STATUTORY RULES OF NORTHERN IRELAND

2003 No. 497

SEXUAL ORIENTATION DISCRIMINATION

Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003

Made - - - -	*1st December 2003*
Coming into operation	*2nd December 2003*

The Office of the First Minister and deputy First Minister, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to discrimination(**2**), in exercise of the powers conferred on it by that section, and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, and shall come into operation on 2nd December 2003.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to an Act of the Assembly.

(2) 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.

(3) 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

(**1**) 1972 c. 68
(**2**) *See* the European Communities (Designation) (No. 3) Order 2002 (S.I.2002/1819)
(**3**) 1954 c. 33 (N.I.)

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).

(4) In these Regulations –

"act" includes a deliberate omission;

"benefits", except in regulation 11 (trustees and managers of occupational pension schemes), includes facilities and services;

"the Commission" means the Equality Commission for Northern Ireland established by section 73 of the Northern Ireland Act 1998(**4**);

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

"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;

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

"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; and

"school" has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986(**5**).

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,

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

(b) given evidence or information in connection with proceedings brought by any person against A or any other person under these Regulations,

(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 Northern Ireland, 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 Northern Ireland, 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 Northern Ireland, 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 references –

(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.

Discrimination by persons with statutory power to select employees for others

7.—(1) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to discriminate against a person –

(a) by refusing to select or nominate, or deliberately not selecting or nominating, him for employment; or

(b) where candidates are selected or nominated in order of preference, by selecting or nominating him lower in order than any other who is selected or nominated.

(2) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to subject that other to harassment in relation to employment at an establishment in Northern Ireland.

Exception for genuine occupational requirement etc

8.—(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

9.—(1) It is unlawful for a principal, in relation to contract work at an establishment in Northern Ireland, 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 Northern Ireland, 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 8 (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 Northern Ireland

10.—(1) For the purposes of this Part ("the relevant purposes"), employment is to be regarded as being at an establishment in Northern Ireland if the employee –

(a) does his work wholly or partly in Northern Ireland; or

(b) does his work wholly outside Northern Ireland and paragraph (2) applies.

(2) This paragraph applies if –