against a person on the grounds of race or ethnic or national origins—

- (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 or deliberately omitting to offer him the appointment.

(2) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this section applies, to discriminate against him on grounds of race or ethnic or national origins—

- (a) in the terms of the appointment;
- (b) in the way he affords him access to opportunities for promotion, transfer, training or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them;
- (c) by terminating the appointment; or
- (d) by subjecting him to any other detriment in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to an office or post to which this section applies, to subject to harassment a person who has been appointed to, or is seeking or being considered for appointment to, such an office or post.

(4) Subsections (1) and (2) do not apply to any act in relation to an office or post where, if the office or post constituted employment, the act would be lawful by virtue of section 4A (exception for genuine occupational requirement).

(5) Subsection (2) does not apply to benefits, facilities or services of any description if the relevant person is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or a section of the public to which the person belongs, unless—

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

- (6) In subsection (2)(c) reference to the termination of the appointment includes 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 by reason of the conduct of the relevant person.
- (7) This section applies to any office or post, other than a political office or post, where—
- (a) sections 4, 7, 10, 26A, 26B and 76 do not apply in relation to appointment to that office or post;
 - (b) it is an office or post to which persons are appointed to discharge functions personally under the direction of another person; and
 - (c) it is an office or post in respect of which they are entitled to remuneration.
- (8) For the purposes of subsection (7) 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; and
 - (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 functions 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.
- (9) In this section—
- (a) appointment to an office or post does not include election to an office or post;
 - (b) “political office or post” 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 (5), or any office held in the House of Lords by a member of it;
 - (iii) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975(6);
 - (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(7);
 - (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(8), or a junior Scottish Minister within the meaning of section 49 of that Act;

(5) 1958 c. 21.

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

(7) 1975 c. 27.

(8) 1998 c. 46.

- (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⁽⁹⁾ or a community council established under section 51 of the Local Government (Scotland) Act 1973⁽¹⁰⁾, which is 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; or
 - (xiv) any office of a political party; and
- (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; and
 - (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.”

Definitions

52. In section 78 of the 1976 Act (general interpretation provisions) insert in the appropriate alphabetical order—

““detriment” does not include conduct of a nature such as to constitute harassment under section 3A;”;

““social protection” and “social advantage” have the same meaning as in Article 3 of Council Directive [2000/43/EC](#);”.

Home Office
2003

Parliamentary Under-Secretary of State

⁽⁹⁾ 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

⁽¹⁰⁾ 1973 c. 65. Section 51 was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 14, paragraph 1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2)(a) and (b) of the European Communities Act 1972 and come into force on 19th July 2003, implement (in Great Britain) Council Directive 2000/43 EC of 29th June 2000 (“the Directive”) and include provision for matters arising out of or relating to such implementation. The Directive is concerned with the principle of equal treatment between persons, irrespective of racial or ethnic origin, in the areas of employment (and related matters), social protection, social advantage, education and access to and supply of, goods and services which are available to the public, including housing.

The Directive necessitates amendment of the Race Relations Act 1976 (“the 1976 Act”), in particular to reflect the provisions of the Directive which deal with the definition of indirect discrimination, harassment, genuine and determining occupational requirements, the burden of proof in proceedings, and abolition of statutory provisions which are contrary to the principle of equal treatment.

Regulations 3 and 4 set out a new definition of indirect discrimination, on grounds of race or ethnic or national origins, in those areas with which the Directive is concerned.

Regulation 5 sets out a new definition of harassment, on the grounds of a person’s race or ethnic or national origins, which will apply in the areas with which the Directive is concerned.

Regulation 6 makes it unlawful for an employer to subject to harassment an employee or an applicant for employment, and removes, partially, the exception (from the discrimination in employment provisions) for employment in a private household.

Regulations 7 and 8 provide for a new exception (from the discrimination in employment provisions) where being of a particular race or of particular ethnic or national origins is a genuine and determining requirement for the employment in question.

Regulation 9 removes, partially, the exception (from the discrimination in employment provisions) for training in skills to be exercised outside Great Britain.

