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**STATUTORY INSTRUMENTS**

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**2003 No.**

**SEXUAL ORIENTATION DISCRIMINATION**

**The Employment Equality (Sexual Orientation) Regulations 2003**

*Made* 2003

*Coming into force* 1<sup>st</sup> December 2003

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The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to discrimination(b), in exercise of the powers conferred by that section, hereby makes the following Regulations:—

## PART I

### DISCRIMINATION TO WHICH THESE REGULATIONS APPLY

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Employment Equality (Sexual Orientation) Regulations 2003, and shall come into force on 1<sup>st</sup> December 2003.

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

#### **Interpretation**

2.—(1) In these Regulations “sexual orientation” means an orientation towards—

- (a) persons of the same sex,
- (b) persons of the opposite sex, or
- (c) persons of the same sex and of the opposite sex.

(2) In these Regulations, references to discrimination are to any discrimination falling within regulation 3 or 4 (and related expressions shall be construed accordingly), and references to harassment shall be construed in accordance with regulation 5.

(3) In these Regulations—

“act” includes a deliberate omission;

“benefits” includes facilities and services;

“detriment” does not include conduct of the nature referred to in regulation 5 (harassment);

“education authority” in relation to Scotland has the same meaning as in section 135(1) of the Education (Scotland) Act 1980(c);

“employment” means employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions shall be construed accordingly;

“Great Britain” includes such of the territorial waters of the United Kingdom as are adjacent

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(a) 1972 c.68.

(b) See the European Communities (Designation) (No.3) Order (S.I. 2002/1819).

(c) 1980 c.44

to Great Britain.

### **Discrimination on grounds of sexual orientation**

3.—(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if—

- (a) on grounds of sexual orientation, A treats B less favourably than he treats or would treat other persons; or
- (b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same sexual orientation as B, but—
  - (i) which puts or would put persons of the same sexual orientation as B at a particular disadvantage when compared with other persons,
  - (ii) which puts B at that disadvantage, and
  - (iii) which A cannot show to be a proportionate means of achieving a legitimate aim.

(2) A comparison of B’s case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

### **Discrimination by way of victimisation**

4.—(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has—

- (a) brought proceedings against A or any other person under these Regulations;
- (b) given evidence or information in connection with proceedings brought by any person against A or any other person under these Regulations;
- (c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or
- (d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations,

or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.

(2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him if the allegation was false and not made in good faith.

### **Discrimination by way of harassment**

5.—(1) For the purposes of these Regulations, a person (“A”) subjects another person (“B”) to harassment where, on grounds of sexual orientation, A engages in unwanted conduct which has the purpose or effect of—

- (a) violating B’s dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) For the purposes of paragraph (1), conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) of that paragraph if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

## **PART II**

### **DISCRIMINATION IN THE EMPLOYMENT FIELD**

#### **Applicants and employees**

6.—(1) It is unlawful for an employer to discriminate against a person—

- (a) in the arrangements he makes for the purpose of determining to whom he should offer employment;
- (b) in the terms on which he offers that person employment; or
- (c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer to discriminate against a person whom he employs—

- (a) in the terms of employment which he affords him;
- (b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;
- (c) by refusing to afford him, or deliberately not affording him, any such opportunity;
- (d) by dismissing him, or subjecting him to any other detriment.

(3) It is unlawful for an employer to subject to harassment a person whom he employs or who has applied to him for employment.

(4) Paragraph (2) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the

employer to his employees; or

- (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
- (c) the benefits relate to training.

(5) In paragraph (2)(d) reference to the dismissal of a person from employment includes references—

- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
- (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

(6) This regulation applies only in relation to employment in Great Britain in accordance with regulation 9.

### **Exception for genuine occupational requirement**

7.—(1) In relation to discrimination falling within regulation 3—

- (a) regulation 6(1)(a) or (c) does not apply to any employment; and
- (b) regulation 6(2)(b) does not apply to promotion or transfer to, or training for, any employment,

where paragraph (2) applies.

(2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—

- (a) being of a particular sexual orientation is a genuine and determining occupational requirement; and
- (b) it is proportionate to apply that requirement in the particular case.

### **Contract workers**

8.—(1) It is unlawful for a principal, in relation to contract work, to discriminate against a contract worker—

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;

- (c) in the way he affords him access to any benefits or by refusing or deliberately not affording him access to them; or
- (d) by subjecting him to any other detriment.

(2) It is unlawful for a principal, in relation to contract work, to subject a contract worker to harassment.

(3) The principal does not contravene paragraph (1)(b) by doing any act in relation to a contract worker where, if the work were to be done by a person taken into the principal's employment, that act would be lawful by virtue of regulation 7 (exception for genuine occupational requirement).

(4) Paragraph (1)(c) does not apply to benefits of any description if the principal is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits by the principal to his contract workers.

(5) This regulation applies only in relation to contract work done in Great Britain (the provisions of regulation 9 about the meaning of employment in Great Britain applying for the purposes of this regulation with appropriate modifications).

(6) In this regulation—

“principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

“contract work” means work so made available; and

“contract worker” means any individual who is supplied to the principal under such a contract.

#### **[Meaning of employment in Great Britain]**

9. [See explanatory notes.]

