
STATUTORY INSTRUMENTS

2003 No. 1661

The Employment Equality (Sexual Orientation) Regulations 2003

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.

(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(1), and, in Scotland, has the meaning given by section 135(1) of the Education (Scotland)

(1) 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).

Act 1980(2), 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;
- (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.

