Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.

SEX DISCRIMINATION

The Sex Discrimination Act 1975 (Amendment) Regulations 2007

Made - - - - ***

Coming into force in accordance with Regulation 1(2)

A draft of these Regulations was laid before Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972(**1**) and was approved by resolution of each House of Parliament.

The Lord Privy Seal, who is a Minister designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to discrimination, in exercise of the powers conferred by that section makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination Act 1975 (Amendment) Regulations 2007.

(2) These Regulations shall come into force on the fifth day after the day on which they are made or on 21st December 2007, whichever is the later.

(3) These Regulations, except for regulation 22, extend to Great Britain.

(4) Regulation 22 extends to England and Wales only.

(5) In these Regulations, "the 1975 Act" means the Sex Discrimination Act 1975(**3**).

Amendment of the 1975 Act

2. The 1975 Act shall be amended in accordance with regulations 3 to 21.

(**1**) 1972 c.68.
(**2**) See the Transfer of Functions (Equality) Order 2007 (S.I. 2007/2914), and in particular Article 6 of that Order.
(**3**) 1975 c.65.

Indirect discrimination

3. In section 1 (direct and indirect discrimination against women)(**4**), after paragraph (a) of subsection (3) insert—

"(aa) sections 29 to 31, except in so far as they relate to an excluded matter,".

Discrimination on the grounds of gender reassignment

4. In section 2A (discrimination on the grounds of gender reassignment)(**5**) in subsection (1), after paragraph (a) insert—

"(aa) section 29, 30 or 31, except in so far as it relates to an excluded matter,".

Pregnancy and maternity

5.—(1) After section 3A (discrimination on the ground of pregnancy or maternity leave)(**6**), insert—

"**Discrimination on the ground of pregnancy or maternity: goods, facilities or services**

3B.—(1) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if he treats her less favourably—

(a) on the ground of her pregnancy, or

(b) within the period of 26 weeks beginning on the day on which she gives birth, on the ground that she has given birth.

(2) A person (P) is taken to discriminate against a woman on the ground of her pregnancy if—

(a) P refuses to provide her with goods, facilities or services because P thinks that providing them would, because of her pregnancy, create a risk to her health or safety, or

(b) P provides or offers to provide them on conditions intended to remove or reduce such a risk because P thinks that provision of them without the conditions would create such a risk.

(3) Subsection (2) does not apply if—

(a) it is reasonable for P to think as mentioned in paragraph (a) or (b), and

(b) P applies an equivalent policy.

(4) An equivalent policy is—

(a) for the purposes of subsection (2)(a), refusing to provide the goods, facilities or services to persons with other physical conditions because P thinks that to do so would, because of such physical conditions, create a risk to the health or safety of such persons;

(b) for the purposes of subsection (2)(b), imposing conditions on the provision of goods, facilities or services to such persons which are intended to remove or reduce the risk to their health or safety because P thinks that the provision without the conditions would create such a risk.

(**4**) Section 1 was substituted by the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001 (S.I. 2001/2660), regulation 3.
(**5**) Section 2A was inserted by the Sex Discrimination (Gender Reassignment) Regulations 1999 (S.I. 1999/1102), regulation 2(1).
(**6**) Section 3A was inserted by the Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), regulation 4.

(5) Subsection (1) applies to sections 29 to 31, except in so far as they relate to an excluded matter."

(2) In section 5 (interpretation), in subsection 1(b), for "or 3A" substitute ", 3A or 3B".

Goods, facilities or services

6. In section 29 (discrimination in provision of goods, facilities or services) after subsection (2) insert—

"(2A) It is unlawful in connection with the provision of goods, facilities or services to the public or a section of the public (except in so far as they relate to an excluded matter) for any person to subject to harassment—

(a) a woman who seeks to obtain or use those goods, facilities or services, or

(b) a woman to whom he provides those goods, facilities or services."

Premises

7. In section 30 (discrimination in disposal or management of premises)—

(a) after subsection (1) insert—

"(1A) It is unlawful for such a person to subject to harassment a woman who applies for the premises.";

(b) after subsection (2) insert—

"(2A) It is unlawful for such a person to subject to harassment a woman who occupies the premises.";

(c) after subsection (3) insert—

"(4) Subsections (1A) and (2A) apply in relation to an application for or occupation of premises except in so far as they relate to an excluded matter.".

Consent for assignment or sub-letting

8. In section 31 (discrimination: consent for assignment or sub-letting) in subsection (1), for the words from "to discriminate" to the end substitute—

"(a) to discriminate against a woman by withholding the licence or consent for disposal of the premises to her, or

(b) in relation to such a consent or licence, to subject to harassment a woman to whom the disposal would be made if the licence or consent were given."

Gender reassignment

9. In section 29 (discrimination in the provision of goods, facilities or services), in subsection (4)(**7**) omit "to vocational training".

Exception for voluntary bodies

10. In section 34 (exception for voluntary bodies) after subsection (4), insert—

"(5) Subsections (2) to (4) do not apply to discrimination under section 1 or 2A in its application to sections 29 to 31 unless the treatment mentioned in those subsections is—

(a) a proportionate means of achieving a legitimate aim, or

(**7**) Section 29(4) was inserted by the Sex Discrimination (Gender Reassignment) Regulations 1999 (S.I. 1999/1102), regulation 6.

(b) for the purpose of preventing or compensating for a disadvantage linked to sex."

Further exceptions from sections 29(1) and 30

11. In section 35 (further exceptions from sections 29(1) and 30)(**8**) —

(a) in subsection (1) leave out paragraphs (a) to (c) and insert "any of the conditions in subsection (1A) to (1C) is satisfied.",

(b) after subsection (1) insert—

"(1A) The condition is that the place is, or is part of—

(a) a hospital,

(b) a resettlement unit provided under Schedule 5 to the Supplementary Benefits Act 1976, or

(c) any other establishment for persons requiring special care, supervision or attention.

(1B) The condition is that the place is (permanently or for the time being) occupied or used for the purposes of an organised religion, and the facilities or service are restricted to men so as to comply with the doctrines of that religion or avoid offending the religious susceptibilities of a significant number of its followers.

(1C) The condition is that the facilities or services are provided for, or are likely to be used by, two or more persons at the same time, and—

(a) the facilities or services are such, or those persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or

(b) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.",

(c) after subsection (2), insert—

"(2A) In their application to discrimination falling within section 2A, subsections (1A), (1C) and (2) shall apply to the extent that any such discrimination is a proportionate means of achieving a legitimate aim.", and

(d) in subsection (3), after "discrimination", (in each place where it occurs) insert "or harassment".

Excluded matters

12.—(1) After section 35 insert–

"**Excluded matters**

35ZA. Each of the following is an excluded matter for the purposes of sections 29 to 31–

(a) education (including vocational training);

(b) the content of media and advertisements;

(c) the provision of goods, facilities or services (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.".

(2) In section 5 (interpretation), after subsection (3) insert—

(**8**) Section 35(1) was amended by the Social Security Act 1980 (c.30), section 20, Schedule 4, paragraph 11.