#### **[Office-holders, post-holders etc]**

10. [See explanatory notes.]

#### **Police**

11.—(1) For the purposes of this Part, the holding of the office of constable shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to a constable

or that office;

- (b) by the police authority as respects any act done by them in relation to a constable or that office.

(2) For the purposes of regulation 26, the holding of the office of constable shall be treated as employment by the chief officer of police (and as not being employment by any other person).

(3) There shall be paid out of the police fund—

- (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under these Regulations, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
- (b) any sum required by a chief officer of police for the settlement of any claim made against him under these Regulations if the settlement is approved by the police authority.

(4) Any proceedings under these Regulations which, by virtue of paragraph (1), would lie against a chief officer of police shall be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in paragraph (2) to the chief officer of police shall be construed accordingly.

(5) Paragraphs (1) and (2) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.

(6) In this regulation—

“chief officer of police”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996(a);
- (b) in relation to a person appointed, or an appointment falling to be made, under section 9(1)(b) or 55(1)(b) of the Police Act 1997(b) (police members of the National Criminal Intelligence Service and the National Crime Squad) means the Director General of the National Criminal Intelligence Service or, as the case may be, the Director General of the National Crime Squad;
- (c) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967(c), means the Chief Constable of the relevant force;
- (d) in relation to any other person or appointment means the officer who has the direction and control of the body of constables or cadets in question;

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(a) 1996 c.16.

(b) 1997 c.50.

(a) 1967 c.77.

“police authority”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996;
- (b) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, has the meaning given in that Act;
- (c) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;

“police cadet” means any person appointed to undergo training with a view to becoming a constable;

“police fund”—

- (a) in relation to a chief officer of police within sub-paragraph (a) of the above definition of that term, has the same meaning as in the Police Act 1996;
- (b) in relation to a chief officer of police within sub-paragraph (b) of that definition, means the service fund established under section 16 or (as the case may be) section 61 of the Police Act 1997; and
- (c) in any other case means money provided by the police authority;

“specified Act” means the Metropolitan Police Act 1829(a), the City of London Police Act 1839(b) or the Police Act 1996.

## **Barristers**

**12.**—(1) It is unlawful for a barrister or barrister’s clerk, in relation to any offer of a pupillage or tenancy—

- (a) to discriminate against a person in the arrangements which are made for the purpose of determining to whom the pupillage or tenancy should be offered;
- (b) to discriminate against a person in respect of any terms on which it is offered; or
- (c) to discriminate against a person in the course of refusing, or deliberately not offering, it to him.

(2) It is unlawful for a barrister or barrister’s clerk, in relation to a pupil or tenant in the chambers in question—

- (a) to discriminate against him in respect of any terms applicable to him as a pupil or tenant;
- (b) to discriminate against him in the opportunities for training, or gaining experience, which are afforded or denied to him;

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(b) 1829 c.44.

(c) 1839, 2 & 3 Vict c. xciv.

- (c) to discriminate against him in the benefits which are afforded or denied to him; or
- (d) to discriminate against him in the course of terminating his pupillage or by subjecting him to—
  - (i) any pressure to leave the chambers, or
  - (ii) any other detriment.

(3) It is unlawful for a barrister or barrister’s clerk to subject to harassment a person who is, or has applied to be, a pupil or tenant in the set of chambers in question.

(4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.

(5) In this regulation—

“barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; and

“pupil”, “pupillage”, “tenancy” and “tenant” have the meanings commonly associated with their use in the context of a set of barristers’ chambers.

(6) This regulation does not apply to Scotland.

## **Advocates**

**13.**—(1) It is unlawful for an advocate, in relation to taking any person as his pupil—

- (a) to discriminate against a person in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
- (b) to discriminate against a person in respect of any terms on which he offers to take any person as his pupil; or
- (c) to discriminate against a person in the course of refusing to take, or deliberately not taking, a person as his pupil.

(2) It is unlawful for an advocate, in relation to a person who is his pupil—

- (a) to discriminate against him in respect of any terms applicable to him as a pupil;
- (b) to discriminate against him in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) to discriminate against him in the benefits which are afforded or denied to him; or
- (d) to discriminate against him in the course of terminating the relationship or by subjecting him to—

- (i) any pressure to terminate the relationship, or
- (ii) any other detriment.

(3) It is unlawful for an advocate to subject to harassment a person who is, or has applied to be, his pupil.

(4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.

(5) In this regulation—

“advocate” means a member of the Faculty of Advocates practising as such; and

“pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.

(6) This regulation does not apply to England and Wales.

## **Partnerships**

**14.**—(1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a person—

- (a) in the arrangements they make for the purpose of determining to whom they should offer that position;
- (b) in the terms on which they offer him that position;
- (c) by refusing to offer, or deliberately not offering, him that position; or
- (d) in a case where the person already holds that position—
  - (i) in the way they afford him access to any benefits or by refusing to afford, or deliberately not affording, him access to them, or
  - (ii) by expelling him from that position, or subjecting him to any other detriment.

(2) It is unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a person who holds or has applied for that position.

(3) Paragraphs (1)(a) to (c) and (2) apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.

(4) Paragraph (1)(a) and (c) does not apply to any act in relation to a position as partner where, if the position were employment, that act would be lawful by virtue of regulation 7 (exception for genuine occupational requirement).

