

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

2007 No.

SEX DISCRIMINATION

**The Sex Discrimination Act 1975
(Amendment) Regulations 2007**

*Made - - - - - ***
Coming into force in accordance with Regulation 1(2)*

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.

The Lord Privy Seal, who is a Minister designated⁽²⁾ for the purposes of section 2(2) of the European Communities Act 1972 in relation to discrimination, in exercise of the powers conferred by that section makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination Act 1975 (Amendment) Regulations 2007.

(2) These Regulations shall come into force on the fifth day after the day on which they are made or on 21st December 2007, whichever is the later.

(3) These Regulations, except for regulation 22, extend to Great Britain.

(4) Regulation 22 extends to England and Wales only.

(5) In these Regulations, “the 1975 Act” means the Sex Discrimination Act 1975⁽³⁾.

Amendment of the 1975 Act

2. The 1975 Act shall be amended in accordance with regulations 3 to 21.

(1) 1972 c.68.

(2) See the Transfer of Functions (Equality) Order 2007 (S.I. 2007/2914), and in particular Article 6 of that Order.

(3) 1975 c.65.

Indirect discrimination

3. In section 1 (direct and indirect discrimination against women)(4), after paragraph (a) of subsection (3) insert—

“(aa) sections 29 to 31, except in so far as they relate to an excluded matter.”.

Discrimination on the grounds of gender reassignment

4. In section 2A (discrimination on the grounds of gender reassignment)(5) in subsection (1), after paragraph (a) insert—

“(aa) section 29, 30 or 31, except in so far as it relates to an excluded matter.”.

Pregnancy and maternity

5.—(1) After section 3A (discrimination on the ground of pregnancy or maternity leave)(6), insert—

“3B Discrimination on the ground of pregnancy or maternity: goods, facilities or services

(1) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if he treats her less favourably—

- (a) on the ground of her pregnancy, or
- (b) within the period of 26 weeks beginning on the day on which she gives birth, on the ground that she has given birth.

(2) A person (P) is taken to discriminate against a woman on the ground of her pregnancy if—

- (a) P refuses to provide her with goods, facilities or services because P thinks that providing them would, because of her pregnancy, create a risk to her health or safety, or
- (b) P provides or offers to provide them on conditions intended to remove or reduce such a risk because P thinks that provision of them without the conditions would create such a risk.

(3) Subsection (2) does not apply if—

- (a) it is reasonable for P to think as mentioned in paragraph (a) or (b), and
- (b) P applies an equivalent policy.

(4) An equivalent policy is—

- (a) for the purposes of subsection (2)(a), refusing to provide the goods, facilities or services to persons with other physical conditions because P thinks that to do so would, because of such physical conditions, create a risk to the health or safety of such persons;
- (b) for the purposes of subsection (2)(b), imposing conditions on the provision of goods, facilities or services to such persons which are intended to remove or reduce the risk to their health or safety because P thinks that the provision without the conditions would create such a risk.

(4) Section 1 was substituted by the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001 (S.I. 2001/2660), regulation 3.

(5) Section 2A was inserted by the Sex Discrimination (Gender Reassignment) Regulations 1999 (S.I. 1999/1102), regulation 2(1).

(6) Section 3A was inserted by the Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), regulation 4.

(5) Subsection (1) applies to sections 29 to 31, except in so far as they relate to an excluded matter.”

(2) In section 5 (interpretation), in subsection 1(b), for “or 3A” substitute “, 3A or 3B”.

Goods, facilities or services

6. In section 29 (discrimination in provision of goods, facilities or services) after subsection (2) insert—

“(2A) It is unlawful in connection with the provision of goods, facilities or services to the public or a section of the public (except in so far as they relate to an excluded matter) for any person to subject to harassment—

- (a) a woman who seeks to obtain or use those goods, facilities or services, or
- (b) a woman to whom he provides those goods, facilities or services.”

Premises

7. In section 30 (discrimination in disposal or management of premises)—

(a) after subsection (1) insert—

“(1A) It is unlawful for such a person to subject to harassment a woman who applies for the premises.”;

(b) after subsection (2) insert—

“(2A) It is unlawful for such a person to subject to harassment a woman who occupies the premises.”;

(c) after subsection (3) insert—

“(4) Subsections (1A) and (2A) apply in relation to an application for or occupation of premises except in so far as they relate to an excluded matter.”.

Consent for assignment or sub-letting

8. In section 31 (discrimination: consent for assignment or sub-letting) in subsection (1), for the words from “to discriminate” to the end substitute—

- “(a) to discriminate against a woman by withholding the licence or consent for disposal of the premises to her, or
- (b) in relation to such a consent or licence, to subject to harassment a woman to whom the disposal would be made if the licence or consent were given.”

Gender reassignment

9. In section 29 (discrimination in the provision of goods, facilities or services), in subsection (4)(7) omit “to vocational training”.

Exception for voluntary bodies

10. In section 34 (exception for voluntary bodies) after subsection (4), insert—

“(5) Subsections (2) to (4) do not apply to discrimination under section 1 or 2A in its application to sections 29 to 31 unless the treatment mentioned in those subsections is—

- (a) a proportionate means of achieving a legitimate aim, or

(7) Section 29(4) was inserted by the Sex Discrimination (Gender Reassignment) Regulations 1999 (S.I. 1999/1102), regulation 6.

- (b) for the purpose of preventing or compensating for a disadvantage linked to sex.”

Further exceptions from sections 29(1) and 30

11. In section 35 (further exceptions from sections 29(1) and 30)(8) —

- (a) in subsection (1) leave out paragraphs (a) to (c) and insert “any of the conditions in subsection (1A) to (1C) is satisfied.”,

(b) after subsection (1) insert—

“(1A) The condition is that the place is, or is part of—

- (a) a hospital,
(b) a resettlement unit provided under Schedule 5 to the [Supplementary Benefits Act 1976](#), or
(c) any other establishment for persons requiring special care, supervision or attention.

(1B) The condition is that the place is (permanently or for the time being) occupied or used for the purposes of an organised religion, and the facilities or service are restricted to men so as to comply with the doctrines of that religion or avoid offending the religious susceptibilities of a significant number of its followers.

(1C) The condition is that the facilities or services are provided for, or are likely to be used by, two or more persons at the same time, and—

- (a) the facilities or services are such, or those persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or
(b) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.”

(c) after subsection (2), insert—

“(2A) In their application to discrimination falling within section 2A, subsections (1A), (1C) and (2) shall apply to the extent that any such discrimination is a proportionate means of achieving a legitimate aim.”, and

(d) in subsection (3), after “discrimination”, (in each place where it occurs) insert “or harassment”.

Excluded matters

12.—(1) After section 35 insert—

“35ZA Excluded matters

Each of the following is an excluded matter for the purposes of sections 29 to 31—

- (a) education (including vocational training);
(b) the content of media and advertisements;
(c) the provision of goods, facilities or services (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”

(2) In section 5 (interpretation), after subsection (3) insert—

(8) Section 35(1) was amended by the Social Security Act 1980 (c.30), section 20, Schedule 4, paragraph 11.

“(4) In this Act, references to an excluded matter must be construed in accordance with section 35ZA.”

Relationships which have come to an end

13. In section 35C (relationships which have come to an end)(9), in subsection (2) before paragraph (a), insert—

“(za) sections 29 to 31, except in so far as they relate to an excluded matter.”.

Charities

14. In section 43 (charities)(10), after subsection (2) insert—

“(2A) But subsection (1) does not apply to discrimination under section 1 or 2A in its application to sections 29 to 31 unless the conferral of benefits is—

- (a) a proportionate means of achieving a legitimate aim, or
- (b) for the purpose of preventing or compensating for a disadvantage linked to sex.”.

Sport

15. At the end of section 44 (sport etc) (which becomes subsection (1)) insert—

“(2) Subsection (1) applies to discrimination under sections 29 to 31 which falls within section 2A, only if the discrimination is necessary to secure—

- (a) fair competition, or
- (b) the safety of competitors,

at such events.”

Insurance

16. At the end of section 45 (insurance) (which becomes subsection (1)) insert—

“(2) In the case of discrimination under section 29, 30 or 31, subsection (1) applies only in so far as that section relates to—

- (a) an excluded matter; or
 - (b) differences in premiums and benefits applicable to a person under a contract of insurance or related financial services entered into on or before the appropriate date.
- (3) Despite subsection (2), the treatment is not unlawful under section 29(1) if—
- (a) in the case of discrimination under a contract entered into after the appropriate date which relates to differences in premiums and benefits, each of the following conditions is satisfied—
 - (i) the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data;
 - (ii) the data referred to in subparagraph (i) are compiled, published (whether in full or in summary form) and regularly updated in accordance with guidance issued by the Treasury;

(9) Section 35C was inserted by the Sex Discrimination Act 1975 (Amendment) Regulations 2003 (S.I. 2003/1657), regulation 4.

(10) Section 43 was amended by Sex Discrimination Act 1975 (Amendment of section 43) Order 1977 (S.I. 1977/528), article 2.

- (iii) the differences in treatment are proportionate having regard to the data mentioned in subparagraph (i);
- (iv) the differences do not result from costs related to pregnancy or to the fact that a woman has given birth at any time in the period of 26 weeks ending on the day the treatment occurs or begins; or
- (b) insurance or related financial services are provided only to members of one sex in relation to risks which only affect that sex.
- (4) Subsection (3)(a) applies to discrimination under section 2A as if, in subsection (1) of that section, after “other persons” there were inserted “of B’s sex”.
- (5) For the purposes of this section, “the appropriate date” means the date on which the Sex Discrimination Act 1975 (Amendment) Regulations 2007 come into force.”

Communal accommodation

- 17.**—(1) Section 46 (communal accommodation) is amended as follows.
- (2) In subsection (4)—
- (a) at the end of paragraph (b) insert “; and”, and
 - (b) after that paragraph, insert—
 - “(c) in respect of discrimination falling within section 2A, whether and how far such discrimination is a proportionate means of achieving a legitimate aim.”.
- (3) In subsection (8) for “section 35(1)(c)” substitute “section 35(1) and (1B)”.

Acts done for purposes of protection of women

- 18.** Section 51(1) (acts done for purposes of protection of women)(**11**) is amended as follows—
- (a) after paragraph (a) insert—
 - “(ba) sections 35A and 35B,”;
 - (b) in paragraph (b) at the beginning insert “the remainder of”.

Acts done under statutory authority

- 19.** Section 51A (acts done under statutory authority to be exempt from certain provisions of Part 3)(**12**) is amended as follows—
- (a) in subsection (1) before paragraph (a) insert—
 - “(za) sections 21A to 27, 32 and 33,”;
 - (b) in subsection (2) for “except so far as they apply to vocational training” substitute “(except sections 21A to 27, 32 and 33) in so far as they relate to an excluded matter”.

Burden of proof

- 20.**—(1) Section 66A (burden of proof: county and sheriff courts)(**13**), in subsection (2), for paragraph (a) substitute—

(11) Section 51 was amended by the Employment Act 1989 (c.38), section 3(1).

(12) Section 51A was amended by the Employment Act 1989, section 3(2).

(13) Section 66A was inserted by the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001 (S.I. 2001/2660), regulations 2(2) and 6. Section 66A(2)(a) was amended by the Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), regulations 31(1) and (2).

- “(a) has committed an act of discrimination or harassment against the claimant which is unlawful by virtue of—
- (i) section 29, 30 or 31, or
 - (ii) any other provision of Part 3 so far as it applies to vocational training, or”.

Time for answering questions from aggrieved persons

21. In section 74(2A) (help for aggrieved persons in obtaining information etc)(**14**), after subparagraph (i) of paragraph (a) insert—

“(ia) section 29, 30 or 31, except in so far as it relates to an excluded matter,”.

Amendment of the Public Health Act 1936

22. In subsection (3)(c) of section 87 of the Public Health Act 1936(**15**) (provision of public conveniences) omit “other than urinals,”.

Transitional provisions

23.—(1) The amendment made by regulation 20 (burden of proof) shall not apply in relation to proceedings where the act (within the meaning of the 1975 Act) complained of took place before the date on which these Regulations come into force.

(2) The amendment made to section 74 by regulation 21 (time for answering questions from aggrieved persons) shall not apply in the case of a question served on a respondent before the date on which these Regulations come into force.

(3) In paragraph (2) “question” and “respondent” shall be construed in accordance with section 74.

(4) Section 45(3)(a)(iv), inserted by the amendment made to section 45 by regulation 16, shall not apply to contracts entered into before 22nd December 2008.

Signed by

Date

Lord Privy Seal
Government Equalities Office

(14) Section 74(2A) was inserted by the Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), regulation 32(1) and (4).

(15) 1936 c.49; section 87(3) was amended by the Local Government Act 1972 (c.70), section 180 and Schedule 14, paragraph 9(2).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2) of the European Communities Act 1972, implement in Great Britain Council Directive 2004/113 EC of 13th December 2004 (“the Directive”) and come into force on the fifth day after the day on which they are made or on 21st December 2007, whichever is later. The Directive is concerned with implementing the principle of equal treatment between men and women in the access to and supply of goods and services which are available to the public.

The Directive necessitates amendment of the Sex Discrimination Act 1975 (“the 1975 Act”), in particular to reflect the provisions of the Directive which deal with discrimination, harassment and sexual harassment, the burden of proof in court proceedings, and the amendment of statutory provisions which would otherwise be contrary to the requirements of the Directive.

Regulation 3 applies the Directive-based definition of indirect discrimination to the areas of the 1975 Act with which the Directive is concerned, namely section 29 (discrimination in the provision of goods, facilities or services), section 30 (discrimination in disposal or management of premises) and 31 (discrimination: consent for assignment or sub-letting), except in so far as these provisions relate to an “excluded matter”. The excluded matters, set out at regulation 12 are: (a) education (including vocational training); (b) the content of media and advertisements; and (c) the provision of goods, facilities or services (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.

Regulation 4 introduces protection from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services or premises with which the Directive is concerned.

Regulation 5 extends protection from discrimination on grounds of pregnancy and introduces protection from discrimination on grounds of maternity in the provision of goods, facilities, or services with which the Directive is concerned.

Regulations 6 to 8 make it unlawful for any person in the connection with the provision of goods, facilities, services or premises with which the Directive is concerned, to subject another to harassment.

Regulation 9 amends section 29 (discrimination in the provision of goods, facilities or services) so that section 29(1)(b) makes unlawful discrimination on the grounds of gender reassignment in the provision of goods, facilities and services.

Regulations 10, 11, 14, 15 and 17 amend existing exceptions concerning the provision of single-sex goods, facilities, services or premises with which the Directive is concerned.

Regulation 13 provides that in the provision of goods, facilities, services or premises with which the Directive is concerned, where there has been a relationship in which certain acts of discrimination, or harassment, would have been unlawful, it is also unlawful to subject a person to a detriment or harassment by reference to that relationship after the relationship has ended.

Regulation 16 amends section 45 of the 1975 Act (insurance) to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women, in the areas with which the Directive is concerned.

Regulation 18 amends section 51 of the 1975 Act (acts done for purposes of protection of women) so that nothing in section 35A (barristers) and section 35B (advocates) makes unlawful an act done under section 51. This amendment is a clarification following our implementation of Directive

[2002/73/EC](#) amending Council Directive [76/207/EEC](#) on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Regulation 19 removes the exception for acts which are done under statutory authority in the areas with which the Directive is concerned.

Regulation 20 reverses the burden of proof in court proceedings relating to discrimination or harassment in the provision of goods, facilities, services or premises with which the Directive is concerned.

Regulation 21 ensures that respondents must reply to a claimant's preliminary questions relating to discrimination or harassment in the provision of goods, facilities, services or premises with which the Directive is concerned, within eight weeks of being served with them.

Regulation 22 enables local authorities to charge fees for the use of urinals provided under the Public Health Act 1936 to comply with Article 13 of the Directive (compliance).

Regulation 23 sets out transitional provisions.

A full impact assessment of the effect that this instrument will have on the costs of business is available from the Government Equalities Office website (currently www.womenandequalityunit.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website. Copies have been placed in the Libraries of both Houses of Parliament and are also available from the Government Equalities Office, Ashdown House, Zone 2 C/1, 123 Victoria Street, London, SW1E 6DE.