
STATUTORY RULES OF NORTHERN IRELAND

2003 No. 497

SEXUAL ORIENTATION DISCRIMINATION

Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003

Made *1st December 2003*

Coming into operation *2nd December 2003*

ARRANGEMENT OF REGULATIONS

PART I

GENERAL

1. Citation and commencement.
2. Interpretation.
3. Discrimination on grounds of sexual orientation.
4. Discrimination by way of victimisation.
5. Harassment on grounds of sexual orientation.

PART II

DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING

6. Applicants and employees.
7. Discrimination by persons with statutory power to select employees for others.
8. Exception for genuine occupational requirement etc.
9. Contract workers.

10. Meaning of employment and contract work at establishment in Northern Ireland.
11. Trustees and managers of occupational pension schemes
12. Office-holders etc.
13. Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve.
14. Other police bodies.
15. Barristers.
16. Partnerships.
17. Trade organisations.
18. Qualifications bodies.
19. Providers of vocational training.
20. Employment agencies, careers guidance etc.
21. Assisting persons to obtain employment.
22. Institutions of further and higher education.
23. Relationships which have come to an end.

PART III

OTHER UNLAWFUL ACTS

24. Liability of employers and principals.
25. Aiding unlawful acts.

PART IV

GENERAL EXCEPTIONS FROM PARTS II AND III

26. Exception for national security etc.
27. Effect of certificates by Secretary of State.
28. Exception for benefits dependent on marital status.
29. Exceptions for positive action.

PART V

FUNCTIONS OF THE EQUALITY COMMISSION

30. General duty of Commission.
31. Research and education.
32. Codes of practice.

PART VI

ENFORCEMENT

33. Restriction of proceedings for breach of Regulations.
34. Jurisdiction of industrial tribunals.
35. Burden of proof: industrial tribunals.
36. Remedies on complaints in industrial tribunals.
37. Jurisdiction of county courts.
38. Burden of proof: county courts.
39. Help for persons in obtaining information etc.
40. Assistance by Commission
41. Period within which proceedings to be brought.

PART VII

SUPPLEMENTAL

42. Validity of contracts, collective agreements and rules of undertakings
43. Application to Crown etc.
44. Amendments to legislation

SCHEDULES:

Schedule 1 – Occupational pension schemes.

Schedule 2 – Questionnaire of person aggrieved.

Schedule 3 – Reply by respondent.

Schedule 4 – Validity of contracts, collective agreements and rules of undertakings.

Schedule 5 – Amendments to legislation.

The Office of the First Minister and deputy First Minister, being a Department 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 on it by that section, and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, and shall come into operation on 2nd December 2003.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^(c) shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations “sexual orientation” means a sexual 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.

(3) In these Regulations, references to discrimination are to any discrimination falling within regulation 3 (discrimination on grounds of sexual orientation) or 4 (discrimination by way of victimisation) and related expressions shall be construed accordingly, and references to harassment shall be construed in accordance with regulation 5 (harassment on grounds of sexual orientation).

(4) In these Regulations—

(a) 1972 c.68.

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

(c) 1954 c.33 (N.I.)

“act” includes a deliberate omission;

“benefits”, except in regulation 11 (trustees and managers of occupational pension schemes), includes facilities and services;

“the Commission” means the Equality Commission for Northern Ireland established by section 73 of the Northern Ireland Act 1998(a);

“the Department” means the Office of the First Minister and deputy First Minister;

“detriment” does not include harassment within the meaning of regulation 5;

references to “employer”, in their application to a person at any time seeking to employ another, include a person who has no employees at that time;

“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;

“Minister of the Crown” includes the Treasury and the Defence Council;

“Northern Ireland” includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland;

“Northern Ireland Minister” includes the First Minister and deputy First Minister acting jointly; and

“school” has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986(b).

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

(a) 1998 c.47

(b) S.I. 1986/594 (N.I.3)

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, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith.

Harassment on grounds of sexual orientation

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) Conduct shall be regarded as having the effect specified in paragraph (1)(a) or (b) only 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 EMPLOYMENT AND VOCATIONAL TRAINING

Applicants and employees

6.—(1) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, 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, in relation to a person whom he employs at an establishment in Northern Ireland, to discriminate against that person—

- (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; or
- (d) by dismissing him, or subjecting him to any other detriment.

(3) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, 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.

Discrimination by persons with statutory power to select employees for others

7. —(1) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to discriminate against a person—

- (a) by refusing to select or nominate, or deliberately not selecting or nominating, him for

employment; or

- (b) where candidates are selected or nominated in order of preference, by selecting or nominating him lower in order than any other who is selected or nominated.