(5) In the case of a limited partnership references in this regulation to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907<sup>(a)</sup>.

(6) This regulation applies to a limited liability partnership as it applies to a firm; and, in its application to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.

(7) In this regulation, “firm” has the meaning given by section 4 of the Partnership Act 1890<sup>(b)</sup>.

(8) References in this regulation to the expulsion of a person from a position as partner include references—

- (a) to the termination of that person’s partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and
- (b) to the termination of that person’s partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

## **Trade organisations**

**15.—**(1) It is unlawful for a trade organisation to discriminate against a person—

- (a) in the terms on which it is prepared to admit him to membership of the organisation; or
- (b) by refusing to accept, or deliberately not accepting, his application for membership.

(2) It is unlawful for a trade organisation, in the case of a member of the organisation, to discriminate against him—

- (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
- (b) by depriving him of membership, or varying the terms on which he is a member; or
- (c) by subjecting him to any other detriment.

(3) It is unlawful for a trade organisation to subject to harassment a person who is a member of the organisation, or who has applied for membership of the organisation.

(4) In this regulation—

“trade organisation” means an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;

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<sup>(a)</sup> 1907 c.24  
<sup>(b)</sup> 1890 c.39

“profession” includes any vocation or occupation; and

“trade” includes any business.

### **Qualifications bodies**

16.—(1) It is unlawful for a qualifications body to discriminate against a person—

- (a) in the terms on which it is prepared to confer a professional or trade qualification on him;
- (b) by refusing or deliberately not granting any application by him for such a qualification; or
- (c) by withdrawing such a qualification from him or varying the terms on which he holds it.

(2) It is also unlawful for a qualifications body to subject to harassment a person who holds a professional or trade qualification conferred by it, or applies for such a qualification.

(3) In this regulation—

“qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—

- (a) a local education authority in England or Wales; or
- (b) an education authority in Scotland;

“confer” includes renew or extend;

“professional or trade qualification” means an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade;

“profession” and “trade” have the same meaning as in regulation 15.

(4) This regulation does not apply to discrimination which is rendered unlawful by regulation 23.

### **Occupational pension schemes**

17. [*See explanatory notes.*]

### **Insurance services**

18. [*See explanatory notes.*]

**Providers of vocational training**

**19.**—(1) It is unlawful, in the case of a person seeking or undergoing training which would help fit him for any employment, for any training provider to discriminate against him—

- (a) in the terms on which the training provider affords him access to any training;
- (b) by refusing or deliberately not affording him such access;
- (c) by terminating his training; or
- (d) by subjecting him to any other detriment during his training.

(2) It is unlawful for a training provider to subject to harassment a person whom he is training or who has applied to him for training.

(3) Paragraphs (1) and (2) do not apply to—

- (a) anything made unlawful by regulation 6 or 23(1) or (2); or
- (b) anything which would be unlawful under any of those provisions but for the operation of any other provision of these Regulations.

(4) Paragraph (1)(b) does not apply if the discrimination only concerns training for employment which, by virtue of regulation 7, the employer could lawfully refuse to offer the person seeking training.

(5) In this regulation—

“training” includes—

- (a) facilities for training, and
- (b) practical work experience provided by an employer to a person whom he does not employ;

“training provider” means any person who provides, or makes arrangements for the provision of, training which would fit another person for any employment, but it does not include—

- (a) a local education authority in England or Wales; or
- (b) an education authority in Scotland.

**Employment agencies, careers guidance etc.**

**20.**—(1) It is unlawful for an employment agency to discriminate against a person—

- (a) in the terms on which the agency offers to provide any of its services;
- (b) by refusing or deliberately not providing any of its services; or

(c) in the way it provides any of its services.

(2) It is unlawful for an employment agency to subject to harassment a person to whom it provides its services, or who has requested it to provide its services.

(3) References in paragraphs (1) and (2) to the services of an employment agency include guidance on careers and any other services related to employment.

(4) This regulation does not apply to discrimination if it only concerns employment which, by virtue of regulation 7, the employer could lawfully refuse to offer the person in question.

(5) An employment agency shall not be subject to any liability under this regulation if it proves that—

(a) it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of paragraph (4), its action would not be unlawful, and

(b) it was reasonable for it to rely on the statement.

(6) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (5)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) For the purposes of this regulation, “employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but it does not include—

(a) a local education authority in England or Wales; or

(b) an education authority in Scotland.

### **Arrangements under the Employment and Training Act 1973 etc**

**21.—**(1) It is unlawful for the Secretary of State to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under section 2 of the Employment and Training Act 1973**(a)**.

(2) It is unlawful for Scottish Enterprise or Highlands and Islands Enterprise to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under such arrangements as are mentioned in section 2(3) of the Enterprise and New Towns (Scotland) Act 1990**(b)** (arrangements analogous to arrangements in pursuance of the said Act of 1973).

(3) This regulation does not apply in a case where—

(a) regulation 19 applies, or

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**(a)** 1973 c.50. Section 2 was substituted by section 25 of the Employment Act 1988 (c.19), and amended by the Employment Act 1989 (c.38) and by section 47 of the Trade Union and Employment Rights Act 1993.

