
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2)(a) and (b) of the European Communities Act 1972 and come into force on 19th July 2003, implement (in Great Britain) Council Directive 2000/43 EC of 29th June 2000 (“the Directive”) and include provision for matters arising out of or relating to such implementation. The Directive is concerned with the principle of equal treatment between persons, irrespective of racial or ethnic origin, in the areas of employment (and related matters), social protection, social advantage, education and access to and supply of, goods and services which are available to the public, including housing.

The Directive necessitates amendment of the Race Relations Act 1976 (“the 1976 Act”), in particular to reflect the provisions of the Directive which deal with the definition of indirect discrimination, harassment, genuine and determining occupational requirements, the burden of proof in proceedings, and abolition of statutory provisions which are contrary to the principle of equal treatment.

Regulations 3 and 4 set out a new definition of indirect discrimination, on grounds of race or ethnic or national origins, in those areas with which the Directive is concerned.

Regulation 5 sets out a new definition of harassment, on the grounds of a person’s race or ethnic or national origins, which will apply in the areas with which the Directive is concerned.

Regulation 6 makes it unlawful for an employer to subject to harassment an employee or an applicant for employment, and removes, partially, the exception (from the discrimination in employment provisions) for employment in a private household.

Regulations 7 and 8 provide for a new exception (from the discrimination in employment provisions) where being of a particular race or of particular ethnic or national origins is a genuine and determining requirement for the employment in question.

Regulation 9 removes, partially, the exception (from the discrimination in employment provisions) for training in skills to be exercised outside Great Britain.

Regulation 10 makes it unlawful for a principal to subject a contract worker to harassment and removes, partially, the exception (from the contract workers provisions) for work to provide training skills to be exercised abroad.

Regulation 11 contains an expanded definition of “work at an establishment in Great Britain”.

Regulation 12 removes the lower limit on the size of partnerships which can discriminate unlawfully on grounds of race or ethnic or national origins, and makes it unlawful for partnerships to subject to harassment partners or applicants for partnership.

Regulations 13 to 17 make it unlawful for bodies such as trade organisations, qualifying bodies, providers of vocational training, employment agencies and the Training Commission to subject persons to harassment.

Regulations 18 and 19 make it unlawful for bodies concerned with education or vocational training or guidance to subject persons to harassment.

Regulation 20 makes it unlawful for public bodies concerned with provision of health, welfare or other services to subject persons to harassment.

Regulation 21 makes a consequential amendment.

Regulations 22 to 24, and 26, make it unlawful for persons concerned with the provision of goods, facilities or services, or accommodation, to subject persons to harassment.

Regulation 25 makes consequential amendments.

Regulations 27 and 28 make it unlawful for barristers and advocates, or their clerks, to subject to harassment a pupil or a tenant, or a person applying to be a pupil or tenant.

Regulation 29 provides that, 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 30 makes consequential amendments to the provisions dealing with discriminatory practices.

Regulation 31 extends to office holders the application of the section of the 1976 Act dealing with instructions to discriminate (or, now, harass).

Regulation 32 extends to office holders the application of the section of the 1976 Act which makes it unlawful to induce someone to commit an unlawful act of discrimination (or, now, harassment).

Regulation 33 removes the exception for charities to discriminate in employment.

Regulation 34 removes, partially, the exception for education or training of persons who are not going to stay in Great Britain.

Regulation 35 removes, partially, the exception for acts which are done under statutory authority.

Regulation 36 makes it the duty of the Commission for Racial Equality (“the CRE”) to work towards the elimination of harassment (in addition to its existing duty in respect of discrimination).

Regulation 37 adds harassment to the matters which can be the subject of a code of practice.

Regulation 38 adds harassment to the matters in respect of which the CRE can require information for the purposes of a formal investigation.

Regulation 39 makes a consequential amendment.

Regulation 40 provides that claims of unlawful discrimination on grounds of race, ethnic or national origins, or harassment, by or against barristers or advocates, or in the appointment of certain office holders, are to be heard by employment tribunals.

Regulations 41 and 43 alter the burden of proof in tribunal and court proceedings relating to discrimination on grounds of race, ethnic or national origins, or harassment, in areas with which the Directive is concerned.

Regulation 42 amends the provisions for bringing complaints in the courts, in consequence of certain matters being transferred to employment tribunals.

Regulation 44 adds harassment to the matters which can be the subject of a non-discrimination notice.

Regulation 45 includes harassment in the provisions dealing with persistent unlawful behaviour.

Regulation 46 makes a consequential amendment.

Regulation 47 ensures that, in certain cases, respondents must reply to a claimant’s preliminary questions within eight weeks of being served with them.

Regulation 48 extends the provisions of the 1976 Act relating to unlawful contracts so as to include harassment.

Regulation 49 applies to collective agreements and rules of undertakings the provisions of the 1976 Act relating to unlawful contracts, insofar as the grounds of race or ethnic or national origins are concerned.

Regulation 50 makes it unlawful to harass a person in relation to a government appointment, updates the provisions dealing with such appointments, and makes it clear that a complaint may be presented to an employment tribunal where the act complained of is on grounds of race or ethnic or national origins.

Regulation 51 makes it unlawful to discriminate (on grounds of race or ethnic or national origins), or to harass a person, in relation to other appointments.

Regulation 52 explains the meaning of certain expressions used in the regulations and inserted in the 1976 Act.