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.

SEXUAL ORIENTATION DISCRIMINATION

The Employment Equality (Sexual Orientation) Regulations 2003

Made - - - - 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(**1**), 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(**2**), in exercise of the powers conferred by that section, hereby makes the following Regulations:—

PART I

GENERAL

Citation, commencement and extent

1.—(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.

Interpretation

2.—(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.

(**1**) 1972 c. 68.

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

(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).

(3) In these Regulations—

"act" includes a deliberate omission;

"benefits" 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; and

"school", in England and Wales, has the meaning given by section 4 of the Education Act 1996(**3**), and, in Scotland, has the meaning given by section 135(1) of the Education (Scotland) Act 1980(**4**), and references to a school are to an institution in so far as it is engaged in the provision of education under those sections.

Discrimination on grounds of sexual orientation

3.—(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.

Discrimination by way of victimisation

4.—(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;

(**3**) 1996 c. 56; 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).
(**4**) 1980 c. 44.

(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.

Harassment on grounds of sexual orientation

5.—(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

Applicants and employees

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

(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.

Exception for genuine occupational requirement etc

7.—(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.

Contract workers

8.—(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.

Meaning of employment and contract work at establishment in Great Britain

9.—(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—