**(b)** 1990 c.35.

- (b) the Secretary of State is acting as an employment agency within the meaning of regulation 20.

## **Part II relationships which have come to an end**

22.—(1) In this regulation a “relevant relationship” is a relationship during the course of which an act of discrimination or harassment by one party to the relationship (“A”) against the other party to it (“B”) would be unlawful by virtue of any provision of this Part.

(2) Where a relevant relationship has come to an end, it is unlawful for A—

- (a) to discriminate against B by subjecting him to a detriment; or
- (b) to subject B to harassment,

where the discrimination or harassment arises out of and is closely connected to that relationship.

## **PART III**

### **DISCRIMINATION IN THE VOCATIONAL TRAINING FIELD**

#### **Bodies in charge of institutions of further and higher education**

23.—(1) It is unlawful, in relation to an educational establishment falling within column 1 of the following table, for a person indicated in relation to the establishment in column 2 (the “responsible body”) to discriminate against a person—

- (a) in the terms on which it offers to admit him to the establishment as a student;
- (b) by refusing or deliberately not accepting an application for his admission to the establishment as a student; or
- (c) where he is a student of the establishment—
  - (i) in the way it affords him access to any benefits,
  - (ii) by refusing or deliberately not affording him access to them, or
  - (iii) by excluding him from the establishment or subjecting him to any other detriment.

(2) It is unlawful, in relation to an educational establishment falling within column 1 of the following table, for a person indicated in relation to the establishment in column 2 (the “responsible body”) to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student.

(3) Paragraph (1)(b) does not apply if the discrimination only concerns training which would help fit a person for employment which, by virtue of regulation 7, the employer could lawfully

refuse to offer the person seeking admission.

(4) In this regulation—

“student” means any person who receives education at an educational establishment falling within column 1 of the following table; and

“university” includes a university college and the college, school or hall of a university.

TABLE

Establishment	Responsible body
ENGLAND and WALES	
1. Institution within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992(a)).	Governing body.
2. University.	Governing body.
3. Institution, other than a university, within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992).	Governing body.
SCOTLAND	
4. College of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992(b) under the management of a board of management within the meaning of Part I of that Act.	The Board of Management.
5. Designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992.	Governing body.
6. University.	Governing body.

### **Part III relationships which have come to an end**

**24.**—(1) In this regulation a “relevant relationship” is a relationship during the course of which an act of discrimination or harassment by one party to the relationship (“A”) against the other party to it (“B”) would be unlawful by virtue of regulation 23.

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(a) 1992 c.13.  
(b) 1992 c.37

- (2) Where a relevant relationship has come to an end, it is unlawful for A—
- (a) to discriminate against B by subjecting him to a detriment; or
  - (b) to subject B to harassment,

where the discrimination or harassment arises out of and is closely connected to that relationship.

**[Extent of Part III]**

25. [*See explanatory notes.*]

**PART IV**

**OTHER UNLAWFUL ACTS**

**Liability of employers and principals**

26.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of these Regulations as done by that other person as well as by him.

(3) In proceedings brought under these Regulations against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

**Aiding unlawful acts**

27.—(1) A person who knowingly aids another person to do an act made unlawful by these Regulations shall be treated for the purpose of these Regulations as himself doing an unlawful act of the like description.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under regulation 26 (or would be so liable but for regulation 26(3)) shall be deemed to aid the doing of the act by the employer or principal.

(3) A person does not under this regulation knowingly aid another to do an unlawful act if—

- (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of these Regulations, the act which he aids would not be unlawful; and

(b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (3)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## PART V

### GENERAL EXCEPTIONS FROM PARTS II TO IV

#### **Exception for national security**

28. Nothing in Parts II to IV of these Regulations shall render unlawful an act done for the purpose of safeguarding national security.

#### **Exception for benefits dependent on marital status**

29. Nothing in Parts II to IV of these Regulations shall render unlawful anything which prevents or restricts access to a benefit by reference to marital status.

#### **Exceptions for positive action**

30.—(1) Nothing in Parts II to IV shall render unlawful any act done in or in connection with—

- (a) affording persons of a particular sexual orientation access to facilities for training which would help fit them for particular work; or
- (b) encouraging persons of a particular sexual orientation to take advantage of opportunities for doing particular work,

where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to sexual orientation suffered by persons doing that work or likely to take up that work.

(2) Nothing in Parts II to IV shall render unlawful any act done by a trade organisation to which regulation 15 applies in or in connection with—

- (a) affording only members of the organisation who are of a particular sexual orientation access to facilities for training which would help fit them for holding a post of any kind in the organisation; or
- (b) encouraging only members of the organisation who are of a particular sexual orientation to take advantage of opportunities for holding such posts in the organisation,

where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to sexual orientation suffered by those holding such posts or likely to hold

such posts.

(3) Nothing in Parts II to IV shall render unlawful any act done by a trade organisation to which regulation 15 applies in or in connection with encouraging only persons of a particular sexual orientation to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to sexual orientation suffered by persons of that sexual orientation who are, or are eligible to become, members.

## PART VI

### ENFORCEMENT

#### **Restriction of proceedings for breach of Regulations**

**31.** Except as provided by these Regulations no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of these Regulations.