(2) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to subject that other to harassment in relation to employment at an establishment in Northern Ireland.

Exception for genuine occupational requirement etc

8.—(1) In relation to discrimination falling within regulation 3 (discrimination on grounds of sexual orientation)—

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

where paragraph (2) or (3) 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;
- (b) it is proportionate to apply that requirement in the particular case; and
- (c) either—
 - (i) the person to whom that requirement is applied does not meet it, or
 - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it,

and this paragraph applies whether or not the employment is for purposes of an organised religion.

(3) This paragraph applies where—

- (a) the employment is for purposes of an organised religion;
- (b) the employer applies a requirement related to sexual orientation—
 - (i) so as to comply with the doctrines of the religion, or
 - (ii) because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and

(c) either—

- (i) the person to whom that requirement is applied does not meet it, or
- (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

Contract workers

9.—(1) It is unlawful for a principal, in relation to contract work at an establishment in Northern Ireland, 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 at an establishment in Northern Ireland, to subject a contract worker to harassment.

(3) A 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 8 (exception for genuine occupational requirement etc).

(4) Paragraph (1) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) 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) 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 and contract work at establishment in Northern Ireland

10.—(1) For the purposes of this Part (“the relevant purposes”), employment is to be regarded as being at an establishment in Northern Ireland if the employee—

- (a) does his work wholly or partly in Northern Ireland; or
- (b) does his work wholly outside Northern Ireland and paragraph (2) applies.

(2) This paragraph applies if—

- (a) the employer has a place of business at an establishment in Northern Ireland;
- (b) the work is for the purposes of the business carried on at that establishment; and
- (c) the employee is ordinarily resident in Northern Ireland —
 - (i) at the time when he applies for or is offered the employment, or
 - (ii) at any time during the course of the employment.

(3) The reference to “employment” in paragraph (1) includes—

- (a) employment on board a ship only if the ship is registered at a port of registry in Northern Ireland, and
- (b) employment on an aircraft or hovercraft only if the aircraft or hovercraft is registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland.

(4) For the purposes of determining if employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources is outside Northern Ireland, this regulation has effect as if references to Northern Ireland included any area designated under section 1(7) of the Continental Shelf Act 1964(a), or any part of such an area, in which the law of Northern Ireland applies.

(5) This regulation applies in relation to contract work within the meaning of regulation 9 as it applies in relation to employment; and, in its application to contract work, references to “employee”, “employer” and “employment” are references to (respectively) “contract worker”, “principal” and “contract work” within the meaning of regulation 9.

Trustees and managers of occupational pension schemes

11.—(1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to 2 December 2003, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).

(2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it.

(3) Schedule 1 (occupational pension schemes) shall have effect for the purposes of —

- (a) defining terms used in this regulation and in that Schedule;
- (b) treating every occupational pension scheme as including a non-discrimination rule;

- (c) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule;
- (d) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes presented to an industrial tribunal under regulation 34 (jurisdiction of industrial tribunals).

Office-holders etc

12.—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this regulation applies, to discriminate against a person—

- (a) in the arrangements which he makes for the purposes of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this regulation applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this regulation applies, to discriminate against him—

- (a) in the terms of the appointment;
- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
- (c) by terminating the appointment; or
- (d) by subjecting him to any other detriment in relation to the appointment.

(4) It is unlawful for a relevant person, in relation to an office or post to which this regulation applies, to subject to harassment a person—

- (a) who has been appointed to the office or post;
- (b) who is seeking or being considered for appointment to the office or post; or
- (c) who is seeking or being considered for a recommendation or approval in relation to an

appointment to an office or post referred to in paragraph (8)(b).

(5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc); and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of regulation 8 to refuse to offer the person such employment.

(6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
- (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
- (c) the benefits relate to training.

(7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference—

- (a) to the termination of the appointment 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 appointment is renewed on the same terms and conditions; and
- (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.

(8) This regulation applies to—

- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
- (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a Northern Ireland Minister, the Assembly or a government department,

but not to a political office or a case where regulation 6 (applicants and employees), 7 (discrimination by persons with statutory power to select employees for others), 9 (contract workers), 15 (barristers) or 16 (partnerships) applies, or would apply but for the operation of any other provision of these Regulations.

(9) For the purposes of paragraph (8)(a) the holder of an office or post—

- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those

functions;

- (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—
 - (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
 - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.

