
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations reproduce the effects of retained EU law in relation to several aspects of the Equality Act 2010 (c. 15). They amend the Equality Act 2010 to ensure that current rights continue once the interpretive effects of EU law on the United Kingdom’s statute book have been removed, at the end of 2023, by the Retained EU Law (Revocation and Reform) Act 2023 (c. 28). In particular, they reproduce effects deriving from the following EU law as it has been interpreted in case law:

- Article 157 of the Treaty on the Functioning of the European Union;
- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (“the Race Directive”);
- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (“the Framework Directive”);
- Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services; and
- Council Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (“the Recast Directive”).

Regulation 2 reproduces aspects of the Recast Directive in relation to pregnancy, maternity and breastfeeding. It amends section 13(6)(b) of the Equality Act 2010 so that no account is to be taken of special treatment in connection with maternity (in addition to pregnancy or childbirth) in a direct sex discrimination case (regulation 2(2)(a)). It gives effect to the principle in *Otero Ramos v Servicio Galego de Saude and another* [2018] ICR 965 that direct discrimination on grounds of breastfeeding is direct sex discrimination by repealing section 13(7), which restricted such claims in cases relating to Part 5 (work) of the Equality Act 2010 (regulation 2(2)(b)). It amends section 18(2) so that protection against discrimination on grounds of pregnancy and maternity covers unfavourable treatment after the “protected period” as well as during it, where the treatment is because of the pregnancy or pregnancy-related illness during the protected period (regulation 2(4)), reflecting the principle in *Brown v Rentokil* (C-179/88). Finally, it amends section 18 to extend the protected period to cover women whose right to maternity leave arises under an occupational scheme rather than under the Employment Rights Act 1996. This reflects the decision in *Chief Officer of Police of the Metropolis v Geldart* [2021] EWCA Civ 611 which applied the principle in *Webb v EMO Air Cargo (UK) Ltd* (C-32/93), that no comparator is needed in cases of pregnancy and maternity discrimination, to such a case.

Regulation 3 adds section 19A to the Equality Act 2010 to reproduce the principle established in “*CHEZ Razpredelenie Bulgaria*” *AD v Komisia za zashtita ot diskriminatsia* (Case C-83/14) that a person without a relevant protected characteristic is indirectly discriminated against where they suffer alongside persons with a relevant protected characteristic from a particular disadvantage arising from a discriminatory provision, criterion or practice.

Regulation 4 reproduces the effect of retained case law in relation to direct discrimination in the context of conditions for access to employment and occupation. It gives effect to the principles of retained case law, in particular *NH v Associazione Avvocatura per i diritti LGBTI - Rete Lenford* (Case C-507/18) such that a public statement made by a person (A) in connection with a relevant decision relating to access to employment or occupation, may amount to direct discrimination even if there is no active recruitment exercise taking place and no identifiable victim. It adds section 60A

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to the Equality Act 2010 to provide for this type of unlawful conduct. Subsection (6) outlines the factors that must be considered when determining whether a statement is made in connection with a relevant decision.

Regulation 5 reproduces the effects of Article 157 of the Treaty on the Functioning of the European Union (“the right to equal pay”) as regards the principle of “single source” which has been recognised in a number of domestic and European cases, e.g. *Lawrence v Regent Office Care Ltd* [2003] ICR 1092. It amends section 79 of the Equality Act 2010 to provide that the circumstances in which employees and others are taken to be comparators for the purposes of Chapter 3 of Part 5 of the 2010 Act include where the employees’ terms are attributable to a single body (ie. single source) which is responsible for the alleged pay inequality and capable of restoring equal treatment. This also applies where employees’ terms are governed by the same collective agreement.

Regulation 6 reproduces the effect of retained case law in relation to the definition of disability for the purposes of the Framework Directive, in particular *Sonia Chacón Navas v Eurest Colectividades SA* (C-13/05) and *HK Danmark acting on behalf of Ring v Dansk almennyttigt Boligselskab* (C-355/11). This is done by inserting a new paragraph 5A into Schedule 1 to the Equality Act 2010 to provide that, in relation to specified provisions of the Act relating to employment and occupation, provisions of the Act defining disability by reference to a person’s ability to carry out normal day-to-day activities must be read as including a person’s ability to participate fully and effectively in working life on an equal basis with other workers.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.