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STATUTORY INSTRUMENTS

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**2008 No. 656**

**SEX DISCRIMINATION**

**The Sex Discrimination Act 1975  
(Amendment) Regulations 2008**

<i>Made</i>	- - - -	<i>8th March 2008</i>
<i>Laid before Parliament</i>		<i>14th March 2008</i>
<i>Coming into force</i>	- -	<i>6th April 2008</i>

The Lord Privy Seal, who is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to discrimination<sup>(2)</sup>, in exercise of the powers conferred by that section makes the following Regulations:

**Citation, commencement, application, extent and interpretation**

1.—(1) These Regulations may be cited as the Sex Discrimination Act 1975 (Amendment) Regulations 2008.

(2) These Regulations shall come into force on 6th April 2008.

(3) The amendments made by regulation 5 apply only in relation to a case where a woman's expected week of childbirth as defined in regulation 2(1) of the Maternity and Parental Leave etc. Regulations 1999<sup>(3)</sup> (interpretation) begins on or after 5th October 2008.

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

(5) In these Regulations "the 1975 Act" means the Sex Discrimination Act 1975<sup>(4)</sup>.

**Discrimination on the ground of pregnancy or maternity leave**

2.—(1) Section 3A of the 1975 Act<sup>(5)</sup> is amended as follows.

(2) In subsection (1)(a) (definition of discrimination on the ground of pregnancy), omit the words "than he would treat her had she not become pregnant".

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(1) 1972 c.68.  
(2) S.I. 2007/2914.  
(3) S.I. 1999/3312.  
(4) 1975 c.65.  
(5) Section 3A was inserted by S.I. 2005/2467.

(3) In subsection (1)(b) (definition of discrimination on the ground of maternity leave), omit the words “than he would treat her if she were neither exercising nor seeking to exercise, and had neither exercised nor sought to exercise, such a right”.

(4) In subsection (2) (definition of discrimination on the ground of compulsory maternity leave), omit the words following “less favourably”.

### **Harassment**

3. In the 1975 Act, in section 4A(1)(a)(6) (definition of harassment), for “on the ground of her sex, he engages in unwanted conduct that” substitute “he engages in unwanted conduct that is related to her sex or that of another person and”.

### **Liability of employers for failing to protect employees from third party harassment**

4. In the 1975 Act, after section 6(2A)(7) (unlawful harassment) insert—

“(2B) For the purposes of subsection (2A), the circumstances in which an employer is to be treated as subjecting a woman to harassment shall include those where—

- (a) a third party subjects the woman to harassment in the course of her employment, and
- (b) the employer has failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.

(2C) Subsection (2B) does not apply unless the employer knows that the woman has been subject to harassment in the course of her employment on at least two other occasions by a third party.

(2D) In subsections (2B) and (2C), “third party” means a person other than—

- (a) the employer, or
- (b) a person whom the employer employs,

and for the purposes of those subsections it is immaterial whether the third party is the same or a different person on each occasion.”.

### **Exception relating to terms and conditions during maternity leave**

5.—(1) For section 6A of the 1975 Act(8) (exception relating to terms and conditions during maternity leave) substitute—

#### **“Exception relating to terms and conditions during maternity leave**

6A.—(1) Subject to subsection (2), section 6(1)(b) and (2) does not make it unlawful to deprive a woman who is on maternity leave of any benefit from the terms and conditions of her employment relating to remuneration.

(2) The reference in subsection (1) to benefit from the terms and conditions of a woman’s employment relating to remuneration does not include a reference to—

- (a) maternity-related remuneration (including maternity-related remuneration that is increase-related),
- (b) remuneration (including increase-related remuneration) in respect of times when the woman is not on maternity leave, or

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(6) Section 4A was inserted by [S.I. 2005/2467](#).

(7) Subsection (2A) was inserted by [S.I. 2005/2467](#).

(8) Section 6A was inserted by [S.I. 2005/2467](#).

(c) remuneration by way of bonus in respect of times when a woman is on compulsory maternity leave.

(3) For the purposes of subsection (2), remuneration is increase-related so far as it falls to be calculated by reference to increases in remuneration that the woman would have received had she not been on maternity leave.

(4) In this section—

“maternity-related remuneration”, in relation to a woman, means remuneration to which she is entitled as a result of being pregnant or being on maternity leave;

“on compulsory maternity leave” means absent from work in consequence of the prohibition in section 72(1) of the Employment Rights Act 1996;

“on maternity leave” means—

- (a) on compulsory maternity leave,
- (b) absent from work in exercise of the right conferred by section 71(1) of the Employment Rights Act 1996 (ordinary maternity leave), or
- (c) absent from work in exercise of the right conferred by section 73(1) of that Act (additional maternity leave); and

“remuneration” means benefits—

- (a) that consist of the payment of money to an employee by way of wages or salary, and
- (b) that are not benefits whose provision is regulated by the employee’s contract of employment.”.

Signed by authority of the Lord Privy Seal

8th March 2008

*Barbara Follett*  
Parliamentary Secretary  
Government Equalities Office

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement in Great Britain Council Directive [2002/73/EC](#) of 23rd September 2002 (OJ L 269, 5. 10.2002, p.15-20) (“the Directive”), in part, and come into force on 6th April 2008. The Directive concerns the principle of equal treatment of men and women as regards access to employment, vocational training and promotion and working conditions.

The Sex Discrimination Act 1975 (“the 1975 Act”) was previously amended by the Employment Equality (Sex Discrimination) Regulations 2005 to meet the Directive’s requirements. These Regulations amend the 1975 Act in order to give full effect to the Directive and otherwise comply with the High Court Order in *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin) in relation to the definitions of harassment and discrimination on grounds of pregnancy or maternity leave and the exception relating to terms and conditions during maternity leave.

Regulation 2 amends the definition of discrimination on grounds of pregnancy or maternity leave to eliminate the requirement of a comparator who is not pregnant or not on maternity leave, as the case may be.

Regulation 3 amends the definition of harassment to remove the causal link between harassment and the sex of the person being harassed. The change enables claims to be made by someone who is not subjected to the unwanted conduct himself or herself but the effect of which nonetheless violates his or her dignity or creates an intimidating, etc. environment for him or her.

Regulation 4 makes it unlawful for an employer to fail to take reasonably practicable steps to protect employees from harassment by third parties where such harassment is known to have occurred on at least two other occasions.

Regulation 5 narrows the extent to which it is not discriminatory to deprive a woman of the benefit of her terms and condition of employment during maternity leave. The amendment facilitates claims for discrimination in relation to eligibility for remuneration by way of bonus while on compulsory maternity leave. In addition, it enables claims for discrimination in relation to terms and conditions of employment in relation to periods of additional maternity leave to the same extent to which they are available in relation to periods of ordinary maternity leave. The amendments made by this regulation apply where a woman’s expected week of childbirth (as defined in the Maternity and Parental Leave etc. Regulations) begins on or after 5th October 2008.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been prepared together with a Transposition Note setting out how these Regulations transpose the Directive in Great Britain. Copies of these are annexed to the Explanatory Memorandum and are available to the public, free of charge, from the Government Equalities Office website (currently [www.equalities.gov.uk](http://www.equalities.gov.uk)), the OPSI website and from the Government Equalities Office based at Floor 5, Eland House, Bressenden Place, London SW1E 5DU. Copies will also be available in the Libraries of both Houses of Parliament.