

EXPLANATORY MEMORANDUM TO
THE EQUALITY ACT (SEXUAL ORIENTATION) REGULATIONS 2007

2007 No. 1263

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This Order prohibits discrimination on the grounds of sexual orientation in the provision of goods, facilities, services, education, management and disposal of premises and the exercise of public functions.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 These Regulations are being laid under section 81 of the Equality Act 2006 and are subject to the affirmative resolution procedure. This is the first exercise of this power, although the corresponding power in section 82 in relation to Northern Ireland was exercised to make the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR 2006 No.439), which came into force on 1 January 2007.

4.2 Discrimination on grounds of religion or belief, and on grounds of sexual orientation, is already prohibited in relation to employment and vocational training. The Equality Act 2006 contains provisions prohibiting discrimination on grounds of religion or belief in relation to the provision of goods, facilities and services, education, disposal and management of premises, and the exercise of public functions.

4.3 These protections formed part of the Equality Bill from the outset. But at its introduction in the House of Lords the absence of equivalent provisions for sexual orientation drew strong cross-party criticism. At Third Reading in the Lords, the Government accepted an amendment, which allowed the Secretary of State to make regulations that prohibit discrimination on grounds of sexual orientation (Official Record, 9th Nov 2005, Col 634). Subsequently in the House of Commons, the Government committed to bringing forward the

Sexual Orientation Regulations so that they came into force at the same time as commencing the provisions prohibiting discrimination on grounds of religion or belief (Official Record, 8th Dec 2005, col 241).

4.4 Last Autumn, the Government announced its intention to bring the protections on grounds of religion or belief and sexual orientation into force this April (Official Record, 19 Oct 2006, Column 1014).

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 As noted in paragraph 4.1, similar Regulations were made in Northern Ireland under section 82 of the Equality Act 2006, which came into force on 1st January 2007. This instrument follows broadly the same approach in relation to Great Britain.

6. European Convention on Human Rights

Ruth Kelly, the Secretary of State for Communities and Local Government has made the following statement regarding Human Rights:

“In my view the provisions of the Equality Act (Sexual Orientation) Regulations 2007 are compatible with the Convention rights.”

7. Policy background

7.1 The Regulations will protect individuals from discrimination on grounds of sexual orientation, in the provision of goods, facilities, services education, disposal and management of premises and the exercise of public. Sexual orientation means an individual's sexual orientation towards:

- People of the same sex as him or her (gay or lesbian);
- People of the opposite sex (heterosexual); or
- People of both sexes (bisexual).

The protection will therefore apply to everyone, whether they are lesbians, gay men, heterosexual or bisexual.

7.2 The Regulations take a similar approach in terms of substance, to the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006. Both draw on the approach set out in Part 2 of the Equality Act 2006. However, where the Northern Ireland Regulations often follow drafting precedent from that jurisdiction, these Regulations, for reasons of consistency within Great Britain, tend to follow the wording of the provisions in Part 2.

7.3 The Regulations will prohibit:

- direct discrimination – when a person treats another person less favourably on the grounds of his/her sexual orientation, or what is believed to be his/her sexual orientation, or the sexual orientation/perceived sexual orientation of another person with whom they associate.
- indirect discrimination – when an apparently neutral provision, criterion or practice results in a disproportionate adverse effect on persons of a particular sexual orientation, as compared to persons who are not of that orientation.

7.4 The Regulations will also cover:

- victimisation – less favourable treatment of a person as a consequence of complaining of discrimination under the Regulations;
- discriminatory advertisements – publishing an advert, or causing an advert to be published, which indicates an intention by any person to discriminate unlawfully under the Regulations;
- instructions to discriminate – the act of instructing someone to discriminate, or causing another to discriminate unlawfully under the Regulations, for example, by offering a financial inducement;
- discriminatory practices – adopting or maintaining a practice likely to result in unlawful discrimination under the Regulations;
- validity of contracts – the Regulations will provide that contractual terms that result from or would result in unlawful discrimination will be void.

7.5 The Regulations’ main impact will be to make it unlawful for a business, or a public authority performing functions of a public nature, to treat a person less favourably than another on the grounds of his or her sexual orientation when providing goods, facilities or services.

7.6 With regard to education, this means that all schools will have to comply with the Regulations in areas such as admissions, discipline and access to benefits. The Regulations will not, however, impact on a teacher’s freedom to express their views in an appropriate manner including on issues of doctrinal belief.

7.7 The Regulations will provide an exemption to allow services to be provided separately for different groups on the basis of their sexual orientation, where this is the best way to meet a specific need facing people of a particular sexual orientation (which may result from discrimination or disadvantage).

7.8 The Regulations will include an exemption in relation to insurance that will have the same effect as provisions in the Sex Discrimination Act and regulations made under the Disability Discrimination Act. It is our intention that this particular exemption will not apply beyond the end of 2008. We will work with the insurance industry and others to ensure that if any exemption is required beyond 2008, it reflects a genuine need in the industry and is in line with industry best practice, and we will legislate accordingly.

7.9 The Regulations will also provide an exemption for the National Blood Service in the collection of blood, where this is supported by epidemiological evidence.

7.10 Discrimination in the selling or letting of premises will also be outlawed. The only exceptions to this are:

- Where an individual is choosing with whom to live in their own private home; or where an individual is choosing with whom to sell their home, provided they don't advertise or use an estate agent;
- If the premises are owned by a religious organisation, or an organisation acting under the auspices of a religion, provided certain conditions are satisfied (see the Religious Organisation exemption).

7.11 Charities will be covered by the Regulations. The only exceptions are:

- where a charity provides services, for example, counselling, to a specific group on the basis of their sexual orientation, in accordance with their charitable instruments; or
- where it is a religious charity and certain conditions are satisfied. (See the Religious Organisation Exemption)

7.12 Private Members' clubs will be covered by the Regulations, but they will be allowed to have a particular sexual orientation as a membership criterion or a criterion for access to benefits by members – where the association is set up for the purpose of providing benefits to people of particular sexual orientation. So, a social club whose purpose is to provide support and social activities for gay men would be allowed to require that its members are gay. But a golf club whose purpose is to provide members with access to a golf course would not.

7.13 As in Northern Ireland, religion and belief organisations, and those acting under their auspices, will be able to discriminate to comply with doctrine, or avoid conflicting with the strongly held religious beliefs of a significant number of the religion's followers provided:

- they are not operating on a commercial basis; and,
- they are not providing a service on behalf of and under contract with a public authority.

There will be no specific exemption for faith based adoption and fostering agencies, but in the interests of children, the Regulations will provide for a transition period until 31 December 2008. Faith based adoption and fostering agencies wishing to take advantage of the transitional arrangements will have to refer gay, lesbian and bi-sexual couples to agencies who are able to assist.