#### **Jurisdiction of employment tribunals**

**32.—**(1) A complaint by any person (“the complainant”) that another person (“the respondent”)—

- (a) has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of Part II; or
- (b) is by virtue of regulation 26 or 27 to be treated as having committed such an act of discrimination or harassment against the complainant,

may be presented to an employment tribunal.

(2) Paragraph (1) does not apply to a complaint under regulation 16(1) or (2) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

(3) In this regulation, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

#### **Burden of proof: employment tribunals**

**33.—**(1) This regulation applies to any complaint presented under regulation 32 to an employment tribunal.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent-

- (a) has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of Part II, or
- (b) is by virtue of regulation 26 or 27 to be treated as having committed such an act of discrimination or harassment against the complainant,

the tribunal shall uphold the complaint unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

### **Remedies on complaints in employment tribunals**

**34.**—(1) Where an employment tribunal finds that a complaint presented to it under regulation 32 is well-founded, the tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court or by a sheriff court to pay to the complainant if the complaint had fallen to be dealt with under regulation 35;
- (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination or harassment to which the complaint relates.

(2) As respects an unlawful act of discrimination falling within regulation 3(1)(b), if the respondent proves that the provision, practice or criterion was not applied with the intention of treating the complainant unfavourably on grounds of sexual orientation, an order may be made under paragraph (1)(b) only if the employment tribunal—

- (a) makes such order under paragraph (1)(a) and such recommendation under paragraph (1)(c) (if any) as it would have made if it had no power to make an order under paragraph (1)(b); and
- (b) (where it makes an order under paragraph (1)(a) or a recommendation under paragraph (1)(c) or both) considers that it is just and equitable to make an order under paragraph (1)(b) as well.

(3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an employment tribunal under paragraph (1)(c), then, if it thinks it just and equitable to do so—

- (a) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)(b); or
- (b) if an order under paragraph (1)(b) was not made, the tribunal may make such an order.

(4) Where an amount of compensation falls to be awarded under paragraph (1)(b), the tribunal may include in the award interest on that amount subject to, and in accordance with, the provisions of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996(a).

### **Claims under Part III**

**35.**—(1) A claim by any person (“the claimant”) that another person (“the respondent”)—

- (a) has committed an act of discrimination or harassment against the claimant which is unlawful by virtue of Part III; or
- (b) is by virtue of regulation 26 or 27 to be treated as having committed such an act of discrimination or harassment against the claimant,

may be made the subject of civil proceedings in like manner as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

(2) Proceedings brought under paragraph (1) shall—

- (a) in England and Wales, be brought only in a county court; and
- (b) in Scotland, be brought only in a sheriff court.

(3) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act of discrimination or harassment may include compensation for injury to feelings whether or not they include compensation under any other head.

(4) Civil proceedings in respect of a claim by any person that he has been discriminated against or subjected to harassment in contravention of regulation 23 by a body to which paragraph (5) applies shall not be instituted unless the claimant has given notice in writing of the claim to the Secretary of State.

(5) This paragraph applies to any body which is a responsible body in relation to an establishment falling within paragraph 1, 4 or 5 of the table in regulation 23.

(6) A county court or sheriff court shall have jurisdiction to entertain proceedings under paragraph (1) with respect to an act done on a ship, aircraft or hovercraft outside its district, including such an act done outside Great Britain.

### **Burden of proof: county and sheriff courts**

**36.**—(1) This regulation applies to any claim brought under regulation 35(1) in a county court in England and Wales or a sheriff court in Scotland.

(2) Where, on the hearing of the claim, the claimant proves facts from which the court

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(a) SI 1996/2803. Regulation 1(2) of those Regulations is amended by paragraph 3 of Schedule 4 to these Regulations.

could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed an act of discrimination or harassment against the claimant which is unlawful by virtue of Part III, or
- (b) is by virtue of regulation 26 or 27 to be treated as having committed such an act of discrimination or harassment against the claimant,

the court shall uphold the claim unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

### **Help for persons in obtaining information etc.**

**37.**—(1) In accordance with this regulation, a person (“the person aggrieved”) who considers he may have been discriminated against, or subjected to harassment, in contravention of these Regulations may serve on the respondent questions in the form set out in Schedule 1 or forms to the like effect with such variation as the circumstances require; and the respondent may if he so wishes reply to such questions by way of the form set out in Schedule 2 or forms to the like effect with such variation as the circumstances require.

(2) Where the person aggrieved questions the respondent (whether in accordance with paragraph (1) or not)—

- (a) the question, and any reply by the respondent (whether in accordance with paragraph (1) or not) shall, subject to the following provisions of this regulation, be admissible as evidence in the proceedings;
- (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within eight weeks of service of the questions or that his reply is evasive or equivocal, the court or tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.

(3) In proceedings before a county court in England or Wales or a sheriff court in Scotland, a question shall only be admissible as evidence in pursuance of paragraph (2)(a)—

- (a) where it was served before those proceedings had been instituted, if it was so served during the period of six months beginning when the act complained of was done;
- (b) where it was served when those proceedings had been instituted, if it was served with the leave of, and within a period specified by, the court in question.

