
STATUTORY INSTRUMENTS

2003 No. 1661

**The Employment Equality (Sexual
Orientation) Regulations 2003**

PART II

DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING

Office-holders etc

10.—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this regulation applies, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this regulation applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this regulation applies, to discriminate against him—

- (a) in the terms of the appointment;
- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
- (c) by terminating the appointment; or
- (d) by subjecting him to any other detriment in relation to the appointment.

(4) It is unlawful for a relevant person, in relation to an office or post to which this regulation applies, to subject to harassment a person—

- (a) who has been appointed to the office or post;
- (b) who is seeking or being considered for appointment to the office or post; or
- (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).

(5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of regulation 7 (exception for genuine occupational requirement etc); and paragraph (2) does not apply to any act in relation

to an office or post where, if the office or post constituted employment, it would be lawful by virtue of regulation 7 to refuse to offer the person such employment.

(6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
- (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
- (c) the benefits relate to training.

(7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference—

- (a) to the termination of the appointment 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 appointment is renewed on the same terms and conditions; and
- (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.

(8) This regulation applies to—

- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
- (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a government department, the National Assembly for Wales or any part of the Scottish Administration,

but not to a political office or a case where regulation 6 (applicants and employees), 8 (contract workers), 12 (barristers), 13 (advocates) or 14 (partnerships) applies, or would apply but for the operation of any other provision of these Regulations.

(9) For the purposes of paragraph (8)(a) the holder of an office or post—

- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
- (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—
 - (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
 - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.

(10) In this regulation—

- (a) appointment to an office or post does not include election to an office or post;
- (b) “political office” means—
 - (i) any office of the House of Commons held by a member of it,
 - (ii) a life peerage within the meaning of the Life Peerages Act 1958(1), or any office of the House of Lords held by a member of it,

- (iii) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975(2),
 - (iv) the offices of Leader of the Opposition, Chief Opposition Whip or Assistant Opposition Whip within the meaning of the Ministerial and other Salaries Act 1975(3),
 - (v) any office of the Scottish Parliament held by a member of it,
 - (vi) a member of the Scottish Executive within the meaning of section 44 of the Scotland Act 1998(4), or a junior Scottish Minister within the meaning of section 49 of that Act,
 - (vii) any office of the National Assembly for Wales held by a member of it,
 - (viii) in England, any office of a county council, a London borough council, a district council, or a parish council held by a member of it,
 - (ix) in Wales, any office of a county council, a county borough council, or a community council held by a member of it,
 - (x) in relation to a council constituted under section 2 of the Local Government etc (Scotland) Act 1994(5) or a community council established under section 51 of the Local Government (Scotland) Act 1973(6), any office of such a council held by a member of it,
 - (xi) any office of the Greater London Authority held by a member of it,
 - (xii) any office of the Common Council of the City of London held by a member of it,
 - (xiii) any office of the Council of the Isles of Scilly held by a member of it,
 - (xiv) any office of a political party;
- (c) “relevant person”, in relation to an office or post, means—
- (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
 - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit, and
 - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
- (d) references to making a recommendation include references to making a negative recommendation; and
- (e) references to refusal include references to deliberate omission.

(2) 1975 c. 24; Schedule 2 was amended by the Scotland Act 1998 (c. 46), sections 48(6) and 87(1) and Schedule 9, and by S.I.2002/794.

(3) 1975 c. 27.

(4) 1998 c. 46.

(5) 1994 c. 39; section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

(6) 1973 c. 65; section 51 was amended by the Local Government etc (Scotland) Act 1994 (c. 39), Schedule 14, paragraph 1.