

2003 No. 1661**EMPLOYMENT AND TRAINING****The Employment Equality (Sexual Orientation)
Regulations 2003**

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*Made**26th June 2003**Coming into force**1st December 2003*

Whereas a draft of these Regulations was laid before Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972, and was approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to discrimination^[1], in exercise of the powers conferred by that section, hereby makes the following Regulations:—

PART I**GENERAL****1.— Citation, commencement and extent**

- (1) These Regulations may be cited as the Employment Equality (Sexual Orientation) Regulations 2003, and shall come into force on 1st December 2003.
- (2) These Regulations do not extend to Northern Ireland.

2.— Interpretation

- (1) In these Regulations, “sexual orientation” means a sexual orientation towards—
 - (a) persons of the same sex;
 - (b) persons of the opposite sex; or
 - (c) persons of the same sex and of the opposite sex.
- (2) In these Regulations, references to discrimination are to any discrimination falling within regulation 3 (discrimination on grounds of sexual orientation) or 4 (discrimination by way of victimisation) and related expressions shall be construed accordingly, and references to harassment shall be construed in accordance with regulation 5 (harassment on grounds of sexual orientation).

¹ See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819).

(3) In these Regulations–

“act” includes a deliberate omission;

“benefits”, except in regulation 9A (trustees and managers of occupational pension schemes), includes facilities and services;

“detriment” does not include harassment within the meaning of regulation 5;

references to “employer”, in their application to a person at any time seeking to employ another, include a person who has no employees at that time;

“employment” means employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions shall be construed accordingly;

“Great Britain” includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain;

“Minister of the Crown” includes the Treasury and the Defence Council; [...] ²

[“proprietor”, in relation to a school in England and Wales, has the meaning given by section 579 of the Education Act 1996^[3], and, in relation to a school in Scotland, means the governing body, trustees, or other person or body of persons responsible for the management of the school; and] ⁴

“school”, in England and Wales, has the meaning given by section 4 of the Education Act 1996^[5], and, in Scotland, has the meaning given by section 135(1) of the Education (Scotland) Act 1980, and references to a school are to an institution in so far as it is engaged in the provision of education under those sections.

3.— Discrimination on grounds of sexual orientation

(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if–

(a) on grounds of sexual orientation, A treats B less favourably than he treats or would treat other persons; or

(b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same sexual orientation as B, but–

(i) which puts or would put persons of the same sexual orientation as B at a particular disadvantage when compared with other persons,

(ii) which puts B at that disadvantage, and

(iii) which A cannot show to be a proportionate means of achieving a legitimate aim.

(2) A comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

² definition inserted by Employment Equality (Sexual Orientation) (Religion or Belief) (Amendment) Regulations 2007/2269 Reg. 3(2)

³ 1996 c. 56; in section 579, the definition of “proprietor” was amended by the School Standards and Framework Act 1998 (c.31) (section 140(1) and Schedule 30, paragraph 183(a)(iii)), S.I. 2003/2045 and 2005/2913.

⁴ definition inserted by Employment Equality (Sexual Orientation) (Religion or Belief) (Amendment) Regulations 2007/2269 Reg. 3(2)

⁵ Section 4 was amended by section 51 of the Education Act 1997 (c. 44) and Schedule 22, Part 3 to the Education Act 2002 (c. 32).

[(3) For the purposes of paragraph (2), in a comparison of B's case with that of another person the fact that one of the persons (whether or not B) is a civil partner while the other is married shall not be treated as a material difference between their respective circumstances.]⁶

4.— Discrimination by way of victimisation

(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has—

- (a) brought proceedings against A or any other person under these Regulations;
- (b) given evidence or information in connection with proceedings brought by any person against A or any other person under these Regulations;
- (c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or
- (d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations,

or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.

(2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith.

5.— Harassment on grounds of sexual orientation

(1) For the purposes of these Regulations, a person (“A”) subjects another person (“B”) to harassment where, on grounds of sexual orientation, A engages in unwanted conduct which has the purpose or effect of—

- (a) violating B's dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in paragraph (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

PART II

DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING

6.— Applicants and employees

(1) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to discriminate against a person—

⁶ added by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch. 17 para. 7(2)

- (a) in the arrangements he makes for the purpose of determining to whom he should offer employment;
 - (b) in the terms on which he offers that person employment; or
 - (c) by refusing to offer, or deliberately not offering, him employment.
- (2) It is unlawful for an employer, in relation to a person whom he employs at an establishment in Great Britain, to discriminate against that person—
- (a) in the terms of employment which he affords him;
 - (b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;
 - (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
 - (d) by dismissing him, or subjecting him to any other detriment.
- (3) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to subject to harassment a person whom he employs or who has applied to him for employment.
- (4) Paragraph (2) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—
- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or
 - (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
 - (c) the benefits relate to training.
- (5) In paragraph (2)(d) reference to the dismissal of a person from employment includes reference—
- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
 - (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

7.— Exception for genuine occupational requirement etc

- (1) In relation to discrimination falling within regulation 3 (discrimination on grounds of sexual orientation)—
- (a) regulation 6(1)(a) or (c) does not apply to any employment;
 - (b) regulation 6(2)(b) or (c) does not apply to promotion or transfer to, or training for, any employment; and
 - (c) regulation 6(2)(d) does not apply to dismissal from any employment,
- where paragraph (2) or (3) applies.
- (2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—
- (a) being of a particular sexual orientation is a genuine and determining occupational requirement;
 - (b) it is proportionate to apply that requirement in the particular case; and
 - (c) either—

(i) the person to whom that requirement is applied does not meet it, or
(ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it,
and this paragraph applies whether or not the employment is for purposes of an organised religion.

(3) This paragraph applies where—

- (a) the employment is for purposes of an organised religion;
- (b) the employer applies a requirement related to sexual orientation—
 - (i) so as to comply with the doctrines of the religion, or
 - (ii) because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and
- (c) either—
 - (i) the person to whom that requirement is applied does not meet it, or
 - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

8.— Contract workers

(1) It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to discriminate against a contract worker—

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;
- (c) in the way he affords him access to any benefits or by refusing or deliberately not affording him access to them; or
- (d) by subjecting him to any other detriment.

(2) It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to subject a contract worker to harassment.

(3) A principal does not contravene paragraph (1)(b) by doing any act in relation to a contract worker where, if the work were to be done by a person taken into the principal's employment, that act would be lawful by virtue of regulation 7 (exception for genuine occupational requirement etc).

(4) Paragraph (1) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits by the principal to his contract workers.

(5) In this regulation—

- “principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;
- “contract work” means work so made available; and
- “contract worker” means any individual who is supplied to the principal under such a contract.

9.— Meaning of employment and contract work at establishment in Great Britain

(1) For the purposes of this Part (“the relevant purposes”), employment is to be regarded as being at an establishment in Great Britain if the employee—

- (a) does his work wholly or partly in Great Britain; or
- (b) does his work wholly outside Great Britain and paragraph (2) applies.

(2) This paragraph applies if—

- (a) the employer has a place of business at an establishment in Great Britain;
- (b) the work is for the purposes of the business carried on at that establishment; and
- (c) the employee is ordinarily resident in Great Britain—
 - (i) at the time when he applies for or is offered the employment, or
 - (ii) at any time during the course of the employment.

(3) The reference to “employment” in paragraph (1) includes—

- (a) employment on board a ship only if the ship is registered at a port of registry in Great Britain, and
- (b) employment on an aircraft or hovercraft only if the aircraft or hovercraft is registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Great Britain.