7.14 The Regulations will make clear that married persons and civil partners are in materially the same position for the purposes of the regulations. This would remove a possible obstacle to civil partners bringing a discrimination claim on grounds of sexual orientation against a provider of goods and services who denied them access to a benefit or service that was being offered to a married person in a similar situation.

7.15 Certain bodies and functions will be exempt from the Regulations, consistent with exemptions from other equality legislation in Great Britain. In relation to public functions, these exceptions are expected to apply to the areas described in the table below.

Activity	Justification
All activities of either House of Parliament, including House authorities	Parliamentary sovereignty
Security Service, Secret Intelligence Service, GCHQ, Service personnel assisting GCHQ as required by the Secretary of State.	To safeguard National Security.
Judicial functions (including things done on the instruction of those exercising such functions)	Constitutional independence of judiciary
Legislating (whether Westminster, devolved bodies or Church Synod)	Legislative independence and freedom to debate frankly
Making secondary legislation whether U.K. or Scottish	Executive freedom
Decisions not to prosecute etc.	To ensure that decisions made in relation to individual cases are determined on the basis of the facts of the case alone.

Consultation

7.16 The Government launched a 12 week consultation in March 2006. A series of regional consultation events were also held in Birmingham, Blackpool, Brighton, Edinburgh and London.

7.17 The Government received 2,747 responses to the consultation, including 507 organisational responses. In addition a number of petitions have been running on the no. 10 website.

7.18 The overwhelming majority of responses (almost 97%) accepted the principle of legislating in this area to prohibit unfair discrimination on grounds of sexual orientation.

7.19 There was an exceptionally strong response on the scope of the proposed religious organisation exemption, with almost every response specifically addressing this question. Overall, roughly two-thirds of all respondents sought a wider exemption. The Government believes that the concerns expressed have been addressed by the wording of the exemption at Regulation 14 (see para 7.9).

7.20 With regard to adoption and fostering services, the Government listened carefully to the views expressed on all sides, before confirming that there would be no specific exemption for faith based adoption agencies (see para 7.11). But to prevent any disruption to services currently being provided to adoptive parents and children and to find a way to ensure that much valued

and needed services are retained and developed, the Regulations will provide for a transition period until the end of 2008. In addition, the Prime Minister will be commissioning an ongoing independent assessment of the issues agencies will need to address during this period to comply with the Regulations.

7.21 We will provide guidance and information on the Sexual Orientation Regulations once the Regulations come into force at the end of April. The new Commission for Equality and Human Rights will provide advice and support on the Regulations when it opens its doors in October 2007.

8. Impact

8.1 A Regulatory Impact Assessment and Equality Impact Assessments are attached to this memorandum.

8.2 The impact on the public sector is minimal. A number of local authorities, NHS groups and police authorities welcomed the Regulations as formalising their existing policies and procedures.

9. Contact

Jonathan Hall at the Department for Communities and Local Government Tel: 0207 944 0661 or e-mail JonathanL.Hall@communities.gsi.gov.uk can answer any queries regarding the instrument.

Final Regulatory Impact Assessment
March 2007
Department for Communities and Local Government: London

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Purpose

That individuals are protected from discrimination in the provision of goods, facilities, services, education, the disposal and management of premises and the exercise of public functions on the grounds of sexual orientation and to widen up markets for both suppliers and consumers.

Objective

In making these regulations the Government intends to extend the framework of discrimination law in Great Britain, to better reflect the values, challenges and opportunities of modern society.

The Government intends to commence these regulations alongside the provisions in Part 2 of the Equality Act 2006 providing new protection from discrimination in goods, facilities

and services, education, the letting and management of premises, and the exercise of public functions, on the grounds of religion or belief. Taken together, these provisions are intended to establish a proportionate, fairer and more equitable legal position in respect of protection from discrimination.

The Current Legislative Framework

Since December 2003 it has been unlawful under the Employment Equality (Sexual Orientation) Regulations 2003 (SI 2003/1661) to discriminate against a person on the grounds of their sexual orientation in employment and vocational training (including further and higher education). The regulations prohibit direct discrimination, indirect discrimination, victimisation and harassment on the grounds of a person's sexual orientation.

Discrimination in the provision of goods, facilities and services, premises and public functions is, or will shortly be, unlawful on the grounds of sex, race, disability and religion or belief.

The Equality Act attracted several amendments during its passage through Parliament which sought to add substantive provisions to provide protection from discrimination in goods, facilities and services, premises and public functions on the grounds of sexual orientation. The statutory provision for making these regulations is section 81 of the Equality Act, and "sexual orientation" is

defined as an individual's sexual orientation towards –

- (a) persons of the same sex as him or her,
- (b) persons of the opposite sex, or
- (c) both.

In other words where a person, on grounds of sexual orientation, is treated less favourably than other people.

In other words where a provision, criterion or practice has the effect of putting people of a particular sexual orientation

at a disadvantage which cannot be justified as a proportionate means of achieving a legitimate aim.

In other words where someone is treated less favourably than others because, for example, they have complained of

discrimination or have assisted someone else in a complaint

In other words where a person engages in unwanted conduct that has the purpose or effect of creating a humiliating,

intimidating or offensive environment for another person on the grounds of their sexual orientation.

Sex Discrimination Act 1975

Race Relations Act 1976 (as amended).

Disability Discrimination Act 1995.

Part 2 of the Equality Act 2006.

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orientation. The Government expressed concern that such provisions should not be added without the opportunity for detailed consultation with those who would be affected by the new measures. Section 81 of the Act therefore provides a power for the Secretary of State to make regulations to prohibit discrimination on the grounds of sexual orientation in Great

Britain. There is a corresponding power in section 82 in relation to Northern Ireland, which

was exercised to make the Equality Act (Sexual Orientation) Regulations (Northern Ireland)

2006 (SR 2006 No 439), which came into force on 1 January 2007.

The Government launched a consultation in March 2006 seeking the views of interested parties on the proposed shape and coverage of regulations to be made under this order making power. Following an exceptionally strong response to the consultation the

Government announced that the regulations would be brought forward in time to be debated in both Houses and – subject to Parliamentary approval – brought into force this April.

Options

There are three broad options for dealing with sexual orientation discrimination in advance of the Single Equality Act. The consultation document described proposals set out in Option (iii).