(4) In proceedings before an employment tribunal, a question shall only be admissible as evidence in pursuance of paragraph (2)(a)—

- (a) where it was served before a complaint had been presented to the tribunal, if it was so served within the period of three months beginning when the act complained of was done;

- (b) where it was served when a complaint had been presented to the tribunal, either—
  - (i) if it was so served within the period of twenty-one days beginning with the day on which the complaint was presented, or
  - (ii) if it was so served later with leave given, and within a period specified, by a direction of the tribunal.

(5) A question and any reply thereto may be served on the respondent or, as the case may be, on the person aggrieved—

- (a) by delivering it to him;
- (b) by sending it by post to him at his usual or last-known residence or place of business;
- (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992, by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office;
- (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service; or
- (e) where the person to be served is the person aggrieved, by delivering the reply, or sending it by post, to him at his address for reply as stated by him in the document containing the questions.

(6) This regulation is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a county court, sheriff court or employment tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

(7) In this regulation "respondent" includes a prospective respondent.

### **Period within which proceedings to be brought**

**38.**—(1) An employment tribunal shall not consider a complaint under regulation 32 unless it is presented to the tribunal before the end of—

- (a) the period of three months beginning when the act complained of was done; or
- (b) in a case to which regulation 40(6) applies, the period of six months so beginning.

(2) A county court or a sheriff court shall not consider a claim brought under regulation 35 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(3) A court or tribunal may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and

equitable to do so.

- (4) For the purposes of this regulation and regulation 37—
- (a) when the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract; and
  - (b) any act extending over a period shall be treated as done at the end of that period; and
  - (c) a deliberate omission shall be treated as done when the person in question decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this regulation to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

## PART VII

### SUPPLEMENTAL

#### **Validity of contracts, collective agreements, and rules of undertakings**

**39.** Schedule 3 (validity of contracts, collective agreements, and rules of undertakings) shall have effect.

#### **Application to the Crown etc**

**40.**—(1) These Regulations apply—

- (a) to an act done by or for purposes of a Minister of the Crown or government department;  
or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as they apply to an act done by a private person.

(2) Parts II and IV apply to—

- (a) service for purposes of a Minister of the Crown or government department;
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body; or
- (c) service in the armed forces,

as they apply to employment by a private person, and shall so apply as if references to a contract

of employment included references to the terms of service.

(3) Paragraphs (1) and (2) have effect subject to regulation 11.

(4) The provisions of Parts II to IV of the Crown Proceedings Act 1947<sup>(a)</sup> shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in England and Wales which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations section 20 of that Act (removal of proceedings from county court to High Court) shall not apply.

(5) The provisions of Part V of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in Scotland which by virtue of the said Part are treated as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations the proviso to section 44 of that Act (removal of proceedings from the sheriff court to the Court of Session) shall not apply.

(6) This paragraph applies to any complaint by a person (“the complainant”) that another person—

- (a) has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of regulation 6; or
- (b) is by virtue of regulation 26 or 27 to be treated as having committed such an act of discrimination or harassment against the complainant,

if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination or harassment in question relates to his service in those forces.

(7) A person may present a complaint to which paragraph (6) applies to an employment tribunal under regulation 32 only if—

- (a) the complainant has made a complaint in respect of the same matter to an officer under the service redress procedures applicable to him; and
- (b) that complaint has not been withdrawn.

(8) For the purpose of paragraph (7)(b), a person shall be treated as having withdrawn his complaint if, having made a complaint to an officer under the service redress procedures, he fails to submit that complaint to the Defence Council under those procedures.

(9) Where a complaint is presented to an employment tribunal under regulation 32 by virtue of paragraph (7), the service redress procedures may continue after the complaint is so presented.

(10) In this regulation—

“armed forces” means any of the naval, military or air forces of the Crown;

“service for purposes of a Minister of the Crown or government department” does not

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<sup>(a)</sup> 1947 c.44

include service in any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975(a);

“the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955(b), section 180 of the Air Force Act 1955(c) and section 130 of the Naval Discipline Act 1957(d); and

“statutory body” means a body set up by or in pursuance of an enactment, and “statutory office” means an office so set up.

### **Application to House of Commons Staff**

**41.**—(1) These Regulations have effect in relation to employment as a relevant member of the House of Commons staff as they have effect in relation to other employment.

(2) In this regulation “relevant member of the House of Commons staff” means any person—

- (a) who was appointed by the House of Commons Commission; or
- (b) who is a member of the Speaker’s personal staff.

### **Application to House of Lords staff**

**42.**—(1) These Regulations have effect in relation to employment as a relevant member of the House of Lords staff as they have effect in relation to other employment.

(2) In this regulation “relevant member of the House of Lords staff” means any person who is employed under a contract with the Corporate Officer of the House of Lords by virtue of which he is an employee.

### **Amendments to legislation**

**43.** Schedule 4 (amendments to legislation) shall have effect.

.....2003

Secretary of State,

Department of Trade and Industry

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(a) 1975 c.24  
(b) 1955 c.18  
(c) 1955 c.19  
(d) 1957 c.53

**SCHEDULE 1**

Regulation 37(1)

**Questionnaire of person aggrieved**

To ..... (*name of person to be questioned*) of .....  
.....(*address*)

1.—(1) I ..... (*name of questioner*) of ..... (*address*) consider that you may have discriminated against me [subjected me to harassment] contrary to the Employment Equality (Sexual Orientation) Regulations 2003.