(4) Subject to paragraph (5), for the purposes of determining if employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources is outside Great Britain, this regulation has effect as if references to Great Britain included—

- (a) any area designated under section 1(7) of the Continental Shelf Act 1964 except an area or part of an area in which the law of Northern Ireland applies; and
- (b) in relation to employment concerned with the exploration or exploitation of the Frigg Gas Field, the part of the Norwegian sector of the Continental Shelf described in Schedule 1.

(5) Paragraph (4) shall not apply to employment which is concerned with the exploration or exploitation of the Frigg Gas Field unless the employer is—

- (a) a company registered under the Companies Act 1985;
- (b) an overseas company which has established a place of business within Great Britain from which it directs the exploration or exploitation in question; or
- (c) any other person who has a place of business within Great Britain from which he directs the exploration or exploitation in question.

(6) In this regulation—

“the Frigg Gas Field” means the naturally occurring gas-bearing sand formations of the lower Eocene age located in the vicinity of the intersection of the line of latitude 59 degrees 53 minutes North and of the dividing line between the sectors of the Continental Shelf of the United Kingdom and the Kingdom of Norway and includes all other gas-bearing strata from which gas at the start of production is capable of flowing into the above-mentioned gas-bearing sand formations;

“overseas company” has the same meaning as in section 744 of the Companies Act 1985.

(7) This regulation applies in relation to contract work within the meaning of regulation 8 as it applies in relation to employment; and, in its application to contract work, references to “employee”, “employer” and “employment” are references to (respectively) “contract worker”, “principal” and “contract work” within the meaning of regulation 8.

[9A.— Trustees and managers of occupational pension schemes

- (1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to the coming into force of these Regulations, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).
- (2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it.
- (3) Schedule 1A (occupational pension schemes) shall have effect for the purposes of—
- (a) defining terms used in this regulation and in that Schedule;
 - (b) treating every occupational pension scheme as including a non-discrimination rule;
 - (c) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule;
 - (d) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes presented to an employment tribunal under regulation 28 (jurisdiction of employment tribunals).

] ⁷**10.— Office-holders etc**

- (1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this regulation applies, to discriminate against a person—
- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered;
 - (b) in the terms on which he offers him the appointment; or
 - (c) by refusing to offer him the appointment.
- (2) It is unlawful, in relation to an appointment to an office or post to which this regulation applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person—
- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
 - (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.
- (3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this regulation applies, to discriminate against him—
- (a) in the terms of the appointment;
 - (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
 - (c) by terminating the appointment; or
 - (d) by subjecting him to any other detriment in relation to the appointment.
- (4) It is unlawful for a relevant person, in relation to an office or post to which this regulation applies, to subject to harassment a person—

⁷ added by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(3)

- (a) who has been appointed to the office or post;
 - (b) who is seeking or being considered for appointment to the office or post; or
 - (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).
- (5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of regulation 7 (exception for genuine occupational requirement etc); and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of regulation 7 to refuse to offer the person such employment.
- (6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless–
- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
 - (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
 - (c) the benefits relate to training.
- (7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference–
- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
 - (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.
- (8) This regulation applies to–
- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
 - (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a government department, the [Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government]⁸ or any part of the Scottish Administration,
- but not to a political office or a case where regulation 6 (applicants and employees), 8 (contract workers), 12 (barristers), 13 (advocates) or 14 (partnerships) applies, or would apply but for the operation of any other provision of these Regulations.
- (9) For the purposes of paragraph (8)(a) the holder of an office or post–
- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
 - (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments–

⁸ words substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 151(a)

- (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
- (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.

(10) In this regulation–

- (a) appointment to an office or post does not include election to an office or post;
- (b) “political office” means–
 - (i) any office of the House of Commons held by a member of it,
 - (ii) a life peerage within the meaning of the Life Peerages Act 1958, or any office of the House of Lords held by a member of it,
 - (iii) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975^[9],
 - (iv) the offices of Leader of the Opposition, Chief Opposition Whip or Assistant Opposition Whip within the meaning of the Ministerial and other Salaries Act 1975,
 - (v) any office of the Scottish Parliament held by a member of it,
 - (vi) a member of the Scottish Executive within the meaning of section 44 of the Scotland Act 1998, or a junior Scottish Minister within the meaning of section 49 of that Act,
 - (vii) any office of the National Assembly for Wales held by a member of it,
 - (viii) a member of the Welsh Assembly Government,
 - (ix) in England, any office of a county council, a London borough council, a district council, or a parish council held by a member of it,
 - (x) in Wales, any office of a county council, a county borough council, or a community council held by a member of it,
 - (xi) in relation to a council constituted under section 2 of the Local Government etc (Scotland) Act 1994^[10] or a community council established under section 51 of the Local Government (Scotland) Act 1973^[11], any office of such a council held by a member of it,
 - (xii) any office of the Greater London Authority held by a member of it,
 - (xiii) any office of the Common Council of the City of London held by a member of it,
 - (xiv) any office of the Council of the Isles of Scilly held by a member of it,
 - (xv) any office of a political party;
- (c) “relevant person”, in relation to an office or post, means–
 - (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
 - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit, and

⁹ Schedule 2 was amended by the Scotland Act 1998 (c. 46), sections 48(6) and 87(1) and Schedule 9, and by S.I. 2002/794.

¹⁰ Section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

¹¹ Section 51 was amended by the Local Government etc (Scotland) Act 1994 (c. 39), Schedule 14, paragraph 1.

- (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
- (d) references to making a recommendation include references to making a negative recommendation; and
- (e) references to refusal include references to deliberate omission.

11.— Police

- (1) Subject to regulation 11A, for the purposes of this Part, the holding of the office of constable shall be treated as employment—
- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;
 - (b) by the police authority as respects any act done by it in relation to a constable or that office.
- (2) Subject to regulation 11A, for the purposes of regulation 22 (liability of employers and principals)—
- (a) the holding of the office of constable shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
 - (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund—
- (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under these Regulations, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
 - (b) any sum required by a chief officer of police for the settlement of any claim made against him under these Regulations if the settlement is approved by the police authority.
- (4) Any proceedings under these Regulations which, by virtue of paragraph (1), would lie against a chief officer of police shall be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in paragraph (3) to the chief officer of police shall be construed accordingly.
- (5) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—
- (a) any compensation, costs or expenses awarded in proceedings under these Regulations against a person under the direction and control of the chief officer of police;
 - (b) any costs or expenses incurred and not recovered by such a person in such proceedings; and
 - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (6) Paragraphs (1) and (2) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.
- (7) Subject to paragraph (8), in this regulation—
- “chief officer of police”—
- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996,

(c) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, means the chief constable of the relevant police force,

(d) in relation to any other person or appointment means the officer or other person who has the direction and control of the body of constables or cadets in question;

“police authority”–

(a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996,

(c) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, has the meaning given in that Act,

(d) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;

“police cadet” means any person appointed to undergo training with a view to becoming a constable;

“police fund”–

(a) in relation to a chief officer of police within sub-paragraph (a) of the above definition of that term, has the same meaning as in the Police Act 1996,

(b) [...] ¹²

(c) in any other case means money provided by the police authority; and

“specified Act” means the Metropolitan Police Act 1829, the City of London Police Act 1839 or the Police Act 1996.

(8) In relation to a constable of a force who is not under the direction and control of the chief officer of police for that force, references in this regulation to the chief officer of police are references to the chief officer of the force under whose direction and control he is, and references in this regulation to the police authority are references to the relevant police authority for that force.

[11A.— Serious Organised Crime Agency

(1) For the purposes of this Part, any constable or other person who has been seconded to SOCA to serve as a member of its staff shall be treated as employed by SOCA.