(10) In this regulation—

- (a) appointment to an office or post does not include election to an office or post;
- (b) “political office” means—
 - (i) any office of the House of Commons held by a member of it,
 - (ii) a life peerage within the meaning of the Life Peerages Act 1958(a), or any office of the House of Lords held by a member of it,
 - (iii) any office of the Assembly held by a member of it,
 - (iv) any office of a district council held by a member of it, or
 - (v) any office of a political party;
- (c) “relevant person”, in relation to an office or post, means—
 - (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
 - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit, and
 - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
- (d) references to making a recommendation include references to making a negative recommendation; and
- (e) references to refusal include references to deliberate omission.

Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve

13.—(1) For the purposes of this Part, the holding of the office of constable as a police

(a) 1958 c.21

officer shall be treated as employment—

- (a) by the Chief Constable as respects any act done by him in relation to that office or a holder of it;
- (b) by the Policing Board as respects any act done by it in relation to that office or the holder of it.

(2) For the purposes of regulation 24 (liability of employers and principals)—

- (a) the holding of the office of constable as a police officer shall be treated as employment by the Chief Constable (and as not being employment by any other person); and
- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) There shall be paid out of funds put at the disposal of the Chief Constable under section 10(5) of the Police (Northern Ireland) Act 2000**(a)**—

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

(4) The Chief Constable may, in such cases and to such extent as appear to him to be appropriate, pay—

- (a) any compensation, damages or costs awarded in proceedings under these Regulations against a police officer;
- (b) any costs incurred and not recovered by a police officer in such proceedings; and
- (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings if the settlement is approved by the Policing Board.

(5) The Chief Constable may make arrangements for the legal representation of a police officer in any proceedings mentioned in paragraph (4).

(6) This regulation—

- (a) applies in relation to a person serving with the Police Service of Northern Ireland by virtue of section 98 of the Police Act 1996**(b)** or section 23 of the Police Act 1997**(c)** as it applies in relation to a police officer;
- (b) applies in relation to a police officer who by virtue of paragraph 7(2)(a) or 8(4)(a) of Schedule 3 to the Police (Northern Ireland) Act 1998**(d)** is under the direction and

(a) 2000 c.32
(b) 1996 c.16
(c) 1997 c.50
(d) 1998 c.32

control of the Police Ombudsman for Northern Ireland as if—

- (i) in paragraph (1) the reference to the Chief Constable included a reference to the Ombudsman;
- (ii) in paragraphs (2), (4) and (5) the references to the Chief Constable were references to the Ombudsman.

Other police bodies

14.—(1) For the purposes of this Part, the holding of the office of constable otherwise than as a police officer shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to that office or a holder of it;
- (b) by the police authority as respects any act done by it in relation to that office or the holder of it;

(2) For the purposes of regulation 24 (liability of employers and principals)—

- (a) the holding of the office of constable otherwise than as a police officer shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

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

- (a) any compensation, damages or costs awarded against a chief officer of police in any proceedings brought against him under these Regulations, and any costs 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) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—

- (a) any compensation, damages or costs awarded in proceedings under these Regulations against a person under the direction and control of the chief officer of police;
- (b) any costs incurred and not recovered by such a person in such proceedings; and
- (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.

(5) A police authority may make arrangements for the legal representation of any person under the direction and control of the chief officer of police in any proceedings mentioned in paragraph (4).

(6) Subject to paragraph (8), in this regulation—

“chief officer of police” means—

- (a) in relation to the National Criminal Intelligence Service, the Director General of that Service;
- (b) in relation to any other body of constables, the person who has the direction and control of the body in question;

“police authority” means—

- (a) in relation to the National Criminal Intelligence Service, the Service Authority for the National Criminal Intelligence Service;
- (b) in relation to any other body of constables, the authority by which the members of the body are paid;

“police fund” means—

- (a) in relation to the National Criminal Intelligence Service, the service fund under section 16 of the Police Act 1997;
- (b) in relation to any other body of constables, money provided by the authority by which the members of the body are paid.

(7) Nothing in paragraphs (3) to (6) applies in relation to the police.

(8) In relation to a constable of a force who is not under the direction and control of the chief officer of police for that force, references in this regulation to the chief officer of police are references to the chief officer of the force under whose direction and control he is, and references in this regulation to the police authority are references to the relevant police authority for that force.

Barristers

15.—(1) It is unlawful for a barrister, in relation to taking any person as his pupil, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
- (b) in respect of any terms on which he offers to take any person as his pupil; or
- (c) by refusing, or deliberately omitting, to take a person as his pupil.