(i) **Do nothing.** The Government has committed to providing full rights for gay men, lesbians and bisexual people, including protection from unfair discrimination on the grounds of sexual orientation at the earliest possible opportunity. Sexual orientation, and age, are the only equality strands that have only partial protection (in employment and vocational training). The inclusion of a regulation making power in the Equality Act 2006 has raised expectations that an extension of the protections in this area is imminent and cannot await the Discrimination Law Review which is expected to lead to a Single Equality Act. Doing nothing is not therefore a tenable option;

(ii) **Extend the protection** on the grounds of sexual orientation to goods, facilities, services, premises and public functions to the full extent of the enabling legislation with no exemptions. This approach, which was proposed by stakeholders during the passage of the Equality Act 2006, would meet the basic objective of protecting individuals from discrimination, but it would also result in inappropriate regulation of some sectors, and would not balance the competing human rights of individuals to hold and manifest a religious belief against the right to live free from discrimination. For example, the Government would not wish to stop the targeting of some public services towards particular groups defined by sexual orientation where such an approach is a key factor in ensuring that such services are widely taken up. The Government also does not wish to prevent religious organisations from maintaining their religious observances and or practices that arise from the basic doctrines of their faith.

(iii) **Extend the protection** on the grounds of sexual orientation to goods, facilities, services, premises and public functions in respect of direct and indirect discrimination, victimisation, discriminatory advertisements and practice with appropriate and proportionate exemptions. This approach would meet the overall objective of prohibiting unfair discrimination, while ensuring that where appropriate, proportionate exemptions are provided for specific services or activities. For example, these would ensure that activities such as the debate and passage of legislation are exempted in line with other equality enactments. It will also allow a balanced approach with regard to religious organisations.

The Government's decisions on the shape of the regulations take account of the strong response to the consultation while retaining the overall approach set out in Option (iii).

Consultation

The Government received 2747 responses to consultation, with 507 organisational responses including 211 local churches. A summary of responses accompanies the Government Response to Consultation.

The overwhelming majority of responses accepted the principle of legislating to prohibit

unfair discrimination on grounds of sexual orientation in this area (almost 97%). There was an exceptionally strong response concerning the scope of the proposed exemption for religious organisations, with almost every response specifically addressing this question. Overall, roughly two-thirds of all responses sought a wider exemption and roughly one-third either supported the consultation proposal or sought to narrow or remove the exemption.

Proposals following the consultation

The Government has listened to the many points of view offered in response to this consultation. Religion or Belief Organisations, and those acting under their auspices, will be able to discriminate provided:

- they are not operating on a commercial basis;
- they are not providing a service on behalf of and under contract with a public authority; and
- the aim of the discrimination is to avoid conflicting with the strongly held religious beliefs of a significant number of the religion's followers.

In many respects, the regulations will mirror the approach taken in the Northern Ireland regulations, to ensure consistency across the United Kingdom. However, we have taken a different approach in a number of areas to reflect the different equality framework and policy considerations in Great Britain. In particular, the GB Regulations:

- provide for a transition period for faith-based adoption and fostering agencies until the end of 2008. In the interim, any agency wishing to take advantage of the transitional arrangements will have to refer gay, lesbian and bisexual couples to agencies who are able to assist;
- will make clear that married couples and civil partners are in materially the same position when considering whether discrimination has taken place on grounds of sexual orientation;

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- will provide targeted exemptions for the Blood Service and insurance companies to allow differential treatment where supported by sound epidemiological and actuarial evidence respectively. It is our intention that the exemption for insurance will not apply beyond the end of 2008;
- will not encompass harassment. As made clear in the consultation of March 2006, this issue will be considered and legislated upon in the context of the Discrimination Law Review.

Other proposals

In tackling discrimination on the grounds of sexual orientation, the government intends to take a similar approach, where appropriate, to that taken in other legislation in the provision of goods, facilities, services, premises and public functions; and in the Employment Equality (Sexual Orientation) Regulations 2003.

The new protections are intended to capture direct discrimination, indirect discrimination and victimisation. In essence, the new legislation will make it unlawful for businesses or public authorities to discriminate against a person in the provision of goods, facilities or services on the grounds of his or her sexual orientation. For instance, it would become unlawful to:

- Refuse a same-sex couple a double room in a hotel because this might cause offence to other customers;
- Refuse to provide a gift registration service for couples planning a civil partnership where such a service was offered to couples planning a wedding;
- Refuse admission to a bar because someone was not gay.

However, certain services and activities provided by organisations currently are targeted at customers or users on the basis of their sexual orientation. For example, in the private sector, there are some gay bars and clubs, travel and financial service companies that design their products for lesbian, gay and bisexual customers. Providing goods or services

likely to be of more interest to lesbians, gay men or bisexuals would not be unlawful if these goods or services are also made available to people of any sexual orientation. Those who provide such goods or services would not therefore be obliged to provide new services likely to be of particular interest to heterosexual customers.

We are proposing that certain bodies will be exempt from the regulations, consistent with exemptions from other equality legislation. Public authority exceptions are limited to the areas described in the table below.

Activity Justification

All activities of either House of Parliament, including House authorities

Parliamentary sovereignty

Security Service, Secret Intelligence Service,

Government Communications Headquarters

(GCHQ), personnel assisting GCHQ as required by the Secretary of State.

To safeguard national security.

Judicial functions (including things done on the instruction of those exercising such functions)

Constitutional independence of judiciary

Legislating (whether Westminster, devolved bodies or Church Synod)

Legislative independence and freedom to debate frankly

Making secondary legislation whether U.K. or Scottish

Executive freedom

Decisions not to prosecute etc. To ensure that decisions made in relation to individual cases are determined on the basis of the facts of the case alone.

Health Impact

We expect there to be a positive impact on health and an improvement in the level of healthcare and uptake of health services by lesbians, gay men and bisexual people. The consultation has elicited evidence from a range of organisations showing that lesbians, gay men and bisexuals face disproportionate health risks in a number of areas, including mental health, suicide, self-harm, sexual health, eating disorders and alcohol or substance abuse.

A range of organisations involved in healthcare supported the regulations on the basis that they will help address the low take-up of mainstream health or counselling services by lesbians, gay men and bisexuals. One local survey shows 50% of gay men have not

disclosed their sexuality to their GP, possibly reducing clinical effectiveness. By deterring discrimination and giving lesbians, gay men and bisexuals increased confidence in accessing mainstream services, the regulations can be expected to result in improved clinical outcomes through earlier diagnosis and treatment. The regulations will provide a targeted exemption to enable the National Blood Service to maintain policies which exclude donations by certain groups, including gay men. This exemption will be tied to close analysis of the epidemiology of confirmed HIV and Hepatitis B positive tests among blood samples from people donating blood in the UK, and will be subject to regular review.

Rural Impact

We anticipate that the regulations may lead to a small but appreciable improvement in the quality of life for some lesbians, gay men and bisexuals living in rural areas, in terms of improved access to community facilities. The consultation has elicited evidence of lesbians, gay men and bisexuals living in rural areas in Wales and the South-East encountering obstacles accessing community facilities due to discrimination by charities and village halls.