(2) For the purposes of regulation 22 (liability of employers and principals)—

(a) the secondment of any constable or other person to SOCA to serve as a member of its staff shall be treated as employment by SOCA (and not as being employment by any other person); and

(b) anything done by a person so seconded in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) In this regulation “SOCA” means the Serious Organised Crime Agency.

]¹³

¹² repealed by Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006/594 Sch. 1 para. 37(4)

¹³ added by Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006/594 Sch. 1 para. 37(5)

12.— Barristers

- (1) It is unlawful for a barrister or barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person—
 - (a) in the arrangements which are made for the purpose of determining to whom the pupillage or tenancy should be offered;
 - (b) in respect of any terms on which it is offered; or
 - (c) by refusing, or deliberately not offering, it to him.
- (2) It is unlawful for a barrister or barrister's clerk, in relation to a pupil or tenant in the set of chambers in question, to discriminate against him—
 - (a) in respect of any terms applicable to him as a pupil or tenant;
 - (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
 - (c) in the benefits which are afforded or denied to him; or
 - (d) by terminating his pupillage, or by subjecting him to any pressure to leave the chambers or other detriment.
- (3) It is unlawful for a barrister or barrister's clerk, in relation to a pupillage or tenancy in the set of chambers in question, to subject to harassment a person who is, or has applied to be, a pupil or tenant.
- (4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.
- (5) In this regulation—

“barrister's clerk” includes any person carrying out any of the functions of a barrister's clerk; “pupil”, “pupillage” and “set of chambers” have the meanings commonly associated with their use in the context of barristers practising in independent practice; and “tenancy” and “tenant” have the meanings commonly associated with their use in the context of barristers practising in independent practice, but also include reference to any barrister permitted to work in a set of chambers who is not a tenant.
- (6) This regulation extends to England and Wales only.

13.— Advocates

- (1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a person—
 - (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
 - (b) in respect of any terms on which he offers to take any person as his pupil; or
 - (c) by refusing to take, or deliberately not taking, a person as his pupil.
- (2) It is unlawful for an advocate, in relation to a person who is his pupil, to discriminate against him—
 - (a) in respect of any terms applicable to him as a pupil;
 - (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
 - (c) in the benefits which are afforded or denied to him; or

- (d) by terminating the relationship, or by subjecting him to any pressure to terminate the relationship or other detriment.
- (3) It is unlawful for an advocate, in relation to a person who is his pupil or taking any person as his pupil, to subject such a person to harassment.
- (4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.
- (5) In this regulation—
“advocate” means a member of the Faculty of Advocates practising as such; and
“pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.
- (6) This regulation extends to Scotland only.

14.— Partnerships

- (1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a person—
- (a) in the arrangements they make for the purpose of determining to whom they should offer that position;
 - (b) in the terms on which they offer him that position;
 - (c) by refusing to offer, or deliberately not offering, him that position; or
 - (d) in a case where the person already holds that position—
 - (i) in the way they afford him access to any benefits or by refusing to afford, or deliberately not affording, him access to them, or
 - (ii) by expelling him from that position, or subjecting him to any other detriment.
- (2) It is unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a person who holds or has applied for that position.
- (3) Paragraphs (1)(a) to (c) and (2) apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.
- (4) Paragraph (1) does not apply to any act in relation to a position as partner where, if the position were employment, that act would be lawful by virtue of regulation 7 (exception for genuine occupational requirement etc).
- (5) In the case of a limited partnership references in this regulation to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907.
- (6) This regulation applies to a limited liability partnership as it applies to a firm; and, in its application to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.
- (7) In this regulation, “firm” has the meaning given by section 4 of the Partnership Act 1890.
- (8) In paragraph (1)(d) reference to the expulsion of a person from a position as partner includes reference—

- (a) to the termination of that person's partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and
- (b) to the termination of that person's partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

15.— Trade organisations

- (1) It is unlawful for a trade organisation to discriminate against a person—
 - (a) in the terms on which it is prepared to admit him to membership of the organisation; or
 - (b) by refusing to accept, or deliberately not accepting, his application for membership.
- (2) It is unlawful for a trade organisation, in relation to a member of the organisation, to discriminate against him—
 - (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
 - (b) by depriving him of membership, or varying the terms on which he is a member; or
 - (c) by subjecting him to any other detriment.
- (3) It is unlawful for a trade organisation, in relation to a person's membership or application for membership of that organisation, to subject that person to harassment.
- (4) In this regulation—
 - “trade organisation” means an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;
 - “profession” includes any vocation or occupation; and
 - “trade” includes any business.

16.— Qualifications bodies

- (1) It is unlawful for a qualifications body to discriminate against a person—
 - (a) in the terms on which it is prepared to confer a professional or trade qualification on him;
 - (b) by refusing or deliberately not granting any application by him for such a qualification; or
 - (c) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a person who holds or applies for such a qualification.
- (3) Paragraph (1) does not apply to a professional or trade qualification for purposes of an organised religion where a requirement related to sexual orientation is applied to the qualification so as to comply with the doctrines of the religion or avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.
- (4) In this regulation—

“qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—

- (a) a governing body of an educational establishment to which regulation 20 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or
- (b) [a proprietor of]¹⁴ a school;

“confer” includes renew or extend;

“professional or trade qualification” means any authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade;

“profession” and “trade” have the same meaning as in regulation 15.

17.— The provision of vocational training

(1) It is unlawful, in relation to a person seeking or undergoing training which would help fit him for any employment, for any training provider to discriminate against him—

- (aa) in the arrangements he makes for the purpose of determining to whom he should offer training;
- (a) in the terms on which the training provider affords him access to any training;
- (b) by refusing or deliberately not affording him such access;
- (c) by terminating his training; or
- (d) by subjecting him to any other detriment during his training.

(2) It is unlawful for a training provider, in relation to a person seeking or undergoing training which would help fit him for any employment, to subject him to harassment.

(3) Paragraph (1) does not apply if the discrimination only concerns training for employment which, by virtue of regulation 7 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person seeking training.

(4) In this regulation—

“registered pupil”, in England and Wales, has the meaning given by section 434(5) of the Education Act 1996, and, in Scotland, means a pupil deemed to be attending or in attendance at a school in terms of section 135(1) of the Education (Scotland) Act 1980;

“training” means—

- (a) all types and all levels of training which would help fit a person for any employment;
- (b) vocational guidance;
- (c) facilities for training;
- (d) practical work experience provided by an employer to a person whom he does not employ; and
- (e) any assessment related to the award of any professional or trade qualification

“training provider” means any person who provides, or makes arrangements for the provision of, training which would help fit another person for any employment, but it does not include—

- (a) an employer in relation to training for persons employed by him;

¹⁴ words inserted by Employment Equality (Sexual Orientation) (Religion or Belief) (Amendment) Regulations 2007/2269 Reg. 3(3)(b)

- (b) a governing body of an educational establishment to which regulation 20 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, except in relation to a person who is undertaking practical work experience at the educational establishment and is not a student at, or employed by, that establishment; or
- [(c) a proprietor of a school in relation to a pupil registered at that or another school, except where that pupil is undertaking practical work experience provided by a school at which he is not registered and he is not employed by that school.]¹⁵

18.— Employment agencies, careers guidance etc

- (1) It is unlawful for an employment agency to discriminate against a person—
- (a) in the terms on which the agency offers to provide any of its services;
 - (b) by refusing or deliberately not providing any of its services; or
 - (c) in the way it provides any of its services.
- (2) It is unlawful for an employment agency, in relation to a person to whom it provides its services, or who has requested it to provide its services, to subject that person to harassment.
- (3) Paragraph (1) does not apply to discrimination if it only concerns employment which, by virtue of regulation 7 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.
- (4) An employment agency shall not be subject to any liability under this regulation if it proves that—
- (a) it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of paragraph (3), its action would not be unlawful, and
 - (b) it was reasonable for it to rely on the statement.
- (5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) For the purposes of this regulation—
- (a) “employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but it does not include—
 - (i) a governing body of an educational establishment to which regulation 20 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or
 - (ii) [a proprietor of]¹⁶ a school; and
 - (b) references to the services of an employment agency include guidance on careers and any other services related to employment.

