
DRAFT STATUTORY INSTRUMENTS

2003 No.

RACE RELATIONS

The Race Relations Act 1976 (Amendment) Regulations 2003

Made	2003
Coming into force	2003

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

Citation, commencement and extent

- (1) These Regulations may be cited as the Race Relations Act 1976 (Amendment) Regulations 2003 and shall come into force on 2003.
- (2) In these Regulations "the 1976 Act" means the Race Relations Act 1976^(c).
- (3) These Regulations do not extend to Northern Ireland.

Transitional provisions

- Regulations 29 and 31 apply to proceedings commenced before 2003, as well as proceedings instituted on or after that date, but do not affect any case in which proceedings were determined before that date.

Racial discrimination

- In section 1 of the 1976 Act, after subsection (1), insert -

^(b) See the European Communities (Designation)(No 3.) Order (S.I. 2002/1819).
^(c) 1976 c.74; as amended by the Race Relations (Amendment) Act 2000 (c.34).

“(1A) a person also discriminates against another if in any circumstances relevant for the purposes of any provision referred to in subsection (1B) he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but -

- (a) which puts or would put persons of the same race or national or ethnic origins as that other at a particular disadvantage when compared with other persons,
- (b) which puts that other at that disadvantage, and
- (c) which he cannot show to be a proportionate means of achieving a legitimate aim.

(1B) The provisions mentioned in subsection (1A) are -

- (a) Part II,
- (b) sections 17 to 18D,
- (c) section 19B, so far as relating to -
 - (i) any form of social security;
 - (ii) health care;
 - (iii) other forms of social protection; and
 - (iv) any form of social advantage,
- (d) sections 20 to 24,
- (e) sections 26A and 26B, and
- (f) Part IV, in its application to the provisions referred in paragraphs (a) to (e).

(1C) Where, by virtue of subsection (1A), a person discriminates against another, subsection (1)(b) does not apply to him.“

Discrimination by way of Harassment

4. After section 2 of the 1976 Act insert -
“Discrimination by way of harassment
2A.-(1) A person subjects another to harassment in any circumstances relevant for the purposes of any provision referred to in section 1(1B) where, on the grounds of that other’s race or

ethnic or national origins, he engages in unwanted conduct which has the purpose or effect of -

- (a) violating that other's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for that other.

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

(3) This section does not affect the law relating to harassment -

- (a) in circumstances other than those referred to in subsection (1), or
- (b) where the conduct in question is not on the grounds of a person's race, or ethnic or national origins.

Harassment by employers

5. (1) In the heading to section 4 of the 1976 Act (discrimination against applicants and employees), after the word "discrimination" insert "or harassment".

(2) That section is amended as follows -

- (a) after subsection (2) insert -
“(2A) It is unlawful for an employer to subject to harassment a person whom he employs or who has applied to him for employment.”;
- (b) for subsection (3) (exception for employment for purposes of private household) substitute -
“(3) subsections (1) and (2) do not apply to employment for the purposes of a private household except in relation to discrimination -
 - (a) on grounds other than those of race, ethnic or national origins; or
 - (b) falling within section 2.”; and
- (c) after subsection (4) insert -

“(4A) In subsection (2)(c) reference to the dismissal of a person from employment include 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.”

(c)

Exception for genuine occupational requirement

6. After section 4 of the 1976 Act insert -

“Exception for genuine occupational requirement

4A.-(1) in relation to discrimination on grounds of race or ethnic or national origins in any circumstances relevant for the purposes of any provision referred to in section 1(1B) -

- (a) section 4(1)(a) or (c) does not apply to any employment, and
- (b) section 4(2)(b) does not apply to promotion or transfer to, or training for, any employment,

where subsection (2) applies.

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

- (a) being of a particular race or particular ethnic or national origins is a genuine and determining occupational requirement, and
- (b) it is proportionate to apply that requirement in the particular case.”

7. In Section 5 of the 1976 Act (exceptions for genuine occupational qualifications), in subsection (1), after the words “racial discrimination” insert “other than that which is referred to in section 4A”.