Regulation 10 makes it unlawful for a principal to subject a contract worker to harassment and removes, partially, the exception (from the contract workers provisions) for work to provide training skills to be exercised abroad.

Regulation 11 contains an expanded definition of “work at an establishment in Great Britain”.

Regulation 12 removes the lower limit on the size of partnerships which can discriminate unlawfully on grounds of race or ethnic or national origins, and makes it unlawful for partnerships to subject to harassment partners or applicants for partnership.

Regulations 13 to 17 make it unlawful for bodies such as trade organisations, qualifying bodies, providers of vocational training, employment agencies and the Training Commission to subject persons to harassment.

Regulations 18 and 19 make it unlawful for bodies concerned with education or vocational training or guidance to subject persons to harassment.

Regulation 20 makes it unlawful for public bodies concerned with provision of health, welfare or other services to subject persons to harassment.

Regulation 21 makes a consequential amendment.

Regulations 22 to 24, and 26, make it unlawful for persons concerned with the provision of goods, facilities or services, or accommodation, to subject persons to harassment.

Regulation 25 makes consequential amendments.

Regulations 27 and 28 make it unlawful for barristers and advocates, or their clerks, to subject to harassment a pupil or a tenant, or a person applying to be a pupil or tenant.

Regulation 29 provides that, where there has been a relationship in which certain acts of discrimination, or harassment, would have been unlawful, it is also unlawful to subject a person to a detriment or harassment by reference to that relationship after the relationship has ended.

Regulation 30 makes consequential amendments to the provisions dealing with discriminatory practices.

Regulation 31 extends to office holders the application of the section of the 1976 Act dealing with instructions to discriminate (or, now, harass).

Regulation 32 extends to office holders the application of the section of the 1976 Act which makes it unlawful to induce someone to commit an unlawful act of discrimination (or, now, harassment).

Regulation 33 removes the exception for charities to discriminate in employment.

Regulation 34 removes, partially, the exception for education or training of persons who are not going to stay in Great Britain.

Regulation 35 removes, partially, the exception for acts which are done under statutory authority.

Regulation 36 makes it the duty of the Commission for Racial Equality (“the CRE”) to work towards the elimination of harassment (in addition to its existing duty in respect of discrimination).

Regulation 37 adds harassment to the matters which can be the subject of a code of practice.

Regulation 38 adds harassment to the matters in respect of which the CRE can require information for the purposes of a formal investigation.

Regulation 39 makes a consequential amendment.

Regulation 40 provides that claims of unlawful discrimination on grounds of race, ethnic or national origins, or harassment, by or against barristers or advocates, or in the appointment of certain office holders, are to be heard by employment tribunals.

Regulations 41 and 43 alter the burden of proof in tribunal and court proceedings relating to discrimination on grounds of race, ethnic or national origins, or harassment, in areas with which the Directive is concerned.

Regulation 42 amends the provisions for bringing complaints in the courts, in consequence of certain matters being transferred to employment tribunals.

Regulation 44 adds harassment to the matters which can be the subject of a non-discrimination notice.

Regulation 45 includes harassment in the provisions dealing with persistent unlawful behaviour.

Regulation 46 makes a consequential amendment.

Regulation 47 ensures that, in certain cases, respondents must reply to a claimant’s preliminary questions within eight weeks of being served with them.

Regulation 48 extends the provisions of the 1976 Act relating to unlawful contracts so as to include harassment.

Regulation 49 applies to collective agreements and rules of undertakings the provisions of the 1976 Act relating to unlawful contracts, insofar as the grounds of race or ethnic or national origins are concerned.

Regulation 50 makes it unlawful to harass a person in relation to a government appointment, updates the provisions dealing with such appointments, and makes it clear that a complaint may be presented to an employment tribunal where the act complained of is on grounds of race or ethnic or national origins.

Regulation 51 makes it unlawful to discriminate (on grounds of race or ethnic or national origins), or to harass a person, in relation to other appointments.

Regulation 52 explains the meaning of certain expressions used in the regulations and inserted in the 1976 Act.