¹⁵ substituted by Employment Equality (Sexual Orientation) (Religion or Belief) (Amendment) Regulations 2007/2269 Reg. 3(4)(c)(iii)(bb)

¹⁶ words inserted by Employment Equality (Sexual Orientation) (Religion or Belief) (Amendment) Regulations 2007/2269 Reg. 3(5)(b)

19.— Assisting persons to obtain employment etc

(1) It is unlawful for the Secretary of State to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under section 2 of the Employment and Training Act 1973¹⁷ (arrangements for assisting persons to obtain employment).

(2) It is unlawful for Scottish Enterprise or Highlands and Islands Enterprise to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under such arrangements as are mentioned in section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 (arrangements analogous to arrangements in pursuance of the said Act of 1973).

(3) This regulation does not apply in a case where—

- (a) regulation 17 (providers of vocational training) applies, or would apply but for the operation of any other provision of these Regulations, or
- (b) the Secretary of State is acting as an employment agency within the meaning of regulation 18.

20.— Institutions of further and higher education

(1) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to discriminate against a person—

- (a) in the terms on which it offers to admit him to the establishment as a student;
- (b) by refusing or deliberately not accepting an application for his admission to the establishment as a student; or
- (c) where he is a student of the establishment—
 - (i) in the way it affords him access to any benefits,
 - (ii) by refusing or deliberately not affording him access to them, or
 - (iii) by excluding him from the establishment or subjecting him to any other detriment.

(2) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student.

(3) Paragraph (1) does not apply if the discrimination only concerns training which would help fit a person for employment which, by virtue of regulation 7 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) This regulation applies to the following educational establishments in England and Wales, namely—

- (a) an institution within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992);
- (b) a university;
- (c) an institution, other than a university, within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992).

¹⁷ Section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19), and amended by the Employment Act 1989 (c. 38), Schedule 7, Part 1, and by section 47(1) of the Trade Union and Employment Rights Act 1993 (c. 19).

- (5) This regulation applies to the following educational establishments in Scotland, namely—
- (a) a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992 under the management of a board of management within the meaning of Part I of that Act;
 - (b) a college of further education maintained by an education authority in the exercise of its further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of the Education (Scotland) Act 1980;
 - (c) any other educational establishment (not being a school) which provides further education within the meaning of section 1 of the Further and Higher Education (Scotland) Act 1992;
 - (d) an institution within the higher education sector (within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992);
 - (e) a central institution (within the meaning of section 135 of the Education (Scotland) Act 1980).
- (6) In this regulation—
- “education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980;
- “governing body” includes—
- (a) the board of management of a college referred to in paragraph (5)(a), and
 - (b) the managers of a college or institution referred to in paragraph (5)(b) or (e);
- “student” means any person who receives education at an educational establishment to which this regulation applies; and
- “university” includes a university college and the college, school or hall of a university.

21.— Relationships which have come to an end

- (1) In this regulation a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship (“B”) by the other party to it (“A”) is unlawful by virtue of any preceding provision of this Part.
- (2) Where a relevant relationship has come to an end, it is unlawful for A—
- (a) to discriminate against B by subjecting him to a detriment; or
 - (b) to subject B to harassment,
- where the discrimination or harassment arises out of and is closely connected to that relationship.
- (3) In paragraph (1), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the coming into force of these Regulations, reference to an act of discrimination or harassment which would, after the coming into force of these Regulations, be unlawful.

PART III

OTHER UNLAWFUL ACTS

22.— Liability of employers and principals

- (1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.
- (2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of these Regulations as done by that other person as well as by him.
- (3) In proceedings brought under these Regulations against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

23.— Aiding unlawful acts

- (1) A person who knowingly aids another person to do an act made unlawful by these Regulations shall be treated for the purpose of these Regulations as himself doing an unlawful act of the like description.
- (2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under regulation 22 (or would be so liable but for regulation 22(3)) shall be deemed to aid the doing of the act by the employer or principal.
- (3) A person does not under this regulation knowingly aid another to do an unlawful act if—
 - (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of these Regulations, the act which he aids would not be unlawful; and
 - (b) it is reasonable for him to rely on the statement.
- (4) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (3)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART IV

GENERAL EXCEPTIONS FROM PARTS II AND III

24. Exception for national security

Nothing in Part II or III shall render unlawful an act done for the purpose of safeguarding national security, if the doing of the act was justified by that purpose.

[25. Exception for benefits dependent on a person's status

Nothing in Part II or III shall render unlawful—

- (a) anything which prevents or restricts access to a benefit by reference to marital status where the right to the benefit accrued or the benefit is payable in respect of periods of service prior to the coming into force of the Civil Partnership Act 2004;
- (b) the conferring of a benefit on married persons and civil partners to the exclusion of all other persons.

]¹⁸

26.— Exceptions for positive action

- (1) Nothing in Part II or III shall render unlawful any act done in or in connection with—
- (a) affording persons of a particular sexual orientation access to facilities for training which would help fit them for particular work; or
 - (b) encouraging persons of a particular sexual orientation to take advantage of opportunities for doing particular work,

where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to sexual orientation suffered by persons of that sexual orientation doing that work or likely to take up that work.

- (2) Nothing in Part II or III shall render unlawful any act done by a trade organisation within the meaning of regulation 15 in or in connection with—

- (a) affording only members of the organisation who are of a particular sexual orientation access to facilities for training which would help fit them for holding a post of any kind in the organisation; or
- (b) encouraging only members of the organisation who are of a particular sexual orientation to take advantage of opportunities for holding such posts in the organisation,

where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to sexual orientation suffered by those of that sexual orientation holding such posts or likely to hold such posts.

- (3) Nothing in Part II or III shall render unlawful any act done by a trade organisation within the meaning of regulation 15 in or in connection with encouraging only persons of a particular sexual orientation to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to sexual orientation suffered by persons of that sexual orientation who are, or are eligible to become, members.

PART V

ENFORCEMENT

27.— Restriction of proceedings for breach of Regulations

- (1) Except as provided by these Regulations no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of these Regulations.

¹⁸ substituted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch. 17 para. 7(3)

(2) Paragraph (1) does not prevent the making of an application for judicial review [or the investigation or determination of any matter in accordance with Part X (investigations: the Pensions Ombudsman) of the Pension Schemes Act 1993 by the Pensions Ombudsman]¹⁹ .