(2) It is unlawful for a barrister, in relation to a person who is his pupil, to discriminate against him—

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

him;

(c) in the benefits which are afforded or denied to him; or

(d) by terminating the relationship or by subjecting him to any pressure to terminate the relationship, or any other detriment.

(3) It is unlawful for a barrister to subject to harassment a person who is his pupil 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 a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.

(5) In this regulation—

“pupil” has the meaning commonly associated with its use in the context of a person training as a barrister.

Partnerships

16.—(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) 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 8 (exception for genuine occupational requirement etc).

(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^(a).

(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^(b).

(8) In paragraph (1)(d) reference to the expulsion of a person from a position as partner includes reference—

- (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

17.—(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 relation to 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, in relation to a person’s membership or application for membership of that organisation, to subject that person to harassment.

(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;

“profession” includes any vocation or occupation; and

(a) 1907 c.24

(b) 1890 c.39

“trade” includes any business.

Qualifications bodies

18.—(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 unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a person who holds or applies for such a qualification.

(3) Paragraph (1) does not apply to a professional or trade qualification for purposes of an organised religion where a requirement related to sexual orientation is applied to the qualification so as to comply with the doctrines of the religion or avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers.

(4) In this regulation—

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

- (a) an educational establishment to which regulation 22 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or
- (b) a school;

“confer” includes renew or extend;

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

“profession” and “trade” have the same meaning as in regulation 17.

Providers of vocational training

19.—(1) It is unlawful, in relation to 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, in relation to a person seeking or undergoing training which would help fit him for any employment, to subject him to harassment.

(3) Paragraph (1) does not apply if the discrimination only concerns training for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person seeking training.

(4) 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 help fit another person for any employment, but it does not include—

- (a) an employer in relation to training for persons employed by him;
- (b) an educational establishment to which regulation 22 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations; or
- (c) a school.

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, in relation to a person to whom it provides its services, or who has requested it to provide its services, to subject that person to harassment.

(3) Paragraph (1) does not apply to discrimination if it only concerns employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) 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 (3), its action would not be unlawful, and

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

(5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4)(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.

(6) For the purposes of this regulation—

(a) “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—

(i) an educational establishment to which regulation 22 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or

(ii) a school; and

(b) references to the services of an employment agency include guidance on careers and any other services related to employment.

Assisting persons to obtain employment etc.

21.—(1) It is unlawful for the Department for Employment and Learning 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 1 of the Employment and Training Act (Northern Ireland) 1950^(a) (general functions of the Department as to employment and training for employment).

(2) This regulation does not apply in a case where-

(a) regulation 19 (providers of vocational training) applies, or would apply but for the operation of any other provision of these Regulations, or

(b) the Department for Employment and Learning is acting as an employment agency within the meaning of regulation 20.

Institutions of further and higher education

22.—(1) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment 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—

^(a) 1950 c.29(N.I.) as amended by S.I.1988/1087(N.I.10)Art.3; see also S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999, Art.4 and Schedule 2, Part II.

- (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 to which this regulation applies, for the governing body of that establishment 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) does not apply if the discrimination only concerns training which would help fit a person for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) This regulation applies to the following educational establishments in Northern Ireland, namely—

- (a) an institution of further education (as recognised under Article 8 of the Further Education (Northern Ireland) Order 1997)(a);
- (b) a Higher Education institution (within the meaning of Article 30(3) of the Education and Libraries (Northern Ireland) Order 1993)(b).

(5) In this regulation

“student” means any person who receives education at an educational establishment to which this regulation applies.

Relationships which have come to an end

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

(3) In paragraph (1), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before 2 December 2003, reference to an act of discrimination or harassment which would, after that date, be unlawful.

(a) S.I. 1997/1772 (N.I.15)
(b) S.I. 1993/2810 (N.I.12)

PART III

OTHER UNLAWFUL ACTS

Liability of employers and principals

24.—(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

25.—(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 24 (or would be so liable but for regulation 24(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 IV

GENERAL EXCEPTIONS FROM PARTS II AND III

Exception for national security etc

26. No act done by any person shall be treated for the purposes of any provision of Part II or III as unlawfully discriminating if—

- (a) the act is done for the purpose of safeguarding national security or protecting public safety or public order; and
- (b) the doing of the act is justified by that purpose.

Effect of certificates by Secretary of State

27.—(1) This regulation applies where in any proceedings—

- (a) a person claims that an act discriminated against him in contravention of any provision of Part II or III; and
- (b) the person against whom the claim is made proposes to rely on a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
 - (i) that an act specified in the certificate was done for the purpose of safeguarding national security or protecting public safety or public order; and
 - (ii) that the doing of the act was justified by that purpose.