Other harassment in employment etc

8. In section 7 of the 1976 Act (discrimination against contract workers),
 - (a) in subsection (3)(discrimination against contract workers) after the words “racial group”, in the first place where they occur, insert “, or of a particular race or particular ethnic or national origins,” after those words in the second place where they occur insert “of that race or those origins”, and after the word “qualification” insert “or, as the case may be, requirement”; and
 - (b) after subsection (3), insert -
“(3A) It is unlawful for the principal, in relation to work to which this section applies, to subject a contract worker to harassment.”.

9. In section 10 of the 1976 Act (Partnerships),
 - (a) after subsection (1), insert -
“(1A) The limitation of subsection (1) to six or more partners does not apply in relation to discrimination on grounds of race or ethnic or national origins.
“(1B) It is unlawful for a firm, in relation to a position as a partner in the firm, to subject to harassment a person who holds or has applied for that position.”.
 - (b) in subsection (2) for the words “subsection (1)” substitute “subsections (1), (1A) and (1B)”;
 - (c) in subsection (3) after the word “qualification” insert “or requirement”; and
 - (d) at the end insert -
“(6) References in this section 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.”.

10. In Section 11 of the 1976 Act (trade unions etc), at the end insert -

“(4) It is unlawful for an organisation to which this section applies, in the case of a person who is a member of the organisation or who has applied for membership of the organisation, to subject him to harassment.”.

11. In section 12 of the 1976 Act (qualifying bodies),
 - (a) after subsection (1), insert -

“(1A) It is unlawful for an authority or body to which subsection (1) applies to subject to harassment a person who -

 - (a) holds an authorisation or qualification conferred by it, or
 - (b) applies for such an authorisation or qualification.”; and
 - (b) in subsection (3), after the word “discrimination”, insert “and subsection (1A) does not apply to harassment which is rendered unlawful by section 17 or 18.”.
12. In section 13 of the 1976 Act (persons concerned with provision of vocational training) after subsection (2) insert -

“(3) It is unlawful for any person who provides, or makes arrangements for the provision of, facilities for training to which subsection (1) applies, to subject to harassment a person whom he is training or who has applied to him for training.

(4) Subsection (3) does not apply to harassment which is rendered unlawful by section 4(2A) or section 17 or 18.”.
13. In section 14 of the 1976 Act (employment agencies) -
 - (a) after subsection (1) insert -

“(1A) 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.”;
 - (b) at the end of subsection (2) insert “or harassment”; and
 - (c) in subsection (3) for the words “subsection (1)” substitute “subsections (1) and (1A)”.
14. In section 15 of the 1976 Act (Training Commission etc) after the word “discriminate” insert “or to subject a person to harassment”.

Discrimination or harassment after relationship has ended

15. After section 15 of the 1976 Act insert -

“Relationships which have come to an end

15A(1) This section applies where there has been a relevant relationship and the relationship has come to an end.

- (2) In this section a “relevant relationship” is a relationship during the course of which, by virtue of any provision referred to in section (1)(1B), taken with section 1(1) or (1A), or section 2A, of this Act,
- (a) an act of discrimination by one party to the relationship (“the relevant party”) against another party to the relationship on the grounds of race or ethnic or national origins, or
 - (b) harassment of another party to the relationship by the relevant party,

would have been unlawful.

- (3) It is unlawful for the relevant party -
- (a) to discriminate against another party, or
 - (b) to subject another party to harassment,

where the discrimination or harassment arises out of, and is closely connected to, the relevant relationship.”.

Discrimination in other fields

16. In section 17 of the 1976 Act (discrimination by bodies in charge of educational establishments) -

- (a) at the beginning insert “(1)”; and
- (b) at the end insert -

“(2) It is unlawful for a person indicated in relation to an establishment as mentioned in subsection (1) to subject to harassment -

- (a) a person who applies for admission to the establishment as a pupil; or
- (b) a pupil at the establishment.”.

17. In sections 18 (other discrimination by local education authorities), 18A (Discrimination by Further Education and Higher Education Funding Councils) 18B (Scotland) and 18D (Discrimination by Teacher Training Agency) of the 1976 Act, after the words “constitutes racial

discrimination” insert “or, in relation to vocational training or vocational guidance, harassment”.

