
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in Great Britain Council Directive [2002/73/EC](#) of 23rd September 2002 (OJ L 269, 5. 10.2002, p.15-20) (“the Directive”), in part, and come into force on 6th April 2008. The Directive concerns the principle of equal treatment of men and women as regards access to employment, vocational training and promotion and working conditions.

The Sex Discrimination Act 1975 (“the 1975 Act”) was previously amended by the Employment Equality (Sex Discrimination) Regulations 2005 to meet the Directive’s requirements. These Regulations amend the 1975 Act in order to give full effect to the Directive and otherwise comply with the High Court Order in *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin) in relation to the definitions of harassment and discrimination on grounds of pregnancy or maternity leave and the exception relating to terms and conditions during maternity leave.

Regulation 2 amends the definition of discrimination on grounds of pregnancy or maternity leave to eliminate the requirement of a comparator who is not pregnant or not on maternity leave, as the case may be.

Regulation 3 amends the definition of harassment to remove the causal link between harassment and the sex of the person being harassed. The change enables claims to be made by someone who is not subjected to the unwanted conduct himself or herself but the effect of which nonetheless violates his or her dignity or creates an intimidating, etc. environment for him or her.

Regulation 4 makes it unlawful for an employer to fail to take reasonably practicable steps to protect employees from harassment by third parties where such harassment is known to have occurred on at least two other occasions.

Regulation 5 narrows the extent to which it is not discriminatory to deprive a woman of the benefit of her terms and condition of employment during maternity leave. The amendment facilitates claims for discrimination in relation to eligibility for remuneration by way of bonus while on compulsory maternity leave. In addition, it enables claims for discrimination in relation to terms and conditions of employment in relation to periods of additional maternity leave to the same extent to which they are available in relation to periods of ordinary maternity leave. The amendments made by this regulation apply where a woman’s expected week of childbirth (as defined in the Maternity and Parental Leave etc. Regulations) begins on or after 5th October 2008.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been prepared together with a Transposition Note setting out how these Regulations transpose the Directive in Great Britain. Copies of these are annexed to the Explanatory Memorandum and are available to the public, free of charge, from the Government Equalities Office website (currently www.equalities.gov.uk), the OPSI website and from the Government Equalities Office based at Floor 5, Eland House, Bressenden Place, London SW1E 5DU. Copies will also be available in the Libraries of both Houses of Parliament.