
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in the United Kingdom Council Directive 2004/113 EC of 13th December 2004 (“the Directive”) and come into force on the fifth day after the day on which they are made, or on 6th April 2008, whichever is the later. The Directive is concerned with implementing the principle of equal treatment between men and women in the access to and supply of goods and services which are available to the public.

The Sex Discrimination Act 1975 (“the 1975 Act”) and the Sex Discrimination (Northern Ireland) Order 1976 (“the 1976 Order”) already meet many of the Directive’s requirements. However, to fully implement the Directive amendments are needed to the 1975 Act and 1976 Order, in particular to reflect the provisions of the Directive which deal with: discrimination, harassment and sexual harassment, the burden of proof in court proceedings, and the amendment of statutory provisions which would otherwise be contrary to the requirements of the Directive. The amendments to the 1975 Act and 1976 Order can be found in Schedules 1 and 2 respectively.

In each of Schedules 1 and 2, paragraph 1 applies the Directive-based definition of indirect discrimination to the areas of the 1975 Act and the 1976 Order with which the Directive is concerned. Those areas are, respectively, section 29 and Article 30 (discrimination in the provision of goods, facilities or services), section 30 and Article 31 (discrimination in disposal or management of premises) and section 31 and Article 32 (discrimination: consent for assignment or sub-letting), except in so far as these provisions relate to an “excluded matter”. The excluded matters, set out at paragraph 9 in each of Schedules 1 and 2 are: (a) education (including vocational training); (b) the content of media and advertisements; and (c) the provision of goods, facilities or services (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.

In each of Schedules 1 and 2, paragraph 2 introduces protection from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraph 3 introduces protection from discrimination on grounds of pregnancy and maternity in the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraphs 4 to 6 prohibit harassment in connection with the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraphs 7, 8, 11, 12 and 14 amend existing exceptions concerning the provision of single-sex goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraph 10 amends the respective provisions to which they relate to provide that in the provision of goods, facilities, services or premises with which the Directive is concerned, 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.

In each of Schedules 1 and 2, paragraph 13 amends the respective provisions to which they relate to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women, in the areas with which the Directive is concerned.

Paragraph 15 of Schedule 1 provides a statutory authority defence under section 51 of the 1975 Act (acts done for purposes of protection of women) in respect of section 35A (barristers) and section 35B

Status: This is the original version (as it was originally made).

(advocates). This clarification follows our implementation of Directive [2002/73/EC](#), which amends Council Directive [76/207/EEC](#) on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Paragraph 16 of Schedule 1 and paragraph 15 of Schedule 2 remove the statutory authority defence in the areas with which the Directive is concerned.

Paragraph 16 of Schedule 2 amends Article 54(1)(bb) of the 1976 Order. It extends the duties of the Equality Commission for Northern Ireland to promote equality of opportunity on grounds of gender reassignment in the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraph 17 reverses the burden of proof in court proceedings relating to discrimination or harassment in the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraph 18 provides respondents must reply to a claimant's preliminary questions relating to discrimination or harassment in the provision of goods, facilities, services or premises with which the Directive is concerned, within eight weeks of being served with them.

Regulation 3 enables local authorities in England and Wales to charge fees for the use of urinals provided under the Public Health Act 1936 to comply with Article 13 of the Directive (compliance).

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 the main elements of the Directive are transposed into UK law. Copies of these are annexed to the Explanatory Memorandum, laid before Parliament alongside this instrument. They are available from the Government Equalities Office website at 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.