
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 81 of the Equality Act 2006, make it unlawful to discriminate on the grounds of sexual orientation in the provision of goods, facilities and services, education, disposal and management of premises and exercise of public functions. Sexual orientation is defined in section 35 of the Equality Act 2006 as meaning an individual's sexual orientation towards persons of the same sex as him or her, persons of the opposite sex, or both.

Discrimination on grounds of sexual orientation is defined in regulation 3. Direct discrimination occurs where a person is treated less favourably than another on grounds of sexual orientation (regulation 3(1)). Indirect discrimination occurs where a provision, criterion or practice, which is applied generally, puts a person of a particular sexual orientation at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim (regulation 3(3)). Regulation 3(4) provides that for the purpose of the provisions defining whether discrimination has taken place, when comparing the treatment of two people, the fact that one is a civil partner and the other is married is not a material difference in the circumstances. Victimisation, defined in regulation 3(5), occurs where a person receives less favourable treatment than another by reason of the fact that he has brought (or given evidence in or provided information in connection with) proceedings, made an allegation or otherwise done anything under or by reference to the Regulations, or because he intends to do so.

Regulations 4 to 18 prohibit discrimination in the provision of goods, facilities, services, disposal and management of premises, education and the exercise of public functions.

Regulation 4 provides that it is unlawful to discriminate on grounds of sexual orientation against a person who seeks to obtain or use goods, facilities or services. It sets out examples (although not exclusively) of the sorts of facilities and services that might be covered by the Regulations.

Regulation 5 deals with the disposal and management of premises, and regulation 6 provides for the various exceptions that apply to regulations 4 and 5.

The Regulations also extend the protections to those accessing education and educational facilities (regulation 7) and to those wishing to benefit from functions performed by public authorities (regulation 8) subject to certain exceptions in Schedule 1.

Regulation 9 makes discriminatory practices unlawful, and regulation 10 makes discriminatory advertisements unlawful. It is unlawful to instruct or cause another person to discriminate (regulation 11).

Regulation 12 lists the statutory requirements which these Regulations shall not render unlawful.

It will not be unlawful for a person to do anything by way of meeting the needs for education, training or welfare of persons on the grounds of their sexual orientation, or providing ancillary benefits related to these aims (regulation 13).

Regulation 14 provides an exception for organisations relating to religion and belief, that is those whose purpose is to practise a religion or belief, to advance a religion or belief, to teach the principles of a religion or belief, or to enable persons of a religion or belief to engage in any activity or receive a benefit within the framework of that religion or belief. It extends to those who act on behalf or under the auspices of such an organisation. It does not however extend the exception to organisations whose sole or main purpose is commercial, or those who act under a contract with and on behalf of a public authority.

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Regulation 15 provides a transitional period for religious adoption and fostering agencies to comply with the Regulations, provided they refer a person who has been refused their service on grounds of their sexual orientation, to another provider.

Regulation 16 extends the Regulations to membership rights of private clubs and associations. Regulation 17 provides for exceptions to regulation 16 for associations whose main object is to allow benefits to be enjoyed by persons of a particular sexual orientation.

Charities are also exempt from the Regulations as provided in regulation 18 in so far as they are established to confer a benefit on a particular group by virtue of sexual orientation, and act in accordance with this charitable instrument.

Regulations 19 to 26 deal with the enforcement of the Regulations. Any legal recourse for individuals will be for a claim in tort for breach of a statutory duty (regulation 20(1)). But the Regulations do not prevent proceedings by the Commission for Equality and Human Rights under parts of the Equality Act 2006, judicial review or immigration proceedings (regulation 19).

In England and Wales, where a local education authority or responsible body of an educational establishment has allegedly acted unlawfully, a claim may not be brought unless the claimant has given written notice to the Secretary of State. Similar arrangements apply to Scotland (regulation 20(2) and 20(3)).

Regulation 21 provides that proceedings may not be brought under regulation 20 if the issue of lawfulness could be raised in immigration proceedings. Regulation 22 deals with remedies for unlawful action, and regulation 23 with time limits. Regulation 24 sets out how a claimant or potential claimant or respondent may obtain or provide information in forms set out in Schedule 2. It also states how questions may be given to the other party and how the court will interpret the answers or lack of response to the questions.

Regulation 25 allows for rules of court to be made excluding claimants and others from all or part of proceedings under the Regulations if national security issues arise.

Regulation 26 deals with the validity and revision of contracts and provides that a term of the contract is void where its inclusion makes the contract unlawful by virtue of the Regulations. Regulation 26(5) sets out the powers of the county court to remove or modify a term made unenforceable by this regulation.

Regulation 27 provides an exception to these Regulations where a person is treated less favourably on grounds of his sexual orientation in relation to an annuity, or life insurance policy, or similar matter.

Regulation 28 applies to any person who operates a service for the collection and distribution of human blood in order to provide a medical service. It is unlawful to discriminate on grounds of sexual orientation against a person who offers to donate blood, unless it is reasonably based on clinical and epidemiological data to do so.

Regulation 29 makes it unlawful knowingly to help another to do anything which is unlawful under these Regulations.

Regulation 30 deals with liability of employers and principals and in particular makes acts committed by an employee treated as if they had been done by his employer as well as him.

Regulation 31 applies to the police. It states that police officers shall all be treated as employees of their chief officer of police. Any compensation for an unlawful act must be paid out of police funds.

Regulation 32 amends the Equality Act 2006 to add regulations 10 and 11 of these Regulations to section 25 of that Act, which deals with the power of the Commission for Equality and Human Rights to make applications to court to restrain unlawful advertising, pressure, &c.

Regulation 33 deals with Crown application.

Regulation 34 deals with territorial application.

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A Regulatory Impact Assessment and an Equality Impact Assessment in relation to these Regulations have been placed in the Libraries of the House of Commons and the House of Lords. Copies may be obtained from: www.Communities.gov.uk/index.asp?id=1503693.