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A large number of local churches raised concerns that the regulations would result in a reduction of local community facilities, especially in rural areas, as they would have to stop making their facilities available to the wider community on the assumption the regulations would otherwise require them to provide equal access to lesbians, gay men and bisexuals groups. The exemption for religious organisations will ensure that local churches will be able to retain appropriate discretion in the hire of their facilities to local community groups, and prevent any reduction of local community facilities.

Environmental Impact

There is no anticipated impact of these proposals on the environment.

Costs and benefits

Benefits

The proposed change is designed to make unfair discrimination on the grounds of sexual orientation unlawful. This will generate economic benefits relating both to the increased welfare associated with living in a more equitable society¹⁰ as well as a variety of market based benefits. Greater equality will have a positive effect on pricing, competition, choice and participation.

Unfortunately the difficulty in quantifying equality with respect to goods and services and the lack of authoritative surveys concerning sexual orientation prohibits cogent statistical or econometric analysis. For example, the Census does not collect data on sexual orientation.

However, there has been some research carried out. It is estimated that approx. 6% of Great Britain's population are lesbians, gay men and bisexual people, and ONS figures on civil partnerships show that 15,672 civil partnerships were formed in the UK between December 2005 and the end of September 2006, just 9 months after the Civil Partnership Act came into force. Recent surveys¹¹ concluded that the average annual salaries of lesbians

and gay men are up to £10K higher than the national average with a greater proportion of salary being spent on disposable items and leisure, including holidays. There is some evidence that discrimination currently leads some gay men and lesbians to reduce their use of some types of service or else to direct their business towards known 'gay friendly' service providers, leading to a lack of choice, diminished competition and higher prices. Even service providers that do not discriminate themselves can lose custom if the perceived

risk of discrimination leads potential clients to restrict themselves to designated gay-friendly

establishments. With regards to participation, an associated increase in service uptake has clear benefits to the industries involved and to the utility of lesbians, gay men and bisexuals consumers.

Therefore, making discrimination on the grounds of sexual orientation unlawful in the provision of services is likely to bring financial benefits to the wider business community due to increased economic activity outside strictly gay-friendly providers. Individuals who

are forced to make changes to their economic behaviour as a result of discrimination represents a market distortion resulting in economic inefficiency. Authors have also referred to the impact changed behaviour has on reduced social capital and related productivity¹². As segmentation and barriers to entry diminish markets will integrate

¹⁰ See for example Cordoba and Verdier (2005) "Lucas vs. Lucas: on inequality and growth"

¹¹ Published by "Out Now" marketing consultancy and "Diva Magazine", January 2006.

¹² See Calandrino (1999) 'Sexual Orientation Discrimination in the Labour Market'

¹¹

generating added trade and revenue. However, some consumers may continue to use known providers and be willing to pay a utility premium in order to do so. This however will reflect preferences rather than discrimination and therefore be economically efficient.

A number of business organisations responded to the consultation and all supported the proposals. The Advertising Association of Great Britain agreed that there should be economic benefits associated with making unfair discrimination unlawful.

Costs

Implementation Costs

Administrative costs

The regulations impose no new administrative burdens or licensing requirements on service providers. Following the implementation of the Civil Partnership Act providers should have already updated their procedures to include reference to civil partners alongside married couples.

Familiarisation costs

The principle of non-discrimination on grounds of sexual orientation will be familiar to

all employers through the Employment Equality (Sexual Orientation) Regulations 2003.

In

addition, all public sector organisations and many commercial, voluntary and charitable organisations will have already reviewed their policies and procedure for compatibility with

the Civil Partnership Act. As the regulations follow the definitions and principles of other anti-discrimination legislation in most areas, the burden of familiarisation will be minimal.

It is intended that costs of producing on-going guidance and support for the sexual orientation discrimination regulations will be fully met from within the budget of the new Commission for Equality and Human Rights (CEHR) which will begin operating in October

2007. However, the government intends to produce and distribute introductory guidance covering the sexual orientation discrimination regulations and the new religion and belief protection in the spring of 2007, when the legislation come into effect.

Where appropriate, the intention is that this guidance will be sector specific and build on existing proven mechanisms for reaching certain sorts of organisations, for example by expanding the package of information on equality and diversity issues already provided for

small businesses.

The Home Office Regulatory Impact Assessment on the new religion or belief provisions (Part 2 of the Equality Act 2006) provided estimates of the implementation costs for these measures. These estimates were based on the expectation that each service provider that will be affected by the new laws in relation to religion or belief would have access to a leaflet that explains the changes in the law that would take approximately 5-10 minutes to read depending on the size of the organisation in question. The new sexual orientation regulations will apply to the same group of service providers. The sexual orientation regulations will, in most respects, be similar to the religion or belief discrimination measures and both measures will come into force in April 2007. The Government

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proposes therefore to publish joint guidance covering both the new areas of law, which, given the two sets of provisions cover similar ground, will reduce the total amount of reading required. The cost estimates in this Regulatory Impact Assessment are based on the assumption that this guidance will be no more than 50% longer than guidance which addressed the new religion or belief provisions alone.

It is estimated that the total cost to Government of production and distribution of guidance

that covers the new sexual orientation regulations in addition to the religion or belief measures will be no more than £75K¹³.

There will be costs for businesses and the public sector associated with the assimilation of

new guidance. The amount of time spent reading the guidance, and number of providers spending time doing so, is dependent upon the current equal opportunity policies of those businesses and public authorities and the awareness of the managers towards these issues.

It is envisaged that each service provider covered by the new regulations will have access to a leaflet that explains the changes covering both the new protection being introduced in

relation to religion or belief and those proposed for sexual orientation.

Providers may be expected to spend an additional 2.5 minutes extra reading and understanding the sexual orientation aspects of the combined guidance. Medium to large employers, those with 50 or more employees, will be expected to take an additional 5 minutes to read and consider the aspects of the combined guidance relating to sexual orientation, as some of them may produce and disseminate guidance for staff. These are assumptions of the average time spent dealing with the guidance.

There are about 4.31 million businesses in Great Britain¹⁴ of which about 3.16 million are small employers or businesses with no employees at all. Just over 37,000 are medium to large employers.

The extra costs in the first year for each small business arising from the sexual orientation regulations will be a little over £1.00¹⁵. The total marginal cost for small businesses of spending 2.5 minutes reading and understanding the combined guidance is, therefore, a little under £4.9 million¹⁶. The cost for medium to large business from spending five minutes reading and understanding the guidance on the sexual orientation regulations is about £2.40¹⁷ each. The total marginal cost for medium to large businesses of reading and understanding the guidance is, therefore, about £89,500¹⁸.

