STATUTORY RULES OF NORTHERN IRELAND

2006 No. 439

SEXUAL ORIENTATION DISCRIMINATION

The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006

Made - - - - 8th November 2006
To be laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000

Coming into operation 1st January 2007

The Office of the First Minister and deputy First Minister makes the following Regulations in exercise of the powers conferred by section 82(1), (3), (4) and (5) of the Equality Act 2006(**1**)

Citation and commencement

1.—(1) These Regulations may be cited as the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.

(2) These Regulations shall come into operation on the 1st of January 2007.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**2**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations "sexual orientation" means a sexual orientation towards —

(a) persons of the same sex;

(b) persons of the opposite sex;

(c) persons of the same sex and of the opposite sex.

(3) In these Regulations —

(a) references to discrimination are to any discrimination falling within regulation 3(1) (discrimination on the grounds of sexual orientation) or 4 (discrimination by way of victimisation); and

(b) references to harassment are to any harassment falling within regulation 3(3) (harassment),

and related expressions shall be construed accordingly.

(**1**) 2006 c.3
(**2**) 1954 c.33 (NI)

(4) In these Regulations —

"access" shall be construed in accordance with regulation 48;

"act" includes a deliberate omission;

"benefits" includes facilities and services;

"the Commission" means the Equality Commission for Northern Ireland established by section 73 of the Northern Ireland Act 1998(**3**);

"Commissioner" means a member of the Commission;

"the Department" means the Office of the First Minister and deputy First Minister;

"education" means any form of training or instruction;

"formal investigation" means an investigation under regulation 30;

"general notice", in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

"Minister of the Crown" includes the Treasury and Defence Council;

"non-discrimination notice" means a notice under regulation 37;

"Northern Ireland" includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland;

"Northern Ireland Minister" includes the First Minister and deputy First Minister acting jointly;

"notice" means a notice in writing;

"premises" includes land of any description;

"school" has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986(**4**).

Discrimination and harassment 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 a disadvantage; and

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

(c) A applies to B a requirement or condition which he applies or would apply equally to persons not of the same sexual orientation as B; but —

(i) which is such that the proportion of persons of the same sexual orientation as B who can comply with it is considerably smaller than the proportion of persons not of that sexual orientation who can comply with it; and

(ii) which he cannot show to be justifiable irrespective of the sexual orientation of the person to whom it is applied; and

(**3**) 1998 c.47
(**4**) SI 1986/594 (N.I. 3)

(iii) which is to the detriment of B because he cannot comply with it.

(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.

(3) A person ("A") subjects another person ("B") to harassment in any circumstances relevant for the purposes of any provision referred to in these Regulations where, on the ground 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.

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

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; or

(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.

Goods, facilities or services

5.—(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services —

(a) by refusing or deliberately omitting to provide him with any of them; or

(b) by refusing or deliberately omitting to provide him with goods, facilities or services of the same quality, in the same manner and on the same terms as are normal in his case in relation to other members of the public or (where the person seeking belongs to a section of the public) to other members of that section.

(2) It is unlawful for any person concerned with the provision of goods, facilities or services as mentioned in paragraph (1), in relation to such provision, to subject to harassment —

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

(b) a person to whom he provides those goods, facilities and services.

(3) The following are examples of the facilities and services mentioned in paragraph (1) —

(a) access to and use of any place which members of 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 education;

(e) facilities for entertainment, recreation, or refreshment;

(f) facilities for transport or travel;

(g) the services of any profession or trader, or any local or other public authority.

(4) Nothing in these Regulations shall render unlawful any act done in affording persons of a particular sexual orientation access to goods, facilities or services to meet the specific and justified needs of persons of that group in regard to their education, welfare or any ancillary benefits.

Disposal or management of premises

6.—(1) It is unlawful for a person with power to dispose of any premises to discriminate against another —

(a) in the terms on which he offers him those premises; or

(b) by refusing his application for those premises; or

(c) in his treatment of him in relation to any list of persons in need of premises of that description.

(2) Paragraph (1) does not apply to a person who owns an estate in the premises and wholly occupies them unless, for the purpose of disposing of the premises, he —

(a) uses the services of an estate agent; or

(b) publishes an advertisement or causes an advertisement to be published.

(3) It is unlawful for a person managing any premises to discriminate against a person occupying those premises —

(a) in the way that he affords him access to any benefits or facilities, or by refusing or deliberately omitting to afford him access to them; or

(b) by evicting him, or subjecting him to any other detriment.

(4) It is unlawful for a person, in relation to such premises as are referred to in paragraph (1) or (3), to subject to harassment a person who applies for or, as the case may be, occupies such premises.

(5) It is unlawful for a person whose licence or consent is required for the disposal of any premises comprised in a tenancy —

(a) to discriminate against a person by withholding the licence or consent for the disposal of premises to him; or

(b) in relation to such a licence or consent, to subject to harassment a person who applies for such a licence or consent, or from whom the licence or consent is withheld.

(6) Paragraph (5) applies to tenancies created before as well as after the coming into operation of this regulation.

(7) In this regulation —

"dispose", in relation to premises, includes granting the right to occupy the premises, and, in relation to premises comprised in a tenancy, includes —

(a) assigning the tenancy; and

(b) sub-letting or parting with possession of the premises or any part of the premises,

and "disposal" shall be construed accordingly;

"estate agent" means a person who by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises, and

"tenancy" means a tenancy created —

(a) by a lease or sub-lease;

(b) by an agreement for a lease or sub-lease;

(c) by a tenancy agreement; or

(d) in pursuance of any statutory provision.

(8) This regulation applies only in relation to premises in Northern Ireland.

Exception from regulations 5 (1) and 6: small dwellings

7.—(1) Where the conditions mentioned in paragraph (2) are satisfied —

(a) regulation 5(1) does not apply to the provision by a person of accommodation in any premises;

(b) regulation 6(1) does not apply to the disposal by a person of any premises;

(c) regulation 6(4) does not apply to the withholding of any consent or licence.

(2) The conditions are that —

(a) the relevant occupier resides, and intends to continue to reside, on the premises;

(b) the relevant occupier shares accommodation on the premises with persons who reside on the premises and are not members of his household;

(c) the shared accommodation is not storage accommodation or a means of access; and

(d) the premises are small premises.

(3) For the purpose of this regulation, premises are "small premises" if they fall within paragraph (4) or (5).

(4) Premises fall within this paragraph if —

(a) only the relevant occupier and members of his household reside in the accommodation occupied by him;

(b) the premises comprise, in addition to the accommodation occupied by the relevant occupier, residential accommodation for at least one household;

(c) the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and

(d) there are not normally more than two such households.

(5) Premises fall within this paragraph if there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his household.

(6) For the purpose of this regulation "the relevant occupier" means —

(a) in a case falling within regulation 5(1), the person providing the accommodation or a near relative of his;

(b) in a case falling within regulation 6(1), the person with the power to dispose of the premises, or a near relative of his;

(c) in a case falling within regulation 6(4) the person whose licence or consent is required for the disposal of the premises, or a near relative of his.