(2) The claimant may, in accordance with rules under section 91 of the Northern Ireland Act 1998^(a), appeal against the certificate to the tribunal established under that section.

(3) If on an appeal under paragraph (2) that tribunal determines—

- (a) that the act specified in the certificate was done for the certified purpose; and
- (b) that the doing of the act was justified by that purpose,

the tribunal shall uphold the certificate; in any other case, the tribunal shall quash the certificate.

(4) If—

- (a) the claimant does not appeal against the certificate; or
- (b) the certificate is upheld on appeal,

the certificate shall be conclusive evidence of the matters certified by it.

(5) Sections 91 and 92 of the Northern Ireland Act 1998 shall apply in relation to appeals under this regulation as they apply in relation to appeals under section 90 of that Act.

(6) In this Regulation—

“claim” includes complaint; and

“claimant” includes complainant.

Exception for benefits dependent on marital status

28. Nothing in Part II or III shall render unlawful anything which prevents or restricts access to a benefit by reference to marital status.

Exceptions for positive action

29.—(1) Nothing in Part II or III 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 of that sexual orientation doing that work or likely to take up that work.

(2) Nothing in Part II or III shall render unlawful any act done by a trade organisation within the meaning of regulation 17 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 of that sexual orientation holding such posts or likely to hold such posts.

(3) Nothing in Part II or III shall render unlawful any act done by a trade organisation within the meaning of regulation 17 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 V

FUNCTIONS OF THE EQUALITY COMMISSION

General duty of Commission

30. It shall be the duty of the Commission—

- (a) to work towards the elimination of discrimination;
- (b) to promote equality of opportunity between persons of differing sexual orientations;
and
- (c) to keep under review the working of these Regulations and, when it is so required by the Department or otherwise thinks it necessary, draw up and submit to the Department proposals for amending these Regulations.

Research and education

31.—(1) The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the purposes of regulation 30.

(2) The Commission may make charges for educational or other facilities or services made available by it.

Codes of practice

32.—(1) The Commission may issue codes of practice containing such practical guidance as the Commission thinks fit for all or any of the following purposes, namely—

- (a) the elimination of discrimination or harassment which is unlawful by virtue of these Regulations;
- (b) the promotion of equality of opportunity in any field to which these Regulations apply between persons of differing sexual orientations.

(2) Without prejudice to the generality of paragraph (1), a code of practice issued under this regulation may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by these Regulations.

(3) When the Commission proposes to issue a code of practice, it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) In the course of preparing any draft code of practice for eventual publication under paragraph (3), the Commission shall consult with—

- (a) such organisations or associations of organisations representative of employers or of workers; and
- (b) such other organisations or bodies,

as appear to the Commission to be appropriate.

(5) The Commission may from time to time revise the whole or any part of a code of practice issued under this regulation and issue that revised code, and paragraphs (3) and (4) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

PART VI

ENFORCEMENT

Restriction of proceedings for breach of Regulations

33.—(1) 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.

(2) Paragraph (1) does not prevent the making of an application for judicial review or the investigation or determination of any matter in accordance with Part X (investigations: the Pensions Ombudsman) of the Pension Schemes (Northern Ireland) Act 1993^(a) by the Pensions Ombudsman.

Jurisdiction of industrial tribunals

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

- (a) has committed against the complainant an act to which this regulation applies; or
- (b) is by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

may be presented to an industrial tribunal.

(2) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of any provision of Part II other than—

- (a) where the act is one in respect of which an appeal or proceedings in the nature of an appeal may be brought under any statutory provision, regulation 18 (qualifications bodies);
- (b) regulation 22 (institutions of further and higher education); or
- (c) where the act arises out of and is closely connected to a relationship between the complainant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the complainant by the respondent would have been unlawful by virtue of regulation 22, regulation 23 (relationships which have come to an end).

(3) In paragraph (2)(c), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before 2 December 2003, reference to an act of discrimination or harassment which would, after that date, have been unlawful.

(4) Where a complaint is presented to an industrial tribunal under paragraph (1) and it appears to the tribunal that the act to which the complaint relates is one in respect of which (as being unlawful discrimination within the meaning of the Fair Employment and Treatment (Northern Ireland) Order 1998)(a)

- (a) a complaint could be made to the Fair Employment Tribunal for Northern Ireland under Part VI of that Order; or
- (b) such a complaint has been made, but the proceedings under that Order have not been disposed of,

the tribunal shall not proceed further under these Regulations in relation to the complaint unless all proceedings which can be taken under the Fair Employment and Treatment (Northern Ireland) Order 1998 in respect of the act have been disposed of.