28.— Jurisdiction of employment tribunals

- (1) A complaint by any person (“the complainant”) that another person (“the respondent”)—
- (a) has committed against the complainant an act to which this regulation applies; or
 - (b) is by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed against the complainant such an act,
- may be presented to an employment tribunal.
- (2) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of any provision of Part II other than—
- (a) where the act is one in respect of which an appeal or proceedings in the nature of an appeal may be brought under any enactment, regulation 16 (qualifications bodies);
 - (b) regulation 20 (institutions of further and higher education); or
 - (c) where the act arises out of and is closely connected to a relationship between the complainant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the complainant by the respondent would have been unlawful by virtue of regulation 20, regulation 21 (relationships which have come to an end).
- (3) In paragraph (2)(c), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before the coming into force of these Regulations, reference to an act of discrimination or harassment which would, after the coming into force of these Regulations, have been unlawful.
- (4) In this regulation, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

29.— Burden of proof: employment tribunals

- (1) This regulation applies to any complaint presented under regulation 28 to an employment tribunal.
- (2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent—
- (a) has committed against the complainant an act to which regulation 28 applies; or
 - (b) is by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed against the complainant such an act,
- the tribunal shall uphold the complaint unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

¹⁹ words inserted by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(4)

30.— Remedies on complaints in employment tribunals

- (1) Where an employment tribunal finds that a complaint presented to it under regulation 28 is well-founded, the tribunal shall make such of the following as it considers just and equitable—
- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
 - (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court or by a sheriff court to pay to the complainant if the complaint had fallen to be dealt with under regulation 31 (jurisdiction of county and sheriff courts);
 - (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination or harassment to which the complaint relates.
- (2) As respects an unlawful act of discrimination falling within regulation 3(1)(b), if the respondent proves that the provision, criterion or practice was not applied with the intention of treating the complainant unfavourably on grounds of sexual orientation, an order may be made under paragraph (1)(b) only if the employment tribunal—
- (a) makes such order under paragraph (1)(a) (if any) and such recommendation under paragraph (1)(c) (if any) as it would have made if it had no power to make an order under paragraph (1)(b); and
 - (b) (where it makes an order under paragraph (1)(a) or a recommendation under paragraph (1)(c) or both) considers that it is just and equitable to make an order under paragraph (1)(b) as well.
- (3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an employment tribunal under paragraph (1)(c), then, if it thinks it just and equitable to do so—
- (a) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)(b); or
 - (b) if an order under paragraph (1)(b) was not made, the tribunal may make such an order.
- (4) Where an amount of compensation falls to be awarded under paragraph (1)(b), the tribunal may include in the award interest on that amount subject to, and in accordance with, the provisions of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996^[20].
- [(5) This regulation has effect subject to paragraph 7 of Schedule 1A (occupational pension schemes).]^[21]

31.— Jurisdiction of county and sheriff courts

- (1) A claim by any person (“the claimant”) that another person (“the respondent”)—
- (a) has committed against the claimant an act to which this regulation applies; or
 - (b) is by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed against the claimant such an act,
- may be made the subject of civil proceedings in like manner as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

²⁰ Regulation 1(2) of those Regulations is amended by paragraph 3 of Schedule 5 to these Regulations.

²¹ added by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(5)

- (2) Proceedings brought under paragraph (1) shall—
- (a) in England and Wales, be brought only in a county court; and
 - (b) in Scotland, be brought only in a sheriff court.
- (3) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act to which this regulation applies may include compensation for injury to feelings whether or not they include compensation under any other head.
- (4) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of—
- (a) regulation 20 (institutions of further and higher education); or
 - (b) where the act arises out of and is closely connected to a relationship between the claimant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the claimant by the respondent would have been unlawful by virtue of regulation 20, regulation 21 (relationships which have come to an end).
- (5) In paragraph (4)(b), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before the coming into force of these Regulations, reference to an act of discrimination or harassment which would, after the coming into force of these Regulations, have been unlawful.

32.— Burden of proof: county and sheriff courts

- (1) This regulation applies to any claim brought under regulation 31 in a county court in England and Wales or a sheriff court in Scotland.
- (2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent—
- (a) has committed against the claimant an act to which regulation 31 applies; or
 - (b) is by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed against the claimant such an act,
- the court shall uphold the claim unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

33.— Help for persons in obtaining information etc

- (1) In accordance with this regulation, a person (“the person aggrieved”) who considers he may have been discriminated against, or subjected to harassment, in contravention of these Regulations may serve on the respondent to a complaint presented under regulation 28 (jurisdiction of employment tribunals) or a claim brought under regulation 31 (jurisdiction of county and sheriff courts) questions in the form set out in Schedule 2 or forms to the like effect with such variation as the circumstances require; and the respondent may if he so wishes reply to such questions by way of the form set out in Schedule 3 or forms to the like effect with such variation as the circumstances require.
- (2) Where the person aggrieved questions the respondent (whether in accordance with paragraph (1) or not)—

- (a) the questions, and any reply by the respondent (whether in accordance with paragraph (1) or not) shall, subject to the following provisions of this regulation, be admissible as evidence in the proceedings;
- (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within eight weeks of service of the questions or that his reply is evasive or equivocal, the court or tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.
- (3) In proceedings before a county court in England or Wales or a sheriff court in Scotland, a question shall only be admissible as evidence in pursuance of paragraph (2)(a)–
- (a) where it was served before those proceedings had been instituted, if it was so served within the period of six months beginning when the act complained of was done;
- (b) where it was served when those proceedings had been instituted, if it was served with the leave of, and within a period specified by, the court in question.
- (4) In proceedings before an employment tribunal, a question shall only be admissible as evidence in pursuance of paragraph (2)(a)–
- [(a) where it was served before a complaint had been presented to a tribunal, if it was so served–
- (i) within the period of three months beginning when the act complained of was done; or
- (ii) where paragraph (1A) of regulation 34 applies, within the extended period;
-] ²²
- (b) where it was served when a complaint had been presented to the tribunal, either–
- (i) if it was so served within the period of twenty-one days beginning with the day on which the complaint was presented, or
- (ii) if it was so served later with leave given, and within a period specified, by a direction of the tribunal.
- (5) A question and any reply thereto may be served on the respondent or, as the case may be, on the person aggrieved–
- (a) by delivering it to him;
- (b) by sending it by post to him at his usual or last-known residence or place of business;
- (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992, by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office;
- (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service; or
- (e) where the person to be served is the person aggrieved, by delivering the reply, or sending it by post, to him at his address for reply as stated by him in the document containing the questions.
- (6) This regulation is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a county court, sheriff court or employment tribunal,

²² substituted by Employment Act 2002 (Dispute Resolution) Regulations 2004/752 Reg. 17(h)(i)

and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

(7) In this regulation “respondent” includes a prospective respondent.

34.— Period within which proceedings to be brought

(1) An employment tribunal shall not consider a complaint under regulation 28 unless it is presented to the tribunal before the end of—

- (a) the period of three months beginning when the act complained of was done; or
- (b) in a case to which regulation 36(7) (armed forces) applies, the period of six months so beginning.

[(1A) Where the period within which a complaint must be presented in accordance with paragraph (1) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (1).]²³

(2) A county court or a sheriff court shall not consider a claim brought under regulation 31 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(3) A court or tribunal may nevertheless consider any such complaint or claim which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of this regulation and regulation 33 (help for persons in obtaining information etc)—

- (a) when the making of a contract is, by reason of the inclusion of any term, an unlawful act, that act shall be treated as extending throughout the duration of the contract; and
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this regulation to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

PART VI

SUPPLEMENTAL

35. Validity of contracts, collective agreements and rules of undertakings

Schedule 4 (validity of contracts, collective agreements and rules of undertakings) shall have effect.

36.— Application to the Crown etc

(1) These Regulations apply—

²³ added by Employment Act 2002 (Dispute Resolution) Regulations 2004/752 Reg. 17(h)(ii)

- (a) to an act done by or for purposes of a Minister of the Crown or government department;
or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as they apply to an act done by a private person.

(2) These Regulations apply to—

- (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office;
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body; or
- (c) service in the armed forces,

as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

(3) Paragraphs (1) and (2) have effect subject to regulation 11 (police).