Public authorities

18. In section 19B of the 1976 Act (discrimination by public authorities) -

(a) after subsection (1), insert -

“(2A) it is unlawful for a public authority to subject a person to harassment in the course of carrying out any functions of the authority which consist of the provision of

- (a) any form of social security;
- (b) healthcare;
- (c) any other form of social protection, or
- (d) any form of social advantage,

which does not fall within section 20.”; and

(b) in subsection (6) after the word “discrimination” insert “or harassment”.

Harassment in provision of goods, facilities or services

19. In section 20 of the 1976 Act (discrimination in provision of goods, facilities or services), after subsection (2) insert -

“(3) it is unlawful for any person concerned with the provision of goods, facilities or services as mentioned in subsection (1) to subject to harassment -

- (a) a person who seeks to obtain or use those goods, facilities or services, or
- (b) a person to whom it provides those goods, facilities or services.”.

20. In section 21 of the 1976 Act (discrimination in disposal or management of premises) - ,

- (a) in subsection (3), after the words “does not apply to”, insert “discrimination on grounds other than those of race or ethnic or national origins by”; and
- (b) after subsection (3), insert -
“(4) it is unlawful for a person, in the course of carrying out any of the acts or omissions referred to in subsections (1) and (2), to subject another person to harassment.”.

21. In section 22 of the 1976 Act (exception for small dwellings), at the beginning of subsection (1)(c), insert “ in relation to discrimination on grounds other than those of race or ethnic or national origins”.

22. In section 24 of the 1976 Act (discrimination or consent for assignment or sub-letting),

- (a) in subsection (1) for the words “discriminate against” to the end, substitute

- “(a) discriminate against a person by withholding the licence or consent for disposal of the premises to him or
- (b) subject to harassment a person who applies for such a licence or consent, or from whom such a licence or consent is withheld; and

(b) in subsection (2) after the word “apply” insert the words “to discrimination on grounds other than those of race or ethnic or national origins”.

23. (1) In the headings to sections 26A (discrimination by, or against, barristers) and 26B (discrimination by, or against, advocates) of the 1976 Act, after the word “Discrimination” insert “or harassment”.

(2) In subsection (3) of each of those sections after the words “discriminate against any person” insert “or to subject him to harassment.”.

(3) After subsection (3) of section 26A insert -

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

(4) After subsection (3) of section 26B insert -

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

24. In section 28 of the 1976 Act (discriminatory practices), for subsection (1), substitute -

“(1) In this section ‘discriminatory practice’ means -

- (a) the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part II or III taken with section 1(1)(b); or
- (b) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision referred to in section 1(1B), taken with section 1(1A),

or which, in either case, would be likely to result in such an act of discrimination, if the persons to whom it is applied included persons of any particular racial group or, as the case may be, a particular race or particular ethnic or national

origins, as regards which there has been no occasion for applying it.”.

25. In section 34 of the 1976 Act (Charities), in subsection (1)(a), after the word “colour”, in each place where it occurs, insert”, race, or ethnic or national origins,”.

26. In the headings to sections 30 (instructions to discriminate) and 31 (pressure to discriminate) of the 1976 Act for the word “discriminate” substitute “commit unlawful acts”.

27. In section 41 of the 1976 Act (acts done under statutory authority), in subsection (1), after the words “any act of discrimination” insert “on grounds other than those of race or ethnic or national origins”.

Barristers: Jurisdiction of employment tribunals

28. In section 54(1)(a) of the 1976 Act (jurisdiction of employment tribunals), after the words “Part II” insert “or, in relation to discrimination on grounds of race or ethnic or national origins or harassment, section 26A (discrimination by or against barristers) or 26B (discrimination by or against advocates)”.