Burden of proof: industrial tribunals

35.—(1) This regulation applies to any complaint presented under regulation 34 to an industrial 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 against the complainant an act to which regulation 34 applies; or
- (b) is by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

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 industrial tribunals

36.—(1) Where an industrial tribunal finds that a complaint presented to it under regulation 34 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 to pay to the complainant if the complaint had fallen to be dealt with under regulation 37 (jurisdiction of county courts);

- (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, criterion or practice 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 industrial tribunal—

- (a) makes such order under paragraph (1)(a) (if any) 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 industrial 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 Industrial Tribunals (Interest on Awards in Sexual Orientation Discrimination Cases) Regulations (Northern Ireland) 2003(a).

(5) This regulation has effect subject to paragraph 7 of Schedule 1 (occupational pension schemes).

Jurisdiction of county courts

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

- (a) has committed against the claimant an act to which this regulation applies; or
- (b) is by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against the claimant such an act,

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

(2) Proceedings under paragraph (1) shall be brought only in a county court.

(3) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful

act to which this regulation applies may include compensation for injury to feelings whether or not they include compensation under any other head.

(4) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of—

- (a) regulation 22 (institutions of further and higher education); or
- (b) where the act arises out of and is closely connected to a relationship between the claimant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the claimant by the respondent would have been unlawful by virtue of regulation 22, regulation 23 (relationships which have come to an end).

(5) In paragraph (4)(b), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before 2 December 2003, reference to an act of discrimination or harassment which would, after that date, have been unlawful.

Burden of proof: county courts

38.—(1) This regulation applies to any claim brought under regulation 37(1) in a county court.

(2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed against the claimant an act to which regulation 37 applies; or
- (b) is by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against the claimant such an act,

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

39.—(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 to a complaint presented under regulation 34 (jurisdiction of industrial tribunals) or a claim brought under regulation 37 (jurisdiction of county courts) questions in the form set out in Schedule 2 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 3 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 questions, 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 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 within 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 industrial 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; or
 - (b) by sending it by post to him at his usual or last-known residence or place of business; or
 - (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Industrial Relations (Northern Ireland) Order 1992(a), 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; or
 - (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 statutory provision or rule of law regulating interlocutory and preliminary matters in proceedings before a county court or industrial tribunal, and has effect subject to any statutory provision or rule of law regulating the admissibility of evidence in such proceedings.

(7) In this regulation “respondent” includes a prospective respondent.

Assistance by Commission

40.—(1) Where, in relation to proceedings or prospective proceedings under these regulations, an individual who is an actual or prospective complainant applies to the Commission for assistance under this regulation, the Commission shall consider the application and may grant it if it thinks fit to do so—

- (a) on the ground that the case raises a question of principle; or
- (b) on the ground that it is unreasonable, having regard to the complexity of the case, or to the applicant's position in relation to the respondent or another person involved, or to any other matter, to expect the applicant to deal with the case unaided; or
- (c) by reason of any other special consideration.

(2) Assistance by the Commission under this regulation may include—

- (a) giving advice;
- (b) procuring or attempting to procure the settlement of any matter in dispute;
- (c) arranging for the giving of advice or assistance by a solicitor or counsel;
- (d) arranging for representation by any person, including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;
- (e) any other form of assistance which the Commission may consider appropriate,

but sub-paragraph (d) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend, and address the court in, any proceedings.

(3) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this regulation, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules or regulations) shall constitute a first charge for the benefit of the Commission—

- (a) on any costs which (whether by virtue of a judgment or order of a court or tribunal or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and

- (b) so far as relates to any costs, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(4) The charge conferred by paragraph (3) is subject to any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981^(a) and is subject to any provision in that Order for payment of any sum into the legal aid fund.

(5) In this regulation "respondent " includes a prospective respondent and "rules or regulations"—

- (a) in relation to county court proceedings, means county court rules;
- (b) in relation to industrial tribunal proceedings, means industrial tribunal procedure regulations under the Industrial Tribunals (Northern Ireland) Order 1996^(b).

Period within which proceedings to be brought

41.—(1) An industrial tribunal shall not consider a complaint under regulation 34 (jurisdiction of industrial tribunals) 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 43(6) (armed forces) applies, the period of six months so beginning.

