*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

# 2003 No.

# RACE RELATIONS

## The Race Relations Act 1976 (Amendment) Regulations 2003

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|---|---|
| *Made - - - -* | *2003* |
| *Coming into force - -* | *19th July 2003* |

Whereas these Regulations were laid in draft before each House of Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972(**1**) and were 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(**2**), in exercise of the powers conferred by that section, hereby makes the following Regulations:

### Citation, commencement, extent and interpretation

**1.**—(1) These Regulations may be cited as the Race Relations Act 1976 (Amendment) Regulations 2003 and shall come into force on 19th July 2003.

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

(3) In these Regulations "the 1976 Act" means the Race Relations Act 1976(**3**).

### Transitional provisions

**2.**—(1) Regulations 40 and 42 do not apply to proceedings commenced before 19th July 2003.

(2) Regulations 41 and 43 apply to proceedings commenced before 19th July 2003, as well as proceedings instituted on or after that date, but do not affect any case in which proceedings were determined before that date.

(3) The amendment made to section 65(2)(b) of the 1976 Act by regulation 47 shall not apply in the case of a question served on a respondent before 19th July 2003.

(4) In paragraph (3) "question" and "respondent" shall be construed in accordance with section 65 of the 1976 Act.

(**1**) 1972 c. 68.
(**2**) *See* the European Communities (Designation) (No. 3) Order (S.I.2002/1819).
(**3**) 1976 c. 74; as amended by he Race Relations (Amendment) Act 2000 (c. 34).

**Racial discrimination**

**3.** In section 1 of the 1976 Act (racial discrimination), after subsection (1), insert—

"(1A) A person also discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in subsection (1B), he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but—

(a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons,

(b) which puts that other at that disadvantage, and

(c) which he cannot show to be a proportionate means of achieving a legitimate aim.

(1B) The provisions mentioned in subsection (1A) are—

(a) Part II;

(b) sections 17 to 18D;

(c) section 19B, so far as relating to -

(i) any form of social security;

(ii) health care;

(iii) any other form of social protection; and

(iv) any form of social advantage;

which does not fall within section 20;

(d) sections 20 to 24;

(e) sections 26A and 26B;

(f) sections 76 and 76ZA; and

(g) Part IV, in its application to the provisions referred to in paragraphs (a) to (f).

(1C) Where, by virtue of subsection (1A), a person discriminates against another, subsection (1)(b) does not apply to him.".

**4.** In section 3 of the 1976 Act (meaning of "racial grounds", "racial group" etc), in subsection (4), after the words "section 1(1)", insert "or (1A)".

**Harassment**

**5.** After section 3 of the 1976 Act insert—

"**Harassment**

**3A.**—(1) A person subjects another to harassment in any circumstances relevant for the purposes of any provision referred to in section 1(1B) where, on grounds of race or ethnic or national origins, he engages in unwanted conduct which has the purpose or effect of—

(a) violating that other person's dignity, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

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

**Harassment by employers**

**6.**—(1) In the heading to section 4 of the 1976 Act (discrimination against applicants and employees) omit the words "Discrimination against".

(2) That section is amended as follows—

(a) after subsection (2) insert—

"(2A) 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.";

(b) in subsection (3) (exception for employment for purposes of private household), after the words "section 2", insert "or discrimination on grounds of race or ethnic or national origins"; and

(c) after subsection (4) insert—

"(4A) In subsection (2)(c) reference to the dismissal of a person from employment includes, where the discrimination is on grounds of race or ethnic or national origins, 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.".

**Exception for genuine occupational requirement**

**7.** After section 4 of the 1976 Act insert—

"**Exception for genuine occupational requirement**

**4A.**—(1) In relation to discrimination on grounds of race or ethnic or national origins—

(a) section 4(1)(a) or (c) does not apply to any employment; and

(b) section 4(2)(b) does not apply to promotion or transfer to, or training for, any employment; and

(c) section 4(2)(c) does not apply to dismissal from any employment;

where subsection (2) applies.