Burden of proof

29. After section 54 of the 1976 Act insert -
“ Burden of proof: employment tribunals

54A.-(1) This section applies to a complaint presented under section 54 where the act complained of -

- (a) involves the grounds of race or ethnic or national origins; and
 - (b) falls within any circumstances relevant for the purposes of any provision referred to in section 1(1B)(a) and (e), or Part IV in its application to those provisions.
- (2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this section, 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 a provision referred to in subsection (1), or
- (b) is by virtue of section 32 or 33 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.”.

30. In section 57 (claims under Part III) after the words “Part III” insert “other than, in relation to discrimination on grounds of race or ethnic or national origins, section 26A (discrimination by or against barristers) or section 26B (discrimination by or against advocates)”.

31. After section 57 of the 1976 Act insert -

“Burden of proof : County and Sheriff Courts

57A.-(1) This section applies to a claim brought under section 57 where the act complained of

- (a) involves the grounds of race or ethnic or national origins and
- (b) falls within any circumstances relevant for the purposes of any provision referred to in section 1(1B)(b) to (d), or Part IV in its application to those provisions.

(2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this section, 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 a provision referred to in subsection (1) or
- (b) is by virtue of section 32 or 33 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.”.

Period within which respondent must reply

32. In section 65 of the 1976 Act (help for aggrieved persons in obtaining information etc) -

- (a) in subsection (2)(b), after the words “reasonable period” insert “or, where the questions relate to discrimination on grounds of race or ethnic or national origins, the period referred to in subsection (2A)”;
- (b) after subsection (2) insert -
“(2A) The period referred to in subsection (2)(b) is -
 - (a) a period of eight weeks; or
 - (b) such other period as the Secretary of State may prescribe; or
 - (c) such other period as the court or tribunal considers reasonable,from the date on which the questions are served on the respondent.”; and
- (c) in subsection (3), for the word “and” in the first place where it occurs, substitute -
“(aa) prescribe such other period as is referred to in subsection (2A)(b); and”.

Definitions

33. In section 78 of the 1976 Act (general interpretation provisions) insert in the appropriate alphabetical order -

“ “Social protection” and “social advantage” have the same meaning as in Article 3 of Council Directive 2000/43/EC.”.

Home Office

One of Her Majesty’s Principal Secretaries of
State

2003

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, 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 origins, 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 such treatment.

Regulation 3 sets 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 4 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 5 makes it unlawful for an employer to subject to harassment an employee or an applicant for employment.

Regulation 6 sets out a new exception, from the provisions making it unlawful for an employer to discriminate, where being of a particular race or particular ethnic or national origins is a genuine and determining requirement for the employment in question.

Regulation 8 makes it unlawful for a principal to subject a contract worker to harassment.

Regulation 9 removes the lower limit on the size of partnerships which can discriminate unlawfully, and makes it unlawful for partnerships to subject to harassment partners or applicants for partnership.

Regulations 10 to 14 make it unlawful for bodies such as trade unions, qualifying bodies, providers of vocational training, employment agencies and the Training Commission to subject persons to harassment.

Regulation 15 provides that, where there has been a relationship in which an act of discrimination or harassment would have been unlawful, it is also unlawful to commit such an act by reference to that relationship after the relationship has ended.

Regulations 16 and 17 make it unlawful for bodies concerned with education or vocational training or guidance to subject persons to harassment.

Regulation 18 makes it unlawful for public bodies concerned with provision of health or welfare services to subject persons to harassment.

Regulations 19 to 22 make it unlawful for persons concerned with the provision of goods, services or facilities, or accommodation, to subject persons to harassment.

Regulation 23 makes it unlawful for barristers or their clerks, or advocates, to subject to harassment a pupil or a tenant or an applicant for a pupillage or tenancy.

Regulation 24 makes certain consequential amendments.

Regulations 25 and 27 remove provisions which are contrary to the principle of equal treatment.

Regulation 28 provides that claims of unlawful discrimination on grounds of race, ethnic or national origins, or harassment, by or against barristers or advocates are to be heard by employment tribunals.

Regulations 29 to 31 alter the burden of proof in tribunal and court proceedings relating to discrimination on grounds of race, ethnic or national origins in areas with which the Directive is concerned.

Regulation 32 ensures that respondents must reply to a claimant's preliminary questions within eight weeks of being served with them.