(2) A county court shall not consider a claim brought under regulation 37 (jurisdiction of county courts) 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 or claim 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 39 (help for persons in obtaining information etc)—

- (a) when the making of a contract is, by reason of the inclusion of any term, 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.

^(a) S.I.1981/228 (N.I.8)

^(b) S.I.1996/1921 (N.I.18)

PART VII
SUPPLEMENTAL

Validity of contracts, collective agreements and rules of undertakings

42. Schedule 4 (validity of contracts, collective agreements and rules of undertakings) shall have effect.

Application to the Crown etc

43.—(1) These Regulations apply—

- (a) to an act done by or for purposes of a Minister of the Crown, a Northern Ireland Minister 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) These Regulations apply to—

- (a) service for purposes of a Minister of the Crown, a Northern Ireland Minister or government department, other than service of a person holding a statutory office;
- (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 regulations 13 (Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve) and 14 (other police bodies).

(4) Regulation 10(3) (meaning of employment and contract work at establishment in Northern Ireland) shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the government of the United Kingdom as it has effect in relation to a ship, aircraft or hovercraft specified in regulation 10(3)(a) or (b).

(5) The provisions of Parts II to IV of the Crown Proceedings Act 1947^(a) shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in Northern Ireland 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

^(a) 1947 c.44

under these Regulations section 20 of that Act (removal of proceedings from county court to High Court) 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 (applicants and employees); or
- (b) is by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) 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 complainant may present a complaint to which paragraph (6) applies to an industrial tribunal under regulation 34 (jurisdiction of industrial tribunals) only if—

- (a) he 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 complainant shall be treated as having withdrawn his complaint if, having made a complaint to an officer under the service redress procedures applicable to him, he fails to submit that complaint to the Defence Council under those procedures.

(9) Where a complaint is presented to an industrial tribunal under regulation 34 (jurisdiction of industrial tribunals) 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, a Northern Ireland Minister or government department” does not 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 a statutory provision, and

(a) 1975 c.24

(b) 1955 c.18

(c) 1955 c.19

(d) 1957 c.53

“statutory office” means an office so set up.

Amendments to legislation

44. Schedule 5 (amendments to legislation) shall have effect.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 1st December 2003.

P. McAuley

(L.S.)

A Senior Officer of the Office of the First
Minister and deputy First Minister

Occupational pension schemes

Interpretation

1.—(1) In this Schedule –

“active member”, “deferred member”, “managers”, “pensioner member” and “trustees or managers”, in relation to an occupational pension scheme, have the meanings given by Article 121(1) of the Pensions (Northern Ireland) Order 1995(a) as at 2 December 2003;

“member” means any active member, deferred member or pensioner member;

“non-discrimination rule” means the rule in paragraph 2;

“occupational pension scheme” has the same meaning as in the Pension Schemes Act (Northern Ireland) 1993(b) as at 2 December 2003;

“prospective member”, in relation to an occupational pension scheme, means any person who, under the terms of his employment or the rules of the scheme or both –

- (a) is able, at his own option, to become a member of the scheme,
- (b) shall become so able if he continues in the same employment for a sufficient period of time,
- (c) shall be admitted to it automatically unless he makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of his employer.

(2) In paragraph 6 (procedure in industrial tribunals), “employer”, in relation to an occupational pension scheme, has the meaning given by Article 121(1) of the Pensions (Northern Ireland) Order 1995 as at 2 December 2003.

(3) Any term used in regulation 11 (trustees and managers of occupational pension schemes) and in this Schedule shall have the same meaning in that regulation as it has in this Schedule.

Non-discrimination rule

2. Every occupational pension scheme shall be treated as including a provision (“the non-discrimination rule”) containing a requirement that the trustees or managers of the scheme refrain from doing any act which is unlawful by virtue of regulation 11.

(a) S.I. 1995/3213 (N.I.22)
(b) 1993 c.49

3. The other provisions of the scheme are to have effect subject to the non-discrimination rule.

4. The trustees or managers of an occupational pension scheme may—

- (a) if they do not (apart from this paragraph) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
- (b) if they have such power but the procedure for doing so—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

5. Alterations made by a resolution such as is referred to in paragraph 4 may have effect in relation to a period before the alterations are made (but may not have effect in relation to any time before 2 December 2003).