¹³ The Home Office RIA for the Religion & Belief provisions estimated that the costs of guidance for these measures would

be £50K. It is anticipated that the new additional cost accruing from the addition of guidance on the sexual orientation

regulations to this document will bring the total cost to no more than £75K.

¹⁴ There are 4,309,500 small businesses (businesses with less than 50 employees) and a further 37,000 small to large

business (businesses with over 50 employees) in GB, Source: Small Business Service Statistic (SBS) 2003.

¹⁵ In smaller firms it is assumed that a general administrator/ manager will be responsible for implementation. Data from

the Annual Survey on Hours and Earnings (ASHE) (2005) show that an average gross hourly wage for this occupation

(ASHE code 1) is £20.79. When uplifted by 30% to allow for non-wage labour costs, this becomes £27.03 an hour.

Two and a half minutes reading and understanding the guidance is, therefore, about £1.13.

¹⁶ The cost for small firms is $4.31m \times £1.13 = £4.87m$.

¹⁷ In medium and larger firms it is assumed that there will be a dedicated personnel manager to read guidance, answer

follow-up questions and disseminate information to other parts of the organisation. Using ASHE 2005 data for a

personnel manager (ASHE code 135), average gross wages amount to £22.31 and £29.00 after inclusion of non-wage

labour costs. Five minutes reading time would cost about £2.42.

¹⁸ The cost for medium to large firms is $37,000 \times £2.42 = £89.5k$.

¹³

There are approximately 26,000 public authorities¹⁹, of which around 1,500 could be classed as larger authorities (central government, local government authorities, higher and further education authorities, strategic health authorities etc.) Reading time for the guidance will be the same as for the private sector so the total cost to larger public authorities is expected to be about £3.5k and about £28k for the smaller authorities.²⁰ The total anticipated new cost to public authorities as a result of information on the sexual orientation regulations being included in the guidance on the religion or belief provisions would therefore be just over £30k.

The total aggregated costs for awareness-raising and guidance for the sexual orientation regulations in the first year is therefore in the region of £5 million²¹. In the public sector and much of the voluntary and charitable sector there are dedicated equality officers to

streamline this effort. These are one-off implementation costs, with no ancillary ongoing costs attached. Even if the business-promoting effects discussed in the previous section applied on a very modest scale it is likely they would outweigh these costs.

Policy costs

We anticipate that only a very few businesses, charities or voluntary organisations will need

to change their existing practices or policies in order to comply with the new regulations. In these cases, the requirement to stop discriminating in order to comply with the law is unlikely to be costly – indeed, for commercial providers, no longer refusing to offer their services to potential customers on the grounds of their sexual orientation would be likely to increase rather than decrease business.

Legitimate requirements to discriminate in the voluntary and charitable sector are allowed

for by targeted exemptions in the regulations.

Costs to Service Providers

The essence of the protection would be to require providers of goods, facilities, services and premises, not to refuse to provide services or sell their products to customers on the grounds of their sexual orientation. This will not extend to any requirement to consider reasonable accommodation or adjustment, so it is expected that the costs to providers will be negligible.

Costs to police/Crown Prosecution Service (CPS)

The only criminal offences to be included in the sexual orientation regulations will be summary offences, (i) when someone knowingly or recklessly misleads a publisher into placing a discriminatory advert, and (ii) when someone knowingly or recklessly makes a false statement to someone else whose assistance they seek that proposed action is not discriminatory. These offences currently exist in relation to racial and sex discrimination and have rarely, if ever been used. We therefore assess that the costs to the police and CPS

will be negligible, if any.

¹⁹ 26,13 public authorities.

²⁰ The cost to smaller authorities would be £1.13 x 24,500 = £27.7k. The cost to larger authorities would be about £2.42 x 1,500 = £3.6k.

²¹ £4.87m + £89.5k + £27.7k + £3.6k = £4,990,800

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The Metropolitan Police Service noted that the new regulations will have little, if any, impact on their current policies and procedures.

Cost to the Courts

There may be a cost associated with extra court cases as a result of the proposal. Most cases will be heard in county/sheriff courts but a small number of cases may be heard in the High Court. Our current estimate is that it is very unlikely that there will be more than 10 cases per year which require court action²².

A service provider taken to court by a person alleging discrimination on the grounds of sexual orientation will be expected to meet their own legal costs. However, it is open to a court to make a costs award against the plaintiff and in favour of the respondent if it rules that no discrimination took place. Equally, if the court rules that discrimination did take place, a service provider may be ordered to pay the costs of the victim.

Insurance is available to organisations to cover the costs of legal action. In many cases, legal proceedings are settled out of court. The CEHR will have powers to make arrangements for a conciliation service for both parties to come to an out of court arrangement.

Costs to the Insurance Sector

Discussions with the insurance industry before and during the consultation process indicate that they do not anticipate that significant additional costs will be imposed on insurance and assurance companies as a result of the sexual orientation regulations. In the past, sexual orientation was sometimes taken into account by insurers when seeking to establish an individual's risk of being, or becoming, HIV positive. The Association of British

Insurers (ABI) has issued guidance for insurers on best practice in relation to HIV and insurance with the most recent Statement of Best Practice coming into effect in October 2004. This provides insurers with guidance on what questions can reasonably be asked when assessing insurance applications in order to establish the risk of HIV infection. For example, it makes clear that questions should not be asked about an individual's sexual orientation but may be asked about behaviour that could put an individual at risk of exposure to HIV (for example through having had unsafe sex, intravenous drug abuse, or having had surgery outside the EU).

The ABI has formed an expert working group on HIV and insurance to provide ongoing advice on and the Statement of Best Practice will be reviewed in 2007. At this stage, we anticipate that the new regulations are likely to reinforce the practice recommendations made in the ABI Code of Practice.

Insurers no longer require HIV tests due to a person's sexual orientation. However, insurers do typically set different financial limits at which an HIV test is required for higher levels of cover, regardless of sexual orientation. There are currently different testing levels for single men (regardless of sexual orientation), for married men and for civil partners, due to different risk profiles.

²² As with other discrimination legislation, the regulations will include a provision reserving the right to bring judicial review proceedings in the High Court. Only certain acts of public authorities will be susceptible to judicial review and so only a very small number of cases will require High Court action

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There is no single industry standard for testing thresholds for civil partners, due to the limited amount of data available for civil partnerships. The GB regulations will include an exemption that will have the same effect in relation to insurance as provisions in the Sex Discrimination Act and regulations made under the Disability Discrimination Act. It is our intention that this particular exemption will not apply beyond the end of 2008. We will work with the insurance industry and others to ensure that if any exemption is required beyond 2008, it reflects a genuine need in the industry and is in line with industry best practice, and

we will legislate accordingly. The latest ABI guidance makes clear that insurers should not ask about sexual orientation or any HIV negative tests, but instead base their assessment of risk on answers provided about actual behaviour, regardless of sexual orientation.

