

AMENDMENTS TO THE EMPLOYMENT EQUALITY (SEXUAL ORIENTATION) REGULATIONS (NORTHERN IRELAND) 2003

We are seeking views on the drafting of amendments to the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003. The Regulations prohibit discrimination in employment and vocational training on grounds of sexual orientation, and need to be amended to take account of the introduction of civil partnership. The revisions to the Regulations will take effect from the date that the Civil Partnership Act comes into force – 5 December 2005.

We would be grateful for any comments you might have on the drafting of the amendments by **19 July 2005**. This document can also be viewed on the Gender Equality web site at www.genderequalityni.gov.uk/publications.htm.

Please send any comments

by email to: admin.gender@ofmdfmi.gov.uk

Or by post to: Paul Naylor
Room E3.18
Equality & Rights Division, OFMDFM
Castle Buildings, Stormont, Belfast, BT4 3SR

Or by fax to: (028) 9052 3272

FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identify, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided.
- The Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature.
- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

AMENDMENTS TO THE EMPLOYMENT EQUALITY (SEXUAL ORIENTATION) REGULATIONS (NORTHERN IRELAND) 2003

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk>).

For further information about this particular consultation please contact the consulting branch at 028 9252 3195.

Background

The Civil Partnership Act 2004 will give same-sex couples the opportunity to form a civil partnership and gain legal recognition of their relationship. The Civil Partnership Act will be brought into force on 5 December 2005.

The proposed policy of civil partnership was opened to debate as part of a full public consultation in Northern Ireland run by the Office of Law Reform, Department of Finance and Personnel. The consultation document, "Civil Partnership: A Legal Status for Committed Same-Sex Couples in Northern Ireland" was published in December 2003. The Civil Partnership Bill was discussed extensively in both Houses of Parliament.

As well as giving formal legal recognition, civil partnership brings with it rights and responsibilities between the partners themselves and third parties, including the state and employers. This will include ensuring that access to employment and vocational training and related benefits will achieve, as far as is possible, equality of treatment between spouses and civil partners.

Here we are seeking views on the practical implementation of the policy.

Regulatory Impact Assessment

An assessment of the impact on business, charities or the voluntary sector of the provisions is included in the Regulatory Impact Assessment that accompanied the Civil Partnership Act 2004. A copy of that assessment has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the DTI website at:

http://www.dti.gov.uk/access/ria/pdf/final_ria_for_cp_bill.pdf

Amending the Regulations

Section 259 of the Civil Partnership Act contains a power to allow Northern Ireland departments to amend legislation, by statutory rule, for the general purposes of the Act, in consequence of any provision by or under the Act or for giving effect to the Act or any provision of it.

We intend to amend the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 in a statutory rule to be made in autumn of this year. This will allow time for employers and providers of vocational training time to understand the new legislation before it comes into force in December.

AMENDMENTS TO THE EMPLOYMENT EQUALITY (SEXUAL ORIENTATION) REGULATIONS (NORTHERN IRELAND) 2003

THE DRAFT AMENDMENTS

The existing Statutory Rule to be amended by the draft Regulations can be found at: <http://www.northernireland-legislation.hms.gov.uk/sr/sr2003/20030497.htm>

New regulation 3(3)

3. Discrimination on grounds of sexual orientation

“(3) For the purposes of paragraph (2), in a comparison of B’s case with that of another person the fact that one of the persons (whether or not B) is a civil partner while the other is married shall not be treated as a material difference between their respective circumstances.”

Purpose and effect

1. The purpose of this new provision is to make it clear that, for the purposes of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the status of a civil partner is comparable to the status of a spouse. The effect is to enable a civil partner who is treated less favourably than a married person in similar circumstances to bring a claim for sexual orientation discrimination under the Sexual Orientation Regulations. New paragraph 3(3) prevents the discriminator from being able to say, by way of defence, that being married is a material difference to being a civil partner. The discriminator would have to show that the married person and the civil partner were not in a comparable position for some other reason, for example, that they were doing different jobs.

2. An employer etc would not be able to justify less favourable treatment of a civil partner as compared to a spouse in similar circumstances unless he could show that being heterosexual was a genuine occupational requirement (GOR) of the job within the meaning of regulation 8(2). The additional GOR exception in regulation 8(3) for employment for purposes of an organised religion permits an employer to apply a requirement “related to sexual orientation” (rather than to be a particular sexual orientation). It may therefore permit a narrow range of employers, such as religious organisations, to require that an employee be married (rather than a civil partner) but *only* where such a requirement is necessary to comply with the doctrines of the religion, or because of the nature and context of the job, to avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers. It is likely that these defences will only be available in a very limited number of circumstances.

Feedback requested

We would like comments on the provision as drafted to ensure it achieves the policy intention or revisions which would be required for the sake of clarification. Views are also invited on any possible equality implications of the new provision.

AMENDMENTS TO THE EMPLOYMENT EQUALITY (SEXUAL ORIENTATION) REGULATIONS (NORTHERN IRELAND) 2003

Amended regulation 28

“28. Exception for benefits dependent on marital or civil partnership status

Nothing in Part II or III shall render unlawful –

(a) anything which prevents or restricts access to a benefit by reference to marital status where the right to the benefit accrued or the benefit is payable in respect of periods of service prior to the coming into force of the Civil Partnership Act 2004;

(b) the conferring of a benefit on married persons and civil partners to the exclusion of all other persons. “

Purpose and effect

1. The purpose of paragraph (a) is to preserve the effect of the existing exemption in regulation 28 in respect of service which pre-dates the coming into force of the Civil Partnership Act. Paragraph (a) thus allows married people to be treated more favourably than any other group in respect of such service.

2. The purpose of paragraph (b) is to make it clear that more favourable benefits, such as survivor benefits, can be conferred on civil partners and spouses to the exclusion of others without such a status. The effect is that an individual will not be able to claim that such a practice amounts to unlawful discrimination under the regulations. It may be thought that this exemption, which applies to both civil partners and spouses, is unnecessary since, on the face of it, what is being permitted would not otherwise amount to unlawful discrimination on grounds of sexual orientation under Part II or III of the regulations. We consider that such a provision is needed, however. Otherwise, there is a risk that a pension scheme rule restricting survivor benefits to civil partners and spouses, for example, might be challenged as amounting to indirect discrimination on the basis that it particularly disadvantaged gay people. A gay employee might argue that he found it more difficult to comply with the rule than a heterosexual colleague because entering into a civil partnership effectively meant disclosing his/her sexual orientation.

Feedback requested

We would like comments on the provision as drafted to ensure it achieves the policy intention or revisions which would be required for the sake of clarification. Views are also invited on any possible equality implications.

Equality Screening

The policy proposals set out in this consultation on Amendments to the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 will have a positive equality impact for lesbian, gay and bisexual people who enter a civil partnership. Such couples will be treated in the same way as married couples which, in the context of the Regulations, is more favourable than individuals, unmarried heterosexual couples or lesbian, gay and bisexual people not in a civil partnership. This is consistent with the overall policy on civil partnerships and is justified and proportionate.

AMENDMENTS TO THE EMPLOYMENT EQUALITY (SEXUAL ORIENTATION) REGULATIONS (NORTHERN IRELAND) 2003

As a result of the above conclusions, this policy has been screened out, in accordance with the Department's Equality Scheme provisions. A copy of the screening documentation is available from the Gender Equality web site at www.genderequalityni.gov.uk/publications.htm or on request from Paul Naylor Room E3.18, Equality & Rights Division, OFMDFM, Castle Buildings, Stormont, Belfast, BT4 3SR.

Any views on this screening decision are welcome.

Q&A

When will amendments to the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 take effect?

The amendments will take effect from 5 December 2005 – the date that the Civil Partnership Act comes into force.

What is the timetable for amending the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003?

The Regulations need to be amended to come into force on 5 December 2005. We intend to include amendments to the Regulations in a statutory rule which will be made in the autumn. This will allow time for employers and providers of vocational training to become familiar with the new provisions before they come into force.

What effect do the changes to the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 have on other legislation?

None. Amendments to the Regulations have no read across to other pieces of legislation.

What other legislation is being amended to take account of the Civil Partnership Act?

Legislation will be amended in a wide range of areas as a consequence of the introduction of civil partnership including child support, social security, pensions and tax credits.

Where can I find more information on the Civil Partnership Act?

The Department of Trade and Industry's Women and Equality Unit website contains information about the Government's plans to introduce the Civil Partnership Act:

www.womenandequalityunit.gov.uk/lgbt/partnership.htm