Procedure in industrial tribunals

6. Where under regulation 34 (jurisdiction of industrial tribunals) a member or prospective member of an occupational pension scheme presents to an employment tribunal a complaint that the trustees or managers of the scheme—

- (a) have committed against him an act which is unlawful by virtue of regulation 11 (trustees and managers of occupational pension schemes) or 23 (relationships which have come to an end); or
- (b) are by virtue of regulation 24 (liability of employers and principals) or 25 (aiding unlawful acts) to be treated as having committed against him such an act,

the employer in relation to the scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

Remedies in industrial tribunals

7.—(1) This paragraph applies where –

- (a) under regulation 34 (jurisdiction of industrial tribunals) a member or prospective member of an occupational pension scheme (“the complainant”) presents to an industrial tribunal a complaint against the trustees or managers of the scheme or his employer;
- (b) the complainant is not a pensioner member of the scheme;
- (c) the complaint relates to the terms on which persons become members of the scheme, or the terms on which members of the scheme are treated; and

(d) the tribunal finds the complaint to be well-founded.

(2) Where this paragraph applies, the industrial tribunal may, without prejudice to the generality of its power under regulation 36(1)(a) (power to make order declaring rights of complainant and respondent), make an order declaring that the complainant has a right –

- (a) where the complaint relates to the terms on which persons become members of the scheme, to be admitted to the scheme;
- (b) where the complaint relates to the terms on which members of the scheme are treated, to membership of the scheme without discrimination.

(3) An order under sub-paragraph (2)–

- (a) may be made in respect of such period as is specified in the order (but may not be made in respect of any time before 2 December 2003);
- (b) may make such provision as the industrial tribunal considers appropriate as to the terms on which, or the capacity in which, the complainant is to enjoy such admission or membership.

(4) Where this paragraph applies, the industrial tribunal may not make an order for compensation under regulation 36(1)(b), whether in relation to arrears of benefits or otherwise, except –

- (a) for injury to feelings;
- (b) by virtue of regulation 36(3).

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 (Northern Ireland) 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 39 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 this questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings under the Regulations. 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 3

Regulation 39(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] by me against you.

[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 undertakingsPart 1Validity and revision of contracts

1.—(1) A term of a contract is void where—

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) it is included in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) it provides for the doing of an act which is unlawful by virtue of these Regulations.

(2) Sub-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) Sub-paragraphs (1), (2) and (3) shall apply whether the contract was entered into before or after 2 December 2003; but in the case of a contract made before that date, those sub-paragraphs do not apply in relation to any period before that date.

2.—(1) Paragraph 1(3) does not apply—

- (a) to a contract settling a complaint to which regulation 34(1) (jurisdiction of industrial tribunals) applies where the contract is made with the assistance of the Labour Relations Agency;
- (b) to a contract settling a complaint to which regulation 34(1) applies if the conditions regulating compromise contracts under this Schedule are satisfied in relation to the contract; or
- (c) to a contract settling a claim to which regulation 37 (jurisdiction of county courts) applies.

(2) The conditions regulating compromise contracts under this Schedule 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 industrial 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 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 this Schedule are satisfied.

(3) A person is a relevant independent adviser for the purposes of sub-paragraph (2)(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.

(4) But a person is not a relevant independent adviser for the purposes of sub-paragraph (2)(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 sub-paragraph (3)(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 sub-paragraph (3)(c), if the complainant makes a payment for the advice received from him.

(5) In sub-paragraph (3)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(6) In sub-paragraph (3)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992(a).

(7) For the purposes of sub-paragraph (4)(a) 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.

(8) An agreement under which the parties agree to submit a dispute to arbitration—

(a) S.I. 1992/807 (N.I.5)

- (a) shall be regarded for the purposes of sub-paragraph (1)(a) and (b) as being a contract settling a complaint if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992^(a), and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded as neither being nor including such a contract in any other case.

3.—(1) On the application of a person interested in a contract to which paragraph 1(1) or (2) applies, a county court may make such order as it thinks fit for—

- (a) removing or modifying any term rendered void by paragraph 1(1), or
- (b) removing or modifying any term made unenforceable by paragraph 1(2);

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.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after 2 December 2003).

Part 2

Collective agreements and rules of undertakings

4.—(1) This Part of this Schedule applies to—

- (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 a trade organisation (within the meaning of regulation 17) or a qualifications body (within the meaning of regulation 18) for application to—
 - (i) all or any of its members or prospective members; or
 - (ii) all or any of the persons on whom it has conferred professional or trade qualifications (within the meaning of regulation 18) or who are seeking the professional or trade qualifications which it has power to confer.

(2) Any term or rule to which this Part of this Schedule applies is void where—

^(a) Article 84A was inserted by Article 8 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I.8))

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) the term or rule provides for the doing of an act which is unlawful by virtue of these Regulations.

(3) Sub-paragraph (2) shall apply whether the agreