
STATUTORY INSTRUMENTS

1999 No. 1102

SEX DISCRIMINATION

The Sex Discrimination (Gender Reassignment) Regulations 1999

<i>Made</i>	- - - -	<i>25th March 1999</i>
<i>Laid before Parliament</i>		<i>9th April 1999</i>
<i>Coming into force</i>	- -	<i>1st May 1999</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾, in relation to measures to prevent discrimination on the grounds of sex in fields of pay and treatment in matters of employment, self-employment and vocational training⁽²⁾, in exercise of the powers conferred by that section, hereby makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Sex Discrimination (Gender Reassignment) Regulations 1999.

(2) These Regulations shall come into force on 1st May 1999.

(3) These Regulations do not extend to Northern Ireland.

Discrimination on the grounds of gender reassignment

2.—(1) After section 2 of the Sex Discrimination Act 1975⁽³⁾ (“the 1975 Act”) there shall be inserted the following section—

““Discrimination on the grounds of gender reassignment.”

2A.—(1) A person (“A”) discriminates against another person (“B”) in any circumstances relevant for the purposes of—

- (a) any provision of Part II,
- (b) section 35A or 35B, or
- (c) any other provision of Part III, so far as it applies to vocational training,

(1) 1972 c. 68.

(2) The European Communities (Designation) (No. 3) Order 1997 (S.I. 1997/2563).

(3) 1975 c. 65.

if he treats B less favourably than he treats or would treat other persons, and does so on the ground that B intends to undergo, is undergoing or has undergone gender reassignment.

(2) Subsection (3) applies to arrangements made by any person in relation to another's absence from work or from vocational training.

(3) For the purposes of subsection (1), B is treated less favourably than others under such arrangements if, in the application of the arrangements to any absence due to B undergoing gender reassignment—

- (a) he is treated less favourably than he would be if the absence was due to sickness or injury, or
- (b) he is treated less favourably than he would be if the absence was due to some other cause and, having regard to the circumstances of the case, it is reasonable for him to be treated no less favourably.

(4) In subsections (2) and (3) "arrangements" includes terms, conditions or arrangements on which employment, a pupillage or tenancy or vocational training is offered.

(5) For the purposes of subsection (1), a provision mentioned in that subsection framed with reference to discrimination against women shall be treated as applying equally to the treatment of men with such modifications as are requisite."

(2) In section 5(3) of the 1975 Act (interpretation) after the words "or 3(1)" there shall be inserted the words " , or a comparison of the cases of persons required for the purposes of section 2A,".

(3) In section 82 of the 1975 Act (general interpretation provisions) in subsection (1) after the definition of "further education" there shall be inserted the following definition—

““gender reassignment” means a process which is undertaken under medical supervision for the purpose of reassigning a person’s sex by changing physiological or other characteristics of sex, and includes any part of such a process;”.

Discrimination in relation to pay, etc.

3.—(1) In section 6 of the 1975 Act (discrimination against applicants and employees), after subsection (7) there shall be inserted the following subsection—

“(8) In its application to any discrimination falling within section 2A, this section shall have effect with the omission of subsections (4) to (6).”

(2) In section 8 of the 1975 Act (Equal Pay Act 1970) after subsection (6) there shall be inserted the following subsection—

“(7) In its application to any discrimination falling within section 2A, this section shall have effect with the omission of subsections (3), (4) and (5)(b).”

Exceptions for genuine occupational qualifications

4.—(1) After section 7 of the 1975 Act (exception where sex is a genuine occupational qualification) there shall be inserted the following sections—

““**Corresponding exception relating to gender reassignment.**”

7A.—(1) In their application to discrimination falling within section 2A, subsections (1) and (2) of section 6 do not make unlawful an employer’s treatment of another person if—

- (a) in relation to the employment in question—
 - (i) being a man is a genuine occupational qualification for the job, or
 - (ii) being a woman is a genuine occupational qualification for the job, and

- (b) the employer can show that the treatment is reasonable in view of the circumstances described in the relevant paragraph of section 7(2) and any other relevant circumstances.
- (2) In subsection (1) the reference to the employment in question is a reference—
 - (a) in relation to any paragraph of section 6(1), to the employment mentioned in that paragraph;
 - (b) in relation to section 6(2)—
 - (i) in its application to opportunities for promotion or transfer to any employment or for training for any employment, to that employment;
 - (ii) otherwise, to the employment in which the person discriminated against is employed or from which that person is dismissed.
- (3) In determining for the purposes of subsection (1) whether being a man or being a woman is a genuine occupational qualification for a job, section 7(4) applies in relation to dismissal from employment as it applies in relation to the filling of a vacancy.

“Supplementary exceptions relating to gender reassignment.”

- 7B.—**(1) In relation to discrimination falling within section 2A—
- (a) section 6(1)(a) or (c) does not apply to any employment where there is a supplementary genuine occupational qualification for the job,
 - (b) section 6(2)(a) does not apply to a refusal or deliberate omission to afford access to opportunities for promotion or transfer to or training for such employment, and
 - (c) section 6(2)(b) does not apply to dismissing an employee from, or otherwise not allowing him to continue in, such employment.
- (2) Subject to subsection (3), there is a supplementary genuine occupational qualification for a job only if—
- (a) the job involves the holder of the job being liable to be called upon to perform intimate physical searches pursuant to statutory powers;
 - (b) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held otherwise than by a person who is undergoing or has undergone gender reassignment, because objection might reasonably be taken to allowing to such a person—
 - (i) the degree of physical or social contact with a person living in the home, or
 - (ii) the knowledge of intimate details of such a person’s life,which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job;
 - (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—
 - (i) the only such premises which are available for persons holding that kind of job are such that reasonable objection could be taken, for the purpose of preserving decency and privacy, to the holder of the job sharing accommodation and facilities with either sex whilst undergoing gender reassignment, and
 - (ii) it is not reasonable to expect the employer either to equip those premises with suitable accommodation or to make alternative arrangements; or
 - (d) the holder of the job provides vulnerable individuals with personal services promoting their welfare, or similar personal services, and in the reasonable view of

the employer those services cannot be effectively provided by a person whilst that person is undergoing gender reassignment.

(3) Paragraphs (c) and (d) of subsection (2) apply only in relation to discrimination against a person who—

- (a) intends to undergo gender reassignment, or
- (b) is undergoing gender reassignment.”

(2) In section 9 of the 1975 Act (discrimination against contract workers), in subsection (3) at the beginning there shall be inserted the words “Subject to subsection (3A),”.

(3) After that subsection there shall be inserted the following subsections—

“(3A) Subsection (3) does not apply in relation to discrimination falling within section 2A.

(3B) In relation to discrimination falling within section 2A, the principal does not contravene subsection (2)(a), (b), (c) or (d) by doing any act in relation to a woman if—

- (a) he does it at a time when, if the work were to be done by a person taken into his employment—
 - (i) being a man would be a genuine occupational qualification for the job, or
 - (ii) being a woman would be a genuine occupational qualification for the job, and
- (b) he can show that the act is reasonable in view of the circumstances relevant for the purposes of paragraph (a) and any other relevant circumstances.

(3C) In relation to discrimination falling within section 2A, the principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when, if the work were to be done by a person taken into his employment, there would be a supplementary genuine occupational qualification for the job.”

(4) In section 11 of the 1975 Act (partnerships), in subsection (3) at the beginning there shall be inserted the words “Subject to subsection (3A),”.

(5) After that subsection there shall be inserted the following subsections—

“(3A) Subsection (3) does not apply in relation to discrimination falling within section 2A.

(3B) In relation to discrimination falling within section 2A, subsection (1) does not make unlawful a firm’s treatment of a person in relation to a position as partner where—

- (a) if it were employment—
 - (i) being a man would be a genuine occupational qualification for the job, or
 - (ii) being a woman would be a genuine occupational qualification for the job, and
- (b) the firm can show that the treatment is reasonable in view of the circumstances relevant for the purposes of paragraph (a) and any other relevant circumstances.

(3C) In relation to discrimination falling within section 2A, subsection (1)(a), (c) and, so far as it relates to expulsion, (d)(ii) do not apply to a position as partner where, if it were employment, there would be a supplementary genuine occupational qualification for the job.”

(6) In section 82 of the 1975 Act (general interpretation provisions) in the definition of “genuine occupational qualification” at the end there shall be inserted the words “, except in the expression “supplementary genuine occupational qualification”, which shall be construed in accordance with section 7B(2);”.

Ministers of religion, etc.

5. In section 19 of the 1975 Act (ministers of religion etc.) after subsection (2) there shall be inserted the following subsections—

“(3) In relation to discrimination falling within section 2A, this Part does not apply to employment for purposes of an organised religion where the employment is limited to persons who are not undergoing and have not undergone gender reassignment, if the limitation is imposed to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.

(4) In relation to discrimination falling within section 2A, section 13 does not apply to an authorisation or qualification (as defined in that section) for purposes of an organised religion where the the authorisation or qualification is limited to persons who are not undergoing and have not undergone gender reassignment, if the limitation is imposed to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.”

Discrimination in vocational training—provision of goods, facilities or services

6. In section 29 of the 1975 Act (discrimination in provision of goods, facilities or services) after subsection (3) there shall be inserted the following subsection—

“(4) In its application in relation to vocational training to discrimination falling within section 2A, subsection (1)(b) shall have effect as if references to male members of the public, or of a section of the public, were references to members of the public, or of a section of the public, who do not intend to undergo, are not undergoing and have not undergone gender reassignment.”

The Equal Opportunities Commission

7.—(1) In section 53 of the 1975 Act (establishment and duties of the Commission) in subsection (1) the word “and” after paragraph (b) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(ba) to promote equality of opportunity, in the field of employment and of vocational training, for persons who intend to undergo, are undergoing or have undergone gender reassignment, and”.

(2) In section 56A(4) of the 1975 Act (codes of practice), in subsection (1)—

(a) for the words “either or both” there shall be substituted the words “one or more”, and

(b) after paragraph (b) there shall be inserted the following paragraph—

“(ba) the promotion of equality of opportunity in that field for persons who intend to undergo, are undergoing or have undergone gender reassignment.”

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Signed by order of the Secretary of State

25th March 1999

Margaret Hodge
Parliamentary Under-Secretary of State
Department for Education and Employment

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, extend the Sex Discrimination Act 1975 (“the 1975 Act”) to cover discrimination on grounds of gender reassignment in employment and vocational training, following the judgment of the European Court of Justice in Case No. C-13/94 *P v S and Cornwall County Council*. They come into force on

Regulation 2 inserts a new section 2A into the 1975 Act. This extends the 1975 Act to cover direct discrimination on the ground of gender reassignment in employment and vocational training in circumstances where an individual is treated less favourably by another person on the ground that the individual intends to undergo, is undergoing or has undergone gender reassignment. Section 2A(2) to (4) makes it unlawful for a person who is absent as a result of undergoing gender reassignment to be treated less favourably than he would be if the absence was due to sickness or injury, or some other cause, having regard to the circumstances of his case and it is reasonable for him to be treated no less favourably. The provision further amends section 82 of the 1975 Act (general interpretation provisions) by inserting a definition of gender reassignment.

Regulation 3 disapplies section 6(4)—(6) of the 1975 Act in respect of its application to any discrimination falling within section 2A. The effect of this is that discrimination in relation to pay which falls within section 2A is to be treated as falling under the 1975 Act rather than under the Equal Pay Act 1970. A corresponding amendment is made to section 8 of the 1975 Act.

Regulation 4 inserts new sections 7A and 7B into the 1975 Act. Section 7A disapplies section 6(1) and (2) of the 1975 Act in certain circumstances. It is not unlawful to discriminate on the grounds of gender reassignment where a person’s sex is a genuine occupational qualification for that job and the employer can show that his treatment of the person is reasonable in view of section 7(2) or any other relevant circumstances. Section 7B disapplies section 6(1)(a) and (c) and section 6(2)(a) and (b) in specific circumstances where sex is a genuine occupational qualification. These circumstances are supplementary to those set out in section 7(2) of the 1975 Act. Regulation 4 also makes provision for similar amendments with respect to genuine occupational qualifications in section 9 and section 11 of the 1975 Act (discrimination against contract workers and those in partnerships with others).

Regulation 5 amends section 19 of the 1975 Act (ministers of religion etc.) by disapplying the provisions of the 1975 Act in relation to discrimination under section 2A if a limitation is imposed to comply with the doctrines of a religion or to avoid offending the religious susceptibilities of a significant number of the religion’s followers.

Regulation 6 amends section 29 of the 1975 Act (discrimination in provision of goods, facilities or services) only as regards vocational training, by providing that subsection 29(1)(b) can apply to discrimination falling within section 2A in respect of goods, facilities or services relating to vocational training.

Regulation 7 amends section 53 of the 1975 Act (establishment and duties of the Commission) by inserting a paragraph which extends the duties of the Equal Opportunities Commission to promote equality of opportunity in the field of employment and vocational training for persons who intend to undergo, are undergoing or have undergone gender reassignment. It also amends section 56A of the 1975 Act (codes of practice) by empowering the Equal Opportunities Commission to issue Codes of Practice which cover the promotion of equality of opportunity in the field of employment for persons who intend to undergo, are undergoing, or have undergone gender reassignment.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*