
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) Article 2 and Article 4(1) of Council Directive [97/80/EC](#) of 15th December 1997 (“the Directive”) concerning the burden of proof in cases of discrimination based on sex (OJ L14, 20.1.1998, p.6). The Directive has effect in relation to the United Kingdom by virtue of Council Directive [98/52/EC](#) of 13th July 1998 (OJ L.205, 22.7.1998, p.66).

Article 2(1) of the Directive defines “the principle of equal treatment for men and women” for the purposes of Article 141 (formerly Article 119) of the EC Treaty and other Community legislation relating to sex discrimination, including in particular Directive [76/207/EEC](#) of 9th February 1976 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 (OJ L39, 14.3.1976, p.40).

Article 2(2) of the Directive sets out the definition of indirect discrimination for the purposes of the principle of equal treatment referred to in Article 2(1).

Article 4 requires every Member State to take such measures as are necessary, in accordance with their national judicial systems, to ensure that in complaints of sex discrimination, before a court or other competent authority, the burden is on the complainant initially to establish facts from which the court or competent authority may presume there has been direct or indirect discrimination. Thereafter, the burden shifts to the person who has allegedly discriminated against the complainant, the respondent, to prove that there has been no such discrimination.

The Directive is only applicable to situations concerning equal treatment of men and women as regards employment and vocational training.

The Regulations amend the Sex Discrimination Act 1975 (“the 1975 Act”) and the Employment Act 1989 (“the 1989 Act”) in order to reflect the provisions of the Directive. The amendments come into force on 12th October 2001, subject to transitional provisions (see regulation 2).

Regulation 3 provides for the substitution of section 1 of the 1975 Act. The sole change made to subsection (1) is that it will now apply only in respect of the provisions of the Act other than—

- Part 2 (discrimination in the employment field),
- sections 35A and 35B (discrimination in relation to barristers and advocates), or
- any other provision of Part 3, so far as it relates to vocational training.

The new subsection (2) (as substituted by regulation 3) sets out what constitutes direct and indirect discrimination for the purposes of the following provisions of the 1975 Act—

- Part 2,
- sections 35A and 35B, and
- any other provision of Part 3, so far as it relates to vocational training.

Under new subsection (2)(a), direct discrimination will occur when a person treats a woman less favourably than he treats or would treat a man on the ground of her sex. This is identical to the new subsection (1)(a) (and to the old subsection (1)(a) which regulation 3 replaces). Subsection (2)(b) provides that in circumstances relevant for the purposes of a provision to which the new subsection applies, indirect discrimination will occur where a person applies an apparently neutral provision, criterion or practice to the disadvantage of a woman and to a substantially higher proportion of

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

women than men, unless that provision, criterion or practice can be justified by objective factors unrelated to sex.

Regulation 4 substitutes a new section 3 in the 1975 Act (discrimination against married persons in the employment field). The only change of substance is in subsection (1)(b) (which relates to indirect discrimination). This reflects the provisions of new section 1(2)(b) (as substituted by regulation 3).

Regulations 5 and 6 insert two new sections into the 1975 Act. These sections provide that the burden of proof will shift from the complainant to the respondent if the complainant can prove facts from which the tribunal could, apart from the section, conclude in the absence of an adequate explanation that discrimination has occurred. In those circumstances the burden of proof shifts to the respondent to prove that no such discrimination occurred. This only applies to proceedings by virtue of—

- Part 2,
- Sections 35A or 35B,
- any other provision of Part 3, so far as it relates to vocational training.

Regulation 7 inserts a new subsection (3A) into section 66 of the 1975 Act. The amendment makes it clear that a county court or sheriff court has power to award damages in respect of an unlawful act of discrimination which relates to vocational training and falls within the new section 1(2)(b), (as substituted by regulation 3), whether or not the discrimination is intentional.

Regulation 8 makes consequential amendments to other provisions of the 1975 Act.

Regulation 9 makes a consequential amendment to section 1 of the 1989 Act.

A copy of the Regulatory Impact Assessment relating to these Regulations has been placed in the libraries of both Houses of Parliament and can be obtained from the Women and Equality Unit, Cabinet Office, Second Floor, 10 Great George Street, London SW1P 3AE.