This Draft Statutory Instrument has been printed in substitution of the Draft Statutory Instruments of the same title, which were laid on 7th and 8th March 2007, and is being issued free of charge to all known recipients of those Draft Statutory Instruments.
Draft Regulations laid before Parliament under section 81(4)(b) of the Equality Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.000

SEXUAL ORIENTATION DISCRIMINATION

The Equality Act (Sexual Orientation) Regulations 2007

Made - - - -	*2007*
Coming into force - -	*30th April 2007*

The Secretary of State for Communities and Local Government makes the following Regulations in exercise of the powers conferred by section 81(1) of the Equality Act 2006(**1**).

In accordance with section 81(4)(b) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Equality Act (Sexual Orientation) Regulations 2007 and shall come into force on 30th April 2007.

(2) These Regulations do not extend to Northern Ireland.

Interpretation

2.—(1) References in these Regulations to discrimination are to any discrimination falling within regulation 3 (discrimination on grounds of sexual orientation) and related expressions shall be construed accordingly.

(2) In these Regulations—

"the Commission" means the Commission for Equality and Human Rights,

"criminal investigation" means an investigation into the commission of an alleged offence, and a decision whether to institute criminal proceedings,

"enactment" includes an enactment in or under an Act of the Scottish Parliament,

(**1**) 2006 c. 3.

"fostering agency" means a fostering agency within the meaning of section 4(4) of the Care Standards Act 2000(**2**) and a person providing a fostering service within the meaning of section 2(14)(b) of the Regulation of Care (Scotland) Act 2001(**3**),

"the 2006 Act" means the Equality Act 2006,

"voluntary adoption agency" means an adoption society within the meaning of the Adoption and Children Act 2002(**4**) which is a voluntary organisation within the meaning of that Act, and a person, providing an adoption service within the meaning of section 2(11)(b) of the Regulation of Care (Scotland) Act 2001(**5**).

(3) In these Regulations—

(a) a reference to act or action includes a reference to deliberate omission,

(b) a reference to refusal includes a reference to deliberate omission, and

(c) a reference to providing a service, facility or benefit of any kind includes a reference to facilitating access to the service, facility or benefit.

Discrimination on grounds of sexual orientation

3.—(1) For the purposes of these Regulations, a person ("A") discriminates against another ("B") if, on grounds of the sexual orientation of B or any other person except A, A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances).

(2) In paragraph (1) a reference to a person's sexual orientation includes a reference to a sexual orientation which he is thought to have.

(3) For the purposes of these Regulations, a person ("A") discriminates against another ("B") if A applies to B a provision, criterion or practice—

(a) which he applies or would apply equally to persons not of B's sexual orientation,

(b) which puts persons of B's sexual orientation at a disadvantage compared to some or all others (where there is no material difference in the relevant circumstances),

(c) which puts B at a disadvantage compared to some or all persons who are not of his sexual orientation (where there is no material difference in the relevant circumstances), and

(d) which A cannot reasonably justify by reference to matters other than B's sexual orientation.

(4) For the purposes of paragraphs (1) and (3), 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 in the relevant circumstances.

(5) A person ("A") discriminates against another ("B") if A treats B less favourably than he treats or would treat another and does so by reason of the fact that, or by reason of A's knowledge or suspicion that, B—

(a) has brought or intended to bring, or intends to bring, proceedings under these Regulations,

(b) has given or intended to give, or intends to give, evidence in proceedings under these Regulations,

(c) has provided or intended to provide, or intends to provide, information in connection with proceedings under these Regulations,

(d) has done or intended to do, or intends to do, any other thing under or in connection with these Regulations, or

(**2**) 2000 c. 14.
(**3**) 2001 asp 8.
(**4**) 2002 c. 38.
(**5**) To be substituted by section 7 of the Adoption and Children Act (Scotland) 2007 (asp 4) from a date to be appointed.

(e) has alleged or intended to allege, or intends to allege, that a person has contravened these Regulations.

(6) Paragraph (5) does not apply where A's treatment of B relates to B's—

(a) making or intending to make, not in good faith, a false allegation; or

(b) giving or intending to give, not in good faith, false information or evidence.

Goods, facilities and services

4.—(1) It is unlawful for a person ("A") concerned with the provision to the public or a section of the public of goods, facilities or services to discriminate against a person ("B") who seeks to obtain or to use those goods, facilities or services—

(a) by refusing to provide B with goods, facilities or services,

(b) by refusing to provide B with goods, facilities or services of a quality which is the same as or similar to the quality of goods, facilities or services that A normally provides to—
the public, or

(i) a section of the public to which B belongs,

(c) by refusing to provide B with goods, facilities or services in a manner which is the same as or similar to that in which A normally provides goods, facilities or services to—

(i) the public, or

(ii) a section of the public to which B belongs, or

(d) by refusing to provide B with goods, facilities or services on terms which are the same as or similar to the terms on which A normally provides goods, facilities or services to—

(i) the public, or

(ii) a section of the public to which B belongs.