Costs to the hospitality sector

The consultation has provided evidence of some hotels and bed and breakfasts having turned away, or failed to offer like services, to same-sex couples on the grounds of their sexual orientation. However, the British Hospitality Association have confirmed that they do not consider the proposals for the regulations will have a significant effect on the hospitality sector.

The regulations will not prevent providers of accommodation from only offering single beds or twin rooms.

Small Firms' Impact Test

Small to medium sized enterprises are less likely to have procedures relating to provision of services. However, most would recognise that avoiding discrimination in any form is in line with best business practice. We do not anticipate that any action will be needed beyond the familiarisation already identified under costs earlier in this document. Apart from managers reading the awareness raising literature, small businesses are unlikely to provide formal training or guidance for staff as a result of these changes.

We took pre-consultation sounding with small business (Confederation of British Industry,

Small Business Forum, Federation of Small Business and the British Hospitality Association)

on the impact on small business of the proposed regulations, which have indicated that the

proposed regulations will not pose a significant problem. The Small Business Service does

not believe these proposals will have a significant adverse effect on small firms.

Compensatory measures

The regulations are additional to the current body of discrimination law. They will not replace other measures.

However, they will ensure consistency of protection across the equality strands. Race, sex,

and disability already enjoy statutory protection from discrimination in the provision goods,

facilities, services, premises and public functions. Similar protection is being introduced to

outlaw discrimination on the grounds of religion or belief.

Clear and simple guidance will be provided to ensure that the new law is easy to comply with. The Commission for Equality and Human Rights will provide institutional support for

the regulations from October 2007.

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These regulations will be included in the suite of legislation that is being considered by the

Discrimination Law Review to simplify equality legislation.

Equity and Fairness

The Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003 both came into effect in October 2003, affording protection in employment and vocational training from discrimination on the grounds of sexual orientation or religion or belief. The Equality Act 2006 extends this protection to goods, facilities, services, education, disposal and management of premises and the exercise of public functions for religion or belief.

It is fair and equitable to extend similar protections using the power in section 81 of the Equality Act 2006 against discrimination on the grounds of sexual orientation against discrimination on the grounds of sexual orientation.

An Equality Impact Assessment has been completed for these regulations.

Competition Assessment

Due to the minimal effect on the private sector, it is not envisaged that there will be any immediate effect on competition in any one sector. There may be a slow increase in competition generally due increased economic activity outside strictly gay-friendly providers, but we judge that the effect will be negligible for any particular sector.

As noted above, the British Hospitality Association have confirmed that they do not consider the proposals for the regulations will have a significant effect on the hospitality sector.

A competition filter has been performed that indicated a competition assessment is unnecessary.

Enforcement and Sanctions

Enforcement of these regulations will normally be by a victim of unlawful discrimination bringing proceedings through the courts (ie county court or sheriff court). The new Commission for Equality and Human Rights (which will begin operating in October 2007)

will be able to support some victims to pursue strategic cases. In addition, the Commission

for Equality and Human Rights will have powers to conduct formal investigations – if it suspects that a person has committed an act of unlawful discrimination – and issue unlawful act notices if the investigation finds that discrimination has taken place.

The Commission for Equality and Human Rights will be the only party able to enforce provisions on discriminatory practices and discriminatory advertisements, pressure and instructions to discriminate. These will be brought before an employment tribunal for matters which fall within its jurisdiction and to a county or Sheriff's court for other matters.

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The Commission for Equality and Human Rights's overall budget will cover work on promoting equality and diversity, promoting human rights, working with communities, as well as enforcement. Decisions about what proportion of the Commission for Equality and

Human Rights' efforts will be dedicated to its various activities will be made in due course.

Monitoring and Review

The new Commission for Equality and Human Rights will have a responsibility to keep the working of discrimination legislation and the Human Rights Act under review, including the sexual orientation regulations. It will need to consider the effectiveness and adequacy of statutes and, if necessary, make recommendations or proposals to the relevant Secretary of State for changes.

The Prime Minister will be commissioning an ongoing independent assessment of the issues faith-based adoption and fostering agencies will need to address in the transition period and the impact the regulations have on adoptions and fostering services. This is intended to prevent any disruption to services currently being provided to adoptive parents and children and to find a way to ensure that much valued and needed services are retained and developed, whilst also ensuring agencies comply with the Regulations.

Summary and recommendation

The government believes that the nature of the protection envisaged will have a minimal impact upon costs for the business, public and voluntary sectors.

The implementation costs of the sexual orientation provisions regulations are familiarisation costs. Prior familiarisation with the Employment Equality (Sexual Orientation) Regulations

2003 and the Civil Partnership Act 2004 will mean that the basic principles are already familiar. Familiarisation will be further eased by the similar approach taken, where appropriate, to other anti-discrimination legislation relating to goods and services.

Over the entire economy the cost of this familiarisation effort is estimated at £5 million in the first year, based on providers spending 7 – 15 minutes reading guidance, with minimal

costs thereafter. In the public sector there will be dedicated equality officers to streamline this effort.

While it is not possible to provide a precise estimate of the benefits that are likely to accrue

from these regulations in a defined time span, we anticipate that the advantages to both Government and business from increased take-up of services are likely to exceed the costs of implementation.

Equality Impact Assessment

March 2007

Department for Communities and Local Government: London

The Equality Act (Sexual Orientation) Regulations 2007

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1. Introduction

1.1 This Equality Impact Assessment (EIA) addresses regulations made to prohibit discrimination on grounds of sexual orientation in the provision of goods, facilities, services, education, management and disposal of premises and the exercise of public functions. It considers the impact of the proposals in terms of race, age, disability, gender including gender reassignment, sexual orientation and religion or belief.

1.2 The aim of this EIA is to ensure that the implications for equality in all the protected grounds (in particular race and disability for which we are obliged to carry out equality impact assessments) are thoroughly assessed as the proposals are developed, so that full account is taken of views expressed, and to provide assurance that changes needed to mitigate any potential adverse impacts have been identified.

1.3 The assessment follows the Commission for Racial Equality (CRE) guidance on conducting Equality Impact Assessments. While addressing the impact of proposals

on all the protected grounds, it therefore also fulfils our duty, arising from section 71 of the Race Relations (Amendment) Act 2000, to assess and consult on the likely impact of proposed policies on the promotion of race equality and our duty arising from Section 3 of the Disability Discrimination Act 2005, to assess and consult on the likely impact of proposed policies on the promotion of equality for disabled people. It also anticipates the duty regarding the promotion of gender equality that will arise from Part 4 of the Equality Act 2006 on 6 April 2007.