(2) This subsection applies where, having regard to the nature of the employment or the context in which it is carried out—

(a) being of a particular race or of particular ethnic or national origins 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.".

**8.** In section 5 of the 1976 Act (exceptions for genuine occupational qualifications), in subsection (1), after the words "racial discrimination", insert "in cases where section 4A does not apply".

**9.** In section 6 of the 1976 Act (exception for employment intended to provide training in skills to be exercised outside Great Britain), after the word "employer", insert ", on grounds other than those of race or ethnic or national origins,".

**Other harassment in employment etc.**

**10.**—(1) In the heading to section 7 of the 1976 Act (discrimination against contract workers) omit the words "Discrimination against".

(2) That section is amended as follows—

(a) in subsection (3)—

(i) after the words "racial group", in the first place where they occur, insert ", or not of a particular race or particular ethnic or national origins,";

(ii) after the words "racial group", in the second place where they occur, insert "or of that race or those origins"; and

(iii) after the word "qualification" insert "or, as the case may be, that act would be lawful by virtue of section 4A"; and

(b) after subsection (3), insert—

"(3A) It is unlawful for the principal, in relation to work to which this section applies, to subject a contract worker to harassment."; and

(c) in subsection (4), after the word "principal", insert "on grounds other than those of race or ethnic or national origins,".

**Meaning of employment at establishment in Great Britain**

**11.**—(1) In section 8 of the 1976 Act (meaning of employment at establishment in Great Britain), in subsection (1), for the words "unless the employee" to the end, substitute—

"if the employee—

(a) does his work wholly or partly in Great Britain; or

(b) does his work wholly outside Great Britain and subsection (1A) applies".

(2) After subsection (1) insert—

"(1A) This subsection applies if, in a case involving discrimination on grounds of race or ethnic or national origins, or harassment—

(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.".

**Partnerships**

**12.** In section 10 of the 1976 Act (partnerships)—

(a) after subsection (1), insert—

"(1A) The limitation of subsection (1) to six or more partners does not apply in relation to discrimination on grounds of race or ethnic or national origins.

(1B) It is unlawful for a firm, in relation to a position as a partner in the firm, to subject to harassment a person who holds or has applied for that position.";

(b) in subsection (2), for the words "Subsection (1)" substitute "Subsections (1), (1A) and (1B)";

(c) in subsection (3), for the words "being of a particular racial group" to the end substitute "section 4A or 5 would apply to such employment"; and

(d) at the end insert—

"(6) In subsection (1)(d)(ii) reference to the expulsion of a person from a position as partner includes, where the discrimination is on grounds of race or ethnic or national origins, 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.".

**Other bodies**

**13.** In section 11 of the 1976 Act (trade unions etc), at the end insert—

"(4) It is unlawful for an organisation to which this section applies, in relation to a person's membership or application for membership of that organisation, to subject him to harassment.".

**14.** In section 12 of the 1976 Act (qualifying bodies)—

(a) after subsection (1), insert—

"(1A) It is unlawful for an authority or body to which subsection (1) applies, in relation to an authorisation or qualification conferred by it, to subject to harassment a person who holds or applies for such an authorisation or qualification."; and

(b) for subsection (3), substitute—

"(3) Subsections (1) and (1A) do not apply to discrimination or harassment which is rendered unlawful by section 17 or 18.".

**15.** In section 13 of the 1976 Act (persons concerned with provision of vocational training), after subsection (2), insert—

"(3) It is unlawful for any person who provides, or makes arrangements for the provision of, facilities for training to which subsection (1) applies, in relation to such facilities or training, to subject to harassment a person to whom he provides such training or who is seeking to undergo such training.

(4) Subsection (3) does not apply to harassment which is rendered unlawful by section 4(2A) or by section 17 or 18.".

**16.** In section 14 of the 1976 Act (employment agencies)—

(a) after subsection (1) insert—