(2) Paragraph (1) applies, in particular, to—

(a) access to and use of a place which the public are permitted to enter,

(b) accommodation in a hotel, boarding house or similar establishment,

(c) facilities by way of banking or insurance or for grants, loans, credit or finance,

(d) facilities for entertainment, recreation or refreshment,

(e) facilities for transport or travel, and

(f) the services of a profession or trade.

(3) Paragraph (1) does not apply —

(a) in relation to the provision of goods, facilities or services by a person exercising a public function, or

(b) to discrimination in relation to the provision of goods, facilities or services, where such discrimination—

(i) is unlawful by virtue of another provision of these regulations or by virtue of a provision of the Employment Equality (Sexual Orientation) Regulations 2003(**6**) ("the 2003 Regulations"), or

(ii) would be unlawful by virtue of another provision of these Regulations or of the 2003 Regulations but for an express exception.

(4) For the purposes of paragraph (1) it is immaterial whether or not a person charges for the provision of goods, facilities or services.

(**6**) S.I. 2003/1661.

Premises

5.—(1) It is unlawful for a person to discriminate against another—

(a) in the terms on which he offers to dispose of premises to him,

(b) by refusing to dispose of premises to him, or

(c) in connection with a list of persons requiring premises.

(2) It is unlawful for a person managing premises to discriminate against an occupier—

(a) in the manner in which he provides access to a benefit or facility,

(b) by refusing access to a benefit or facility,

(c) by evicting him, or

(d) by subjecting him to any other detriment.

(3) It is unlawful for a person to discriminate against another by refusing permission for the disposal of premises to him.

(4) This regulation only applies to premises in Great Britain.

Exceptions to regulations 4 and 5

6.—(1) Regulation 4 does not apply to anything done by a person as a participant in arrangements under which he (for reward or not) takes into his home, and treats as if they were members of his family, children, elderly persons, or persons requiring a special degree of care and attention.

(2) Regulation 5 does not apply to anything done in relation to the disposal or management of a part of any premises by a person ("the landlord") if—

(a) the landlord or a near relative of his resides, and intends to continue to reside, in another part of the premises,

(b) the premises include parts (other than storage areas and means of access) shared by residents of the premises, and

(c) the premises are not normally sufficient to accommodate—

(i) in the case of premises to be occupied by households, more than two households in addition to that of the landlord or his near relative, or

(ii) in the case of premises to be occupied by individuals, more than six individuals in addition to the landlord or his near relative.

(3) In paragraph (1) "near relative" means—

(a) spouse or civil partner,

(b) parent or grandparent,

(c) child or grandchild (whether or not legitimate)

(d) spouse or civil partner of a child or grandchild,

(e) brother or sister (whether of full blood or half blood), and

(f) any of the relationships listed in sub-paragraphs (b) to (e) that arises through marriage, civil partnership or adoption.

(4) Regulation 5(1) and (3) shall not apply to the disposal of premises by a person who—

(a) owns an estate or interest in the premises,

(b) occupies the whole of the premises,

(c) does not use the services of an estate agent for the purposes of the disposal, and

(d) does not arrange for the publication of an advertisement for the purposes of the disposal.

Educational establishments, local education authorities, and education authorities

7.—(1) It is unlawful for the responsible body of an educational establishment listed in Schedule 3 to discriminate against a person—

(a) in the terms on which it offers to admit him as a pupil,

(b) by refusing to accept an application to admit him as a pupil, or

(c) where he is a pupil of the establishment—

(i) in the way in which it affords him access to any benefit, facility or service,

(ii) by refusing him access to a benefit, facility or service,

(iii) by excluding him from the establishment, or

(iv) by subjecting him to any other detriment.

(2) In the application of this regulation and Schedule 3 to England and Wales—

(a) an expression also used in any of the Education Acts (within the meaning of section 578 of the Education Act 1996(**7**)) has the same meaning as in that Act, and

(b) "pupil" in relation to an establishment includes any person who receives education at that establishment.

(3) In the application of this regulation and Schedule 3 to Scotland, an expression also used in the Education (Scotland) Act 1980(**8**) has the same meaning as in that Act.

(4) It is unlawful for a local education authority (in England and Wales) or an education authority (in Scotland) in the exercise of their functions to discriminate against a person.

Public authorities

8.—(1) It is unlawful for a public authority exercising a function to do any act which constitutes discrimination.

(2) In paragraph (1)—

(a) "public authority" includes any person who has functions of a public nature (subject to paragraph (3)), and

(b) "function" means function of a public nature.

(3) Paragraph (1) does not apply to—

(a) a body listed in Part 1 of Schedule 1, or

(b) the functions or actions listed in Part 2 of that Schedule.

Discriminatory practices

9.—(1) It is unlawful for a person to operate a practice which would be likely to result in unlawful discrimination if applied to persons of any sexual orientation.

(2) It is unlawful for a person to adopt or maintain a practice or arrangement in accordance with which in certain circumstances a practice would be operated in contravention of paragraph (1).

(3) In this regulation "unlawful discrimination" includes discrimination which is unlawful by virtue of any of regulations 4 to 8.

(4) Proceedings in respect of a contravention of this regulation may be brought only—

(a) by the Commission, and

(**7**) 1996 c. 56.
(**8**) 1980 c. 44.