2. The Policy

2.1 The Regulations will provide a legal remedy for individuals discriminated against on grounds of their sexual orientation, perceived sexual orientation or association with the sexual orientation of other people, in the provision of goods, facilities, services, education, management and disposal of premises and the exercise of public functions.

2.2 The Regulations are complementary to existing legislation. Protection in the field of goods, facilities and services is already afforded to people on the basis of their sex, disability and race. The Government now intends to provide the same protection to people who may experience discrimination on the basis of their sexual orientation, alongside protection on the basis of religion or belief provided for in Part 2 of the Equality Act 2006 which will commence at the same time as these Regulations.

3. Context and drivers for the proposals

3.1 Section 81 of the Equality Act 2006 includes a power to make regulations to prohibit discrimination on grounds of sexual orientation in the provisions of goods and services in Great Britain. Sexual orientation is defined in Part 1 of the Equality Act as an individual's sexual orientation towards (a) persons of the same sex as him or her, (b) persons of the opposite sex, or (c) both.

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3.2 The Government established the Discrimination Law Review in February 2005 to consider the opportunities for creating a clearer and more streamlined legislation framework, which produces better outcomes for those who experience disadvantage.

3.3 A separate Equalities Review, led by Trevor Phillips, looked at the broader issues leading to an unequal society, in particular the reasons why inequalities persist in certain areas and for certain groups and communities, despite forty years of equality legislation. It issued an interim report in March 2006 and the final report to the Prime Minister on 28 February 2007. The Equalities Review recognised that legislation against discrimination is a significant lever in producing changes in social and cultural attitudes and behaviour as regards equality, but that it is by no means the only factor and that social and cultural attitudes can have a significant effect on life chances.

3.4 Great Britain has a proud history of legislating against discrimination, from the first race discrimination laws in the 1960s to the most recent pieces of major legislation (the Equality Act 2006 which also establishes the Commission for Equality and Human Rights; and the Employment Equality (Age) Regulations 2006 which outlaw age discrimination in the workplace).

3.5 Since 1997, the Government has taken a number of legislative steps that have benefited lesbian, gay and bisexual people, repealing Section 28 of the Local Government Act, legislating in the Adoption and Children Act 2002 to permit adoption by same sex couples, bringing forward the Civil Partnership Act 2004,

and prohibiting discrimination in the workplace under the Employment Equality (Sexual Orientation) Regulations 2003. The Government has also recognised the need for protection on religious grounds and introduced new legislation to prohibit discrimination in goods, facilities and services etc. on grounds of religion or belief, and legislation aimed at tackling religious hatred.

3.6 The Regulations will extend to England, Scotland and Wales.

4. Methodology

4.1 Consultation on issues relevant to this policy has been carried out as part of the formal consultation exercise launched in March 2006 and in relation to preparations for the Discrimination Law Review. We have also taken account of the results of the Equalities Review.

4.2 The Government launched a consultation on proposed regulations in March 2006, closing in June. During this period regional stakeholder events were held in Birmingham, Blackpool, Brighton, Edinburgh and London. In total, 2747 responses were received, including 507 organisational responses.

5. Impact Assessment of the proposals

5.1 This section analyses the likely impact of the Regulations. It provides analysis of the impact on a cross-strand basis and also analysis of the differential impact on particular strands where such an impact has been identified. The questions considered are primarily whether the Regulations affect the equality strands equally or differently and whether the strands are affected in a positive or negative way. For a cost/benefit analysis of the Regulations, see the Regulatory Impact Assessment.

5.2 This policy has significant implications for equality of opportunity for lesbian, gay and

bisexual people. Lesbian, gay and bisexual people are more likely than heterosexual people to experience sexual orientation discrimination in the provision of goods, facilities and services. The proposals are therefore likely to have positive impacts for lesbian, gay and bisexual people because it will prohibit this type of discrimination.

5.3 The policy also has implications for members of certain religious communities. The majority of responses to the consultation from religious organisations expressed concern that the proposals would unduly restrict their activities because of religious teachings on homosexual sexual practice.

5.4 There is a general lack of quantitative data on sexual orientation in Great Britain, because of sensitivities around the collection of this information. Consultations on the proposed Regulations, as well as work being carried out through the Discrimination Law Review and Equalities Review, has highlighted the importance of accurate population data.

5.5 The difficulty in quantifying equality with respect to goods and services and the lack of authoritative surveys concerning sexual orientation prohibits cogent statistical or econometric analysis. For example, the Census does not collect data on sexual orientation. However, there has been some research carried out, and the Regulatory Impact Assessment for the Civil Partnership Act estimated that approximately 6% of Great Britain's population are lesbians, gay men or bisexual people. Furthermore, ONS figures on civil partnerships show that over 15,000 same-sex couples in Great Britain had sought legal recognition of a same-sex relationship by September 2006,

just 9 months after the Civil Partnership Act came into force. It is therefore likely that significant numbers of the population will be affected in a positive way by the implementation of the proposed Regulations.

5.6 Because no mechanism for redress currently exists regarding instances of sexual orientation discrimination other than in the field of employment, it is hard to quantify the extent for recourse to these Regulations. However, qualitative testimony from the lesbian, gay and bisexual community in their responses to the consultation, the Equalities Review and the Discrimination Law Review is clear about the types of discrimination lesbian, gay and bisexual people are currently facing when accessing goods, facilities and services. The response to consultation has identified particular issues of concern for lesbian, gay and bisexual people; for example, discrimination experienced by lesbian, gay and bisexual people accessing services in healthcare and other public services, in accessing hotels and the tourism industry, and by children who have gay parents. The Equalities Review has shown that homophobic bullying and hatred are increasingly perceived as problems, particularly amongst younger members of society.

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5.7 Data and consultation responses received from local churches, representatives of national churches and other religious groups show that a real concern exists that organisations with a religious ethos could be forced by these proposals to act in a way which is contrary to their teaching. This concern extends to social outreach activities of faith groups (such as parent and toddler groups), schools, and commercial organisations run by individuals or groups with strong religious beliefs. We believe that this concern is addressed by the mitigation below.

Assessment of impacts

Race, disability

5.8 We have no clear evidence that there is likely to be a differential impact on people within these categories.

Age

5.9 There are likely to be multiple-identity issues in relation to the application of these Regulations in the sphere of education for young people and parents or carers within the groups identified as affected generally. There are also possible indirect impacts on children seeking adoption or fostering. These are considered below. Evidence does not indicate that there is likely to be a more general differential impact on people within these categories.