(2) (*Give date, approximate time and a factual description of the treatment received and of the circumstances leading up to the treatment.*)

(3) I consider that this treatment may have been unlawful [because .....  
..... (*complete if you wish to give reasons, otherwise delete*)].

2. Do you agree that the statement in paragraph 1(2) above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

3. Do you accept that your treatment of me was unlawful discrimination [harassment]?

If not—

(a) why not,

(b) for what reason did I receive the treatment accorded to me, and

(c) how far did considerations of sexual orientation affect your treatment of me?

4. (*Any other questions you wish to ask.*)

5. My address for any reply you may wish to give to the questions raised above is [that set out in paragraph 1(1) above] [the following address .....].

.....(*signature of questioner*)

..... (*date*)

*N.B.*—By virtue of regulation 37 of the Regulations this questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings under the Regulations and a court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within eight weeks of service of this questionnaire, or from an evasive or equivocal reply, including an inference that the person questioned has committed an unlawful act.

**SCHEDULE 2**

Regulation 37(1)

**Reply by respondent**

To ..... (*name of questioner*) of ..... (*address*)

**1.** I ..... (*name of person questioned*) of ..... (*address*) hereby acknowledge receipt of the questionnaire signed by you and dated ..... which was served on me on ..... (*date*).

**2.** [I agree that the statement in paragraph 1(2) of the questionnaire is an accurate description of what happened.]

[I disagree with the statement in paragraph 1(2) of the questionnaire in that .....]

**3.** I accept/dispute that my treatment of you was unlawful discrimination [harassment].

[My reasons for so disputing are..... The reason why you received the treatment accorded to you and the answers to the other questions in paragraph 3 of the questionnaire are .....]

**4.** (*Replies to questions in paragraph 4 of the questionnaire.*)

**[5.** I have deleted (in whole or in part) the paragraph(s) numbered ..... above, since I am unable/unwilling to reply to the relevant questions in the correspondingly numbered paragraph(s) of the questionnaire for the following reasons .....]

..... (*signature of person questioned*)

..... (*date*)

**Validity of contracts, collective agreements, and rules of undertakings**

Part 1

Validity and revision of contracts

1. A term of a contract is void where—
  - (a) its inclusion renders the making of the contract unlawful by virtue of these Regulations;
  - (b) it is included in furtherance of an act rendered unlawful by these Regulations; or
  - (c) it provides for the doing of an act which would be rendered unlawful by these Regulations.
2. Paragraph 1 does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against, or harassment of, a party to the contract, but the term shall be unenforceable against that party.
3. A term in a contract which purports to exclude or limit any provision of these Regulations is unenforceable by any person in whose favour the term would operate apart from this paragraph.
4. Paragraph 3 does not apply—
  - (a) to a contract settling a complaint to which regulation 32(1) applies where the contract is made with the assistance of a conciliation officer<sup>(a)</sup>;
  - (b) to a contract settling a complaint to which regulation 32(1) applies if the conditions regulating compromise contracts under these Regulations are satisfied in relation to the contract; or
  - (c) to a contract settling a claim to which regulation 35 applies.
5. The conditions regulating compromise contracts under these Regulations are that—
  - (a) the contract must be in writing;
  - (b) the contract must relate to the particular complaint;
  - (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue a complaint before an employment tribunal;
  - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk

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<sup>(a)</sup> Section 211 of the Trade Union and Labour Relations (Consolidation) Act 1992 requires ACAS to designate some of its officers to perform the functions of conciliation officers, and applies in relation to this Schedule. The reference to a conciliation officer in this Schedule is therefore to an officer designated under that provision.

- of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
  - (f) the contract must state that the conditions regulating compromise contracts under these Regulations are satisfied.
6. A person is a relevant independent adviser for the purposes of paragraph 5(c)—
- (a) if he is a qualified lawyer;
  - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union; or
  - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
7. But a person is not a relevant independent adviser for the purposes of paragraph 5(c) in relation to the complainant—
- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party;
  - (b) in the case of a person within paragraph 6(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
  - (c) in the case of a person within paragraph 6(c), if the complainant makes a payment for the advice received from him.
8. In paragraph 6(a) “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990<sup>(a)</sup>); and
  - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
9. In paragraph 6(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(b)</sup>.
10. For the purposes of paragraph 7 any two persons are to be treated as connected—
- (a) if one is a company of which the other (directly or indirectly) has control; or
  - (b) if both are companies of which a third person (directly or indirectly) has control.

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<sup>(a)</sup> 1990 c.41  
<sup>(b)</sup> 1992 c.52

11. On the application of any person interested in a contract to which paragraph 2 applies, a county court or a sheriff court may make such order as it thinks just for removing or modifying any term made unenforceable by that paragraph; but such an order shall not be made unless all persons affected have been given notice in writing of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

12. An order under paragraph 11 may include provision as respects any period after the coming into force of these Regulations and before the making of the order.

## Part 2

### Collective agreements and rules of undertakings

13. Without prejudice to the generality of Part 1 of this Schedule, that Part shall apply, as it applies in relation to the term of a contract, to the following, namely—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by an organisation, authority or body to which regulation 15 or 16 applies for application to all or any of its members or prospective members or to all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer;

and that Part shall so apply whether the agreement was entered into, or the rule made, before or after the coming into force of these Regulations.