(4) Regulation 9(3) (meaning of employment and contract work at establishment in Great Britain) shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the government of the United Kingdom as it has effect in relation to a ship, aircraft or hovercraft specified in regulation 9(3)(a) or (b).

(5) The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in England and Wales which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations section 20 of that Act (removal of proceedings from county court to High Court) shall not apply.

(6) The provisions of Part V of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in Scotland which by virtue of the said Part are treated as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations the proviso to section 44 of that Act (removal of proceedings from the sheriff court to the Court of Session) shall not apply.

(7) This paragraph applies to any complaint by a person (“the complainant”) that another person—

- (a) has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of regulation 6 (applicants and employees); or
- (b) is by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed such an act of discrimination or harassment against the complainant,

if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination or harassment in question relates to his service in those forces.

(8) A complainant may present a complaint to which paragraph (7) applies to an employment tribunal under regulation 28 only if—

- (a) he has made a complaint in respect of the same matter to an officer under the service redress procedures applicable to him; and
- (b) that complaint has not been withdrawn.

(9) For the purpose of paragraph (8)(b), a complainant shall be treated as having withdrawn his complaint if, having made a complaint to an officer under the service redress procedures applicable to him, he fails to submit that complaint to the Defence Council under those procedures.

(10) Where a complaint is presented to an employment tribunal under regulation 28 by virtue of paragraph (8), the service redress procedures may continue after the complaint is so presented.

(11) In this regulation—

“armed forces” means any of the naval, military or air forces of the Crown;

“service for purposes of a Minister of the Crown or government department” does not include service in any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975^[24] ;

“the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955^[25] , section 180 of the Air Force Act 1955^[26] and section 130 of the Naval Discipline Act 1957^[27] ; and

“statutory body” means a body set up by or in pursuance of an enactment, and “statutory office” means an office so set up.

37.— Application to House of Commons staff

(1) These Regulations apply to an act done by an employer of a relevant member of the House of Commons staff, and to service as such a member, as they apply to an act done by and to service for purposes of a Minister of the Crown or government department, and accordingly apply as if references to a contract of employment included references to the terms of service of such a member.

(2) In this regulation “relevant member of the House of Commons staff” means any person—

(a) who was appointed by the House of Commons Commission; or

(b) who is a member of the Speaker’s personal staff,

and subsections (6) to (12) of section 195 of the Employment Rights Act 1996 (person to be treated as employer of House of Commons staff) apply, with any necessary modifications, for the purposes of these Regulations.

38.— Application to House of Lords staff

(1) These Regulations apply in relation to employment as a relevant member of the House of Lords staff as they apply in relation to other employment.

(2) In this regulation “relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords, and

²⁴ Schedule 2 was amended by the Scotland Act 1998 (c. 46), sections 48(6) and 87(1), and Schedule 9, and by S.I. 2002/794.

²⁵ Section 180 was amended by section 20 of the Armed Forces Act 1996 (c. 46), and is to be amended by the Armed Forces Act 2001 (c. 19), Schedule 6, paragraph 41, on a date to be appointed.

²⁶ Section 180 was amended by section 20 of the Armed Forces Act 1996 (c. 46), and is to be amended by the Armed Forces Act 2001 (c. 19), Schedule 6, paragraph 41, on a date to be appointed.

²⁷ Section 130 was amended by section 20 of the Armed Forces Act 1996 (c. 46), and is to be amended by the Armed Forces Act 2001 (c. 19), Schedule 6, paragraph 42, on a date to be appointed.

section 194(7) of the Employment Rights Act 1996 (continuity of employment) applies for the purposes of this regulation.

39. Amendments to legislation

Schedule 5 (amendments to legislation) shall have effect.

Jacqui Smith,

Minister of State, for Industry and the Regions and Deputy Minister for Women and Equality,
Department of Trade and Industry

26th June 2003

SCHEDULE 1

Norwegian part of the Frigg Gas Field

Regulation 9(4)

1.

The part of the Norwegian sector of the Continental Shelf described in this Schedule is the area defined by—

- (a) the sets of lines of latitude and longitude joining the following surface co-ordinates—

Longitude	Latitude
02 degrees 05 minutes 30 seconds E	60 degrees 00 minutes 45 seconds N
02 degrees 05 minutes 30 seconds E	59 degrees 58 minutes 45 seconds N
02 degrees 06 minutes 00 seconds E	59 degrees 58 minutes 45 seconds N
02 degrees 06 minutes 00 seconds E	59 degrees 57 minutes 45 seconds N
02 degrees 07 minutes 00 seconds E	59 degrees 57 minutes 45 seconds N
02 degrees 07 minutes 00 seconds E	59 degrees 57 minutes 30 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 57 minutes 30 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 55 minutes 30 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 55 minutes 30 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 54 minutes 45 seconds N
02 degrees 11 minutes 00 seconds E	59 degrees 54 minutes 45 seconds N
02 degrees 11 minutes 00 seconds E	59 degrees 54 minutes 15 seconds N
02 degrees 12 minutes 30 seconds E	59 degrees 54 minutes 15 seconds N
02 degrees 12 minutes 30 seconds E	59 degrees 54 minutes 00 seconds N
02 degrees 13 minutes 30 seconds E	59 degrees 54 minutes 00 seconds N
02 degrees 13 minutes 30 seconds E	59 degrees 54 minutes 30 seconds N
02 degrees 15 minutes 30 seconds E	59 degrees 54 minutes 30 seconds N
02 degrees 15 minutes 30 seconds E	59 degrees 53 minutes 15 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 53 minutes 15 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 52 minutes 45 seconds N

Longitude	Latitude
02 degrees 09 minutes 30 seconds E	59 degrees 52 minutes 45 seconds N
02 degrees 09 minutes 30 seconds E	59 degrees 52 minutes 15 seconds N
02 degrees 08 minutes 30 seconds E	59 degrees 52 minutes 15 seconds N
02 degrees 08 minutes 30 seconds E	59 degrees 52 minutes 00 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 52 minutes 00 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 51 minutes 30 seconds N
02 degrees 05 minutes 30 seconds E	59 degrees 51 minutes 30 seconds N
02 degrees 05 minutes 30 seconds E	59 degrees 51 minutes 00 seconds N
02 degrees 04 minutes 00 seconds E	59 degrees 51 minutes 00 seconds N
02 degrees 04 minutes 00 seconds E	59 degrees 50 minutes 30 seconds N
02 degrees 03 minutes 00 seconds E	59 degrees 50 minutes 30 seconds N
02 degrees 03 minutes 00 seconds E	59 degrees 50 minutes 00 seconds N

(b) a line from the point 02 degrees 03 minutes 00 seconds E 59 degrees 50 minutes 00 seconds N west along the parallel of latitude 59 degrees 50 minutes 00 seconds N until its intersection with the Dividing Line;

(c) a line from the point of intersection specified in sub-paragraph (b) along the Dividing Line until its intersection with the parallel of latitude 60 degrees 00 minutes 45 seconds N;

(d) a line from the point of intersection specified in sub-paragraph (c) east along the parallel of latitude 60 degrees 00 minutes 45 degrees N until its intersection with the meridian 02 degrees 05 minutes 30 seconds E.

2.

In this Schedule, the “Dividing Line” means the dividing line as defined in an Agreement dated 10th March 1965 and made between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Kingdom of Norway as supplemented by a Protocol dated 22nd December 1978.

[SCHEDULE 1A

OCCUPATIONAL PENSION SCHEMES]²⁸

Regulation 9A(3)

Interpretation

1.

(1) In this Schedule—

“active member”, “deferred member”, “managers”, “pensioner member” and “trustees or managers”, in relation to an occupational pension scheme, have the meanings given by section 124(1) of the Pensions Act 1995;

“member”, in relation to an occupational pension scheme, means any active member, deferred member or pensioner member;

²⁸ added by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(6)

“non-discrimination rule” means the rule in paragraph 2;

“occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993;

“prospective member”, in relation to an occupational pension scheme, means any person who, under the terms of his employment or the rules of the scheme or both—

- (a) is able, at his own option, to become a member of the scheme,
- (b) shall become so able if he continues in the same employment for a sufficient period of time,
- (c) shall be admitted to it automatically unless he makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of his employer.

(2) In paragraph 6 (procedure in employment tribunals), “employer”, in relation to an occupational pension scheme, has the meaning given by section 124(1) of the Pensions Act 1995 [...] ²⁹ .

(3) Any term used in regulation 9A (trustees and managers of occupational pension schemes) and in this Schedule shall have the same meaning in that regulation as it has in this Schedule.

Non-discrimination rule

[2.

Every occupational pension scheme shall be treated as including a provision (“the non-discrimination rule”) containing a requirement that the trustees or managers of the scheme refrain from doing any act which is unlawful by virtue of regulation 9A.]³⁰

[3.

The other provisions of the scheme are to have effect subject to the non-discrimination rule.]³¹

[4.

The trustees or managers of an occupational pension scheme may—

- (a) if they do not (apart from this paragraph) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
- (b) if they have such power but the procedure for doing so—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

] ³²

[5.

Alterations made by a resolution such as is referred to in paragraph 4 may have effect in relation to a period before the alterations are made (but may not have effect in relation to any time before the coming into force of these Regulations).] ³³

²⁹ words repealed by Employment Equality (Age) Regulations 2006/1031 Sch. 8(2) para. 63(3)

³⁰ added by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(6)

³¹ added by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(6)

³² added by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(6)

³³ added by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(6)

*Procedure in employment tribunals***[6.**

Where under regulation 28 (jurisdiction of employment tribunals) a member or prospective member of an occupational pension scheme presents to an employment tribunal a complaint that the trustees or managers of the scheme—

- (a) have committed against him an act which is unlawful by virtue of regulation 9A (trustees and managers of occupational pension schemes) or 21 (relationships which have come to an end); or
- (b) are by virtue of regulation 22 (liability of employers and principals) or 23 (aiding unlawful acts) to be treated as having committed against him such an act,

the employer in relation to the scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.]³⁴

*Remedies in employment tribunals***[7.**

(1) This paragraph applies where—

- (a) under regulation 28 (jurisdiction of employment tribunals) a member or prospective member of an occupational pension scheme (“the complainant”) presents to an employment tribunal a complaint against the trustees or managers of the scheme or an employer;
- (b) the complainant is not a pensioner member of the scheme;
- (c) the complaint relates to the terms on which persons become members of the scheme, or the terms on which members of the scheme are treated; and
- (d) the tribunal finds the complaint to be well-founded.

(2) Where this paragraph applies, the employment tribunal may, without prejudice to the generality of its power under regulation 30(1)(a) (power to make order declaring rights of complainant and respondent), make an order declaring that the complainant has a right—

- (a) where the complaint relates to the terms on which persons become members of the scheme, to be admitted to the scheme;
- (b) where the complaint relates to the terms on which members of the scheme are treated, to membership of the scheme without discrimination.

(3) An order under sub-paragraph (2)—

- (a) may be made in respect of such period as is specified in the order (but may not be made in respect of any time before the coming into force of these Regulations);
- (b) may make such provision as the employment tribunal considers appropriate as to the terms on which, or the capacity in which, the complainant is to enjoy such admission or membership.

(4) Where this paragraph applies, the employment tribunal may not make an order for compensation under regulation 30(1)(b), whether in relation to arrears of benefits or otherwise, except—

- (a) for injury to feelings;
- (b) by virtue of regulation 30(3).

] ³⁵

³⁴ added by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(6)

SCHEDULE 2**Questionnaire of person aggrieved****Regulation 33(1)**

[Form not available in online format. Please see original printed copy.]

SCHEDULE 3**Reply by respondent****Regulation 33(1)**

[Form not available in online format. Please see original printed copy.]

SCHEDULE 4**Validity of contracts, collective agreements and rules of undertakings****Regulation 35****Part 1****Validity and revision of contracts****1.**

(1) A term of a contract is void where—

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) it is included in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) it provides for the doing of an act which is unlawful by virtue of these Regulations.

(2) Sub-paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against, or harassment of, a party to the contract, but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit any provision of these Regulations is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(4) Sub-paragraphs (1), (2) and (3) shall apply whether the contract was entered into before or after the date on which these Regulations come into force; but in the case of a contract made before that date, those sub-paragraphs do not apply in relation to any period before that date.

2.

(1) Paragraph 1(3) does not apply—

³⁵ added by Employment Equality (Sexual Orientation) (Amendment) Regulations 2003/2827 Reg. 3(6)

- (a) to a contract settling a complaint to which regulation 28(1) (jurisdiction of employment tribunals) applies where the contract is made with the assistance of a conciliation officer within the meaning of section 211 of the Trade Union and Labour Relations (Consolidation) Act 1992;
 - (b) to a contract settling a complaint to which regulation 28(1) applies if the conditions regulating compromise contracts under this Schedule are satisfied in relation to the contract; or
 - (c) to a contract settling a claim to which regulation 31 (jurisdiction of county or sheriff courts) applies.
- (2) The conditions regulating compromise contracts under this Schedule are that—
- (a) the contract must be in writing;
 - (b) the contract must relate to the particular complaint;
 - (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue a complaint before an employment tribunal;
 - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
 - (e) the contract must identify the adviser; and
 - (f) the contract must state that the conditions regulating compromise contracts under this Schedule are satisfied.
- (3) A person is a relevant independent adviser for the purposes of sub-paragraph (2)(c)—
- (a) if he is a qualified lawyer;
 - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union; or
 - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
- (4) But a person is not a relevant independent adviser for the purposes of sub-paragraph (2)(c) in relation to the complainant—
- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party;
 - (b) in the case of a person within sub-paragraph (3)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
 - (c) in the case of a person within sub-paragraph (3)(c), if the complainant makes a payment for the advice received from him.
- (5) In sub-paragraph (3)(a) “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990); and
 - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

[(5A) A person shall be treated as being a qualified lawyer within sub-paragraph (5)(a) if he is a Fellow of the Institute of Legal Executives employed by a solicitors' practice.]³⁶

(6) In sub-paragraph (3)(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.

(7) For the purposes of sub-paragraph (4)(a) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control; or
- (b) if both are companies of which a third person (directly or indirectly) has control.

(8) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of sub-paragraph (1)(a) and (b) as being a contract settling a complaint if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded as neither being nor including such a contract in any other case.

3.

(1) On the application of a person interested in a contract to which paragraph 1(1) or (2) applies, a county court or a sheriff court may make such order as it thinks fit for—

- (a) removing or modifying any term rendered void by paragraph 1(1), or
- (b) removing or modifying any term made unenforceable by paragraph 1(2);

but such an order shall not be made unless all persons affected have been given notice in writing of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of these Regulations).

Part 2

Collective agreements and rules of undertakings

4.

(1) This Part of this Schedule applies to—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by a trade organisation (within the meaning of regulation 15) or a qualifications body (within the meaning of regulation 16) for application to—
 - (i) all or any of its members or prospective members; or

³⁶ added by Employment Equality (Sexual Orientation) Regulations 2003 (Amendment) Regulations 2004/2519 Reg. 2

(ii) all or any of the persons on whom it has conferred professional or trade qualifications (within the meaning of regulation 16) or who are seeking the professional or trade qualifications which it has power to confer.

(2) Any term or rule to which this Part of this Schedule applies is void where—

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) the term or rule provides for the doing of an act which is unlawful by virtue of these Regulations.

(3) Sub-paragraph (2) shall apply whether the agreement was entered into, or the rule made, before or after the date on which these Regulations come into force; but in the case of an agreement entered into, or a rule made, before the date on which these Regulations come into force, that sub-paragraph does not apply in relation to any period before that date.

5.

A person to whom this paragraph applies may present a complaint to an employment tribunal that a term or rule is void by virtue of paragraph 4 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of paragraph 4(2)(c), that—
 - (i) an act for the doing of which it provides, may at some such time be done in relation to him, and
 - (ii) the act would be unlawful by virtue of these Regulations if done in relation to him in present circumstances.

6.

In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
 - (i) an employer,
 - (ii) an organisation of employers of which an employer is a member, or
 - (iii) an association of such organisations of one of which an employer is a member,
 or
- (b) a rule made by an employer within the meaning of paragraph 4(1)(b),

paragraph 5 applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

7.

In the case of a complaint about a rule made by an organisation or body to which paragraph 4(1)(c) applies, paragraph 5 applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation or body;
- (b) on whom the organisation or body has conferred a professional or trade qualification (within the meaning of regulation 16); or
- (c) who is genuinely and actively seeking such a professional or trade qualification which the organisation or body has power to confer.

8.

(1) When an employment tribunal finds that a complaint presented to it under paragraph 5 is well-founded the tribunal shall make an order declaring that the term or rule is void.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of these Regulations).

9.

The avoidance by virtue of paragraph 4(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself), namely—

- (a) such of the rights of the person to be discriminated against; and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

10.

In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

SCHEDULE 5

Amendments to legislation

Regulation 39

1.

The Employment Tribunals Act 1996 is amended as follows—

- (a) in section 18(1)^[37] (cases where conciliation provisions apply)—
 - (i) at the end of paragraph (i), there is omitted “or”, and
 - (ii) after paragraph (j), there is inserted—

“or

- (k) under regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003”;
- (b) in section 21^[38] (jurisdiction of the Employment Appeal Tribunal), in subsection (1) (which specifies the proceedings and claims to which the section applies)—
 - (i) at the end of paragraph (j), there is omitted “or”, and
 - (ii) after paragraph (k) there is inserted—

³⁷ Section 18(1) has been amended on a number of occasions. The most recent and relevant amendment for the purposes of these Regulations was that made by S.I. 2002/2034.

³⁸ Section 21 has been amended on a number of occasions. The most recent and relevant amendment for the purposes of these Regulations was that made by S.I. 2002/2034.

“or

(1) the Employment Equality (Sexual Orientation) Regulations 2003”.

2.

Section 126 (compensation for acts which are both unfair dismissal and discrimination) of the Employment Rights Act 1996^{39]} is amended as follows–

(a) in subsection (1)(b)–

(i) after “Race Relations Act 1976” there is omitted “and”, and

(ii) after “Disability Discrimination Act 1995” there is inserted–

“and the Employment Equality (Sexual Orientation) Regulations 2003”;

(b) in subsection (2) after “those Acts” there is inserted “or Regulations”.

3.

Sub-paragraph (b) of the definition of “an award under the relevant legislation” in regulation 1(2) (interpretation) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 is amended as follows–

(a) after “section 56(1)(b) of the 1976 Act” there is omitted “or”; and

(b) after “section 8(2)(b) of the 1995 Act” there is inserted–

“or regulation 30(1)(b) of the Employment Equality (Sexual Orientation) Regulations 2003”.

4.

In the Employment Act 2002 at the end of each of the following schedules–

(a) Schedule 3 (tribunal jurisdictions to which section 31 applies for adjustment of awards for non-completion of statutory procedure);

(b) Schedule 4 (tribunal jurisdictions to which section 32 applies for complaints where the employee must first submit a statement of grievance to employer); and

(c) Schedule 5 (tribunal jurisdictions to which section 38 applies in relation to proceedings where the employer has failed to give a statement of employment particulars),

there is inserted–

“Regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003 (discrimination in the employment field)”.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which are made under section 2(2) of the European Communities Act 1972 (c. 68), implement (in Great Britain) Council Directive 2000/78/EC of 27th November 2000 establishing

³⁹ Section 126 was amended by section 14 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

a general framework for equal treatment in employment (OJ L 303, 2.12.2000, p. 16) so far as it relates to discrimination on grounds of sexual orientation. The Regulations make it unlawful to discriminate on grounds of sexual orientation in employment and vocational training. They prohibit direct discrimination, indirect discrimination, victimisation and harassment.

Sexual orientation is defined in regulation 2 as meaning a sexual orientation towards persons of the same sex, persons of the opposite sex, or to both persons of the same sex and of the opposite sex.

Direct discrimination, defined in regulation 3(1)(a), occurs where a person is treated less favourably than another on grounds of sexual orientation. Indirect discrimination, defined in regulation 3(1)(b), occurs where a provision, criterion or practice, which is applied generally, puts persons of a particular sexual orientation at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim. Victimisation, defined in regulation 4, occurs where a person receives less favourable treatment than others by reason of the fact that he has brought (or given evidence in) proceedings, made an allegation or otherwise done anything under or by reference to the Regulations. Harassment, defined in regulation 5, occurs where a person is subjected to unwanted conduct on grounds of sexual orientation with the purpose or effect of violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

Regulations 6 to 21 prohibit discrimination, victimisation and harassment in the fields of employment and vocational training. In particular, they protect employees (regulation 6), contract workers (regulation 8), office-holders (including constables) (regulations 10 and 11), and partners in firms. They not only prohibit discrimination etc by employers, but also by trade organisations (regulation 15), bodies conferring professional and trade qualifications (regulation 16), training providers (regulation 17), employment agencies (regulation 18), and further and higher education institutions (regulation 20). By virtue of regulation 21, discrimination, victimisation or harassment occurring after the relevant relationship has ended is unlawful if it arises out of, and is closely connected to, the relationship. The Regulations also apply to Crown servants and Parliamentary staff (regulations 36 to 38). Regulation 35 and Schedule 4 address the validity of discriminatory terms in contracts and collective agreements.

Not all differences of treatment on grounds of sexual orientation are unlawful. There are exceptions in regulations 24 to 26 for differences of treatment related to national security, to benefits which are dependent on marital status, and positive action. Regulation 7 provides an exception where being of a particular sexual orientation is a genuine and determining occupational requirement for a post, if it is proportionate to apply the requirement in the particular case. Regulation 7 also provides an exception for employment for purposes of an organised religion, where a requirement related to sexual orientation is applied so as to comply with the doctrines of the religion or to avoid conflicting with the religious convictions of its followers.

Regulations 27 to 34 provide remedies for individuals, including compensation, by way of proceedings in employment tribunals and in the county or sheriff courts. There are special provisions about the burden of proof in those cases in regulations 29 and 32, which transfer the burden to a respondent to a case once a complainant has established facts from which a court or tribunal could conclude, in the absence of an adequate explanation, that an act of discrimination or harassment has been committed by the respondent. Regulation 33 and Schedules 2 and 3 also include a questionnaire procedure to assist complainants in obtaining information from respondents.

A full Regulatory Impact Assessment report of the effect that these Regulations would have on the costs to business and a Transposition Note are freely available to the public from the Selected

Employment Rights Branch, UG65, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.