Sexual orientation

5.10 Lesbian, gay and bisexual people are more likely than heterosexual people to suffer discrimination on the basis of their sexual orientation in the supply of goods, facilities and services. Responses to the consultation have cited examples of ongoing discrimination in accessing hotels, restaurants, cafes, and private housing, in relation to venues and commercial services for civil partnership registration and celebration, in the delivery of education, and in the public provision of healthcare, social housing and nursing homes.

5.11 The Regulations will impact positively on people in the lesbian, gay and bisexual community by providing a route to redress against discrimination. However, it will also have a positive impact on members of the heterosexual community, as they too

can seek redress for discrimination where, for example, they are refused access to a pub because they are not gay.

Religious belief

5.12 It is clear from the consultation that many groups and individuals with a strong faith identity are concerned that the extension of goods, facilities and services protection to include sexual orientation will require faith organisations and individual business owners to act in a way that is incompatible with their beliefs. Areas which they fear will be affected are:

- Core religious observance and practice (e.g. marriage, sacraments);
- Wider social and community activities (e.g. parent and toddler group, senior citizens' luncheon club);
- Faith-based charities and voluntary groups (e.g. youth clubs, homeless shelters, adoption and fostering agencies);
- Faith-based schools;
- Commercial activities run by an individual or organisation with a strong faith ethos.

5.13 It is for this reason that an exemption for religious organisations will be included in the Regulations.

Multiple-identity and faith groups

5.14 Some respondents to the consultation noted that lesbian, gay and bisexual people that are also members of a faith community may be differentially affected by the Regulations. Insofar as these lesbian, gay and bisexual people wish to access goods, facilities and services provided by a faith-based organisation to the wider community, they are in the same position as any other lesbian, gay and bisexual person. The difference arises when they wish to access facilities and services associated with core religious observance, such as the sacraments in the Christian tradition. We acknowledge that this is a difficult issue for individuals in this position. There are clearly negative impacts for those involved, with complex human rights implications.

Multiple-identity and children

5.15 The education provisions will have a greater impact on young people as pupils. There are also possible indirect impacts on young people as children seeking adoption or fostering, through the impact of the Regulations on religious adoption and fostering agencies. There will therefore be multiple identity issues for young people of different sexual orientation and/or religious belief (and, for pupils, by association with the sexual orientation and/or religious beliefs of their parents or carers).

Multiple-identity and transsexual people

5.16 There is a limited cross-strand impact to the extent that transsexual people are more likely to be perceived as having lesbian, gay or bisexual sexual orientations.

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6. Measures to mitigate adverse impact and

alternative policies which might better achieve equality of opportunity

6.1 The Regulations impact on the needs and rights of lesbian, gay and bisexual people and people with strong religious beliefs. Mitigating measures are required to balance the rights of people in these two equality categories (and those who are both, namely lesbian, gay and bisexual people with strong religious beliefs). In the Employment Equality (Sexual Orientation) Regulations 2003, a similar issue was faced. In that case an exemption to the Regulations was applied which allowed employers to apply a sexual orientation requirement (subject to it being reasonable) to prospective employees where their sexual orientation would be a material consideration in complying with doctrinal teaching of a religion or to avoid offence to significant numbers of a religion's followers.

6.2 We believe that a similar mitigation would be equitable in relation to these Regulations, and propose an exemption from the Regulations for the provision of goods, facilities and services by certain religious organisations.

6.3 It is necessary to define the limits of any exemption, balancing the needs, rights and views of all those who will be affected. The human rights standards in the European Convention on Human Rights, made part of our law by the Human Rights Act 1998, have helped us to do this in an objective way.

6.4 Having considered the response to consultation and taken careful account of the human rights implications, we have decided to ensure that the Regulations do not unduly interfere with the right of religious organisations to organise their own affairs in accordance with the deeply held beliefs of their religion, while guaranteeing the rights of the lesbian, gay and bisexual individuals and groups to equality of treatment. We believe that the Regulations provide the best balance between the rights to nondiscrimination and to freedom of thought, conscience and religion.

6.5 The exemption will be available for those organisations whose purpose is to practice, advance or teach a religion, and/or to enable persons of that religion to receive certain benefits or engage in certain activities within the framework of their religion, as well as those who act under the auspices of such organisations. The exemption will not be available for organisations with a sole or primarily commercial purpose, nor organisations providing a service on behalf of and under contract with a public authority. The exemption means that religious organisations and those acting under their auspices do not have to act in contravention of their core doctrinal beliefs or the strongly held religious beliefs of a significant number of their religion's followers.

6.6 To allow individuals to qualify for the exemption other than when acting under the auspices of religious organisations would not balance rights as effectively. It would create a sphere in which homophobia and genuine doctrinal belief would be indistinguishable in law, and in which the rights of lesbian, gay and bisexual people could potentially be compromised. On considering alternative ways to draw this exception either more widely (including exempting primarily commercial organisations), or more narrowly (including not having an exception), therefore, the current proposal is assessed as the best balance. It represents the best possible mitigation of the potential negative impacts on people of different religious belief

while minimising the potential negative impact of the exception on people of different sexual orientation. This view is supported by the conclusions of the Joint Committee on Human Rights (HL Paper 58, HC350) on the corresponding provisions in the Northern Ireland regulations covering this area.

6.7 In a letter to the Prime Minister on 23rd January 2007, Cardinal Cormac Murphy-O'Connor made clear that the Regulations as they stood would force the closure of Catholic adoption services, as Catholic teaching about the foundations of family life meant that its adoption agencies would not be able to recruit and consider homosexual couples as potential adoptive parents. During the consultation a number of faith-based organisations indicated that they would withdraw their provision rather than act in contravention of their core doctrinal beliefs in this area, and there are international precedents for such organisations amending or withdrawing their services in similar circumstances. Given the important contribution of faith-based adoption and fostering agencies, there is a credible risk that the Regulations will have an indirect impact on vulnerable children seeking adoption or fostering. To ensure that vital services for children are not disrupted, the Regulations will provide for a transition period for faith based adoption and fostering agencies until the end of 2008. In the interim, any agency wishing to take advantage of the transitional arrangements will have to refer lesbian, gay and bisexual couples to agencies who are able to assist, to minimise the potential negative impact of the exception on lesbian, gay and bisexual couples.

6.8 In relation to education, grant-maintained schools already operate in an environment in which it would be contrary to their statutory duties of care and overarching quality frameworks to refuse access to a school, or any benefit to a pupil on the basis of their own sexual orientation or that of any person associated with them. In the vast majority of situations, therefore, these Regulations will reflect existing practice in grant-maintained schools. Again, on consideration, we feel that this reflects the best balance between the needs, rights and interests of groups of people who may be affected differently.

6.9 The Regulations will not remove protections for religious beliefs in existing educational framework. In particular parents have a right to have their children educated in accordance with their religious beliefs, to be consulted on sex education classes, and to withdraw their children from sex or religious education.