14. A person to whom this paragraph applies may present a complaint to an employment tribunal that a term or rule is void by virtue of paragraph 1 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of paragraph 1(c), that—
  - (i) an act for the doing of which it provides, may at some such time be done in relation to him, and
  - (ii) the act would be rendered unlawful by these Regulations if done in relation to him in present circumstances.

15. In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
  - (i) an employer,

- (ii) an organisation of employers of which an employer is a member, or
  - (iii) an association of such organisations of one of which an employer is a member, or
- (b) a rule made by an employer,

paragraph 14 applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

16. In the case of a complaint about a rule made by an organisation, authority or body to which paragraph 13(c) applies, paragraph 14 applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body;
- (b) on whom the organisation, authority or body has conferred an authorisation or qualification; or
- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.

17. When an employment tribunal finds that a complaint presented to it under paragraph 14 is well-founded the tribunal shall make an order declaring that the term or rule is void.

18. The avoidance by virtue of Part 1 of this Schedule of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights except in so far as they enable any person to require another person to be treated less favourably than himself, namely—

- (a) such of the rights of the person to be discriminated against; and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

19. In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(a)</sup> (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

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<sup>(a)</sup> 1992 c.52

**SCHEDULE 4**

Regulation 43

**Amendments to legislation**

1. The Employment Tribunals Act 1996<sup>(a)</sup> is amended as follows—
  - (a) in section 18(1) (cases where conciliation provisions apply)—
    - (i) at the end of paragraph (i), there is omitted “or”, and
    - (ii) after paragraph (j), there is inserted—

“or

    - (k) under regulation 32 of the Employment Equality (Sexual Orientation) Regulations 2003.”;
  - (b) in section 21 (jurisdiction of the Employment Appeal Tribunal), in subsection (1) (which specifies the proceedings and claims to which the section applies)—
    - (i) at the end of paragraph (j), there is omitted “or”, and
    - (ii) after paragraph (k) there is inserted—

“or

    - (l) the Employment Equality (Sexual Orientation) Regulations 2003.”.
2. Section 126 (compensation for acts which are both unfair dismissal and discrimination) of the Employment Rights Act 1996<sup>(b)</sup> is amended as follows—
  - (a) in subsection (1)(b)—
    - (i) after “Race Relations Act 1976” there is omitted “and”, and
    - (ii) after “Disability Discrimination Act 1995” there is inserted—

“and the Employment Equality (Sexual Orientation) Regulations 2003”;
  - (b) in subsection (2) after “those Acts” there is inserted “or Regulations”.
3. Regulation 1(2)(b) (interpretation) of the Employment Tribunals (Interest on Awards in

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<sup>(a)</sup> 1996 c.17.

<sup>(b)</sup> 1996 c.18

Discrimination Cases) Regulations 1996**(a)** is amended as follows—

- (a) after “section 56(1)(b) of the 1976 Act” there is omitted “or”; and
- (b) after “section 8(2)(b) of the 1995 Act” there is inserted—

“or regulation 34(1)(b) of the Employment Equality (Sexual Orientation) Regulations 2003”.

4. In the Employment Act 2002**(b)** at the end of each of the following schedules—

- (a) Schedule 3 (tribunal jurisdictions to which section 31 applies for adjustment of awards for non-completion of statutory procedure);
- (b) Schedule 4 (tribunal jurisdictions to which section 32 applies for complaints where the employee must first submit a statement of grievance to employer); and
- (c) Schedule 5 (tribunal jurisdictions to which section 38 applies in relation to proceedings where the employer has failed to give a statement of employment particulars),

there is inserted—

“Regulation 32 of the Employment Equality (Sexual Orientation) Regulations 2003 (discrimination in the employment field)”.

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**(a)** SI 1996/2803

**(b)** 2002 c.22

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 2000/78/EC of 27<sup>th</sup> November 2000 establishing a general framework for equal treatment in employment (OJ L 303, 2.12.2000, p.16) so far as it relates to discrimination on grounds of sexual orientation. The Regulations make it unlawful to discriminate on grounds of sexual orientation in employment and vocational training. This includes direct discrimination, indirect discrimination, victimisation and harassment.

Regulations 6 to 22 prohibit discrimination in the context of employment, contract work and partnerships, and by trade organisations, bodies conferring qualifications, employment agencies, and training providers. The Regulations also apply to Crown servants and Parliamentary staff. Regulation 23 prohibits discrimination in relation to further and higher education. Regulation 39 and Schedule 3 address the validity of discriminatory terms in contracts and collective agreements.

There are exceptions in regulations 28 to 30 for differences of treatment related to national security, to benefits which are dependent on marital status, and to positive action. Regulation 7 provides an exception where being of a particular sexual orientation is a genuine occupational requirement for a post.

Regulations 32 to 38 provide remedies for individuals, including compensation, by way of proceedings in employment tribunals and in the county or sheriff courts. There are special provisions about the burden of proof in those cases in regulations 33 and 36. Regulation 37 and Schedules 1 and 2 also include a questionnaire procedure to assist complainants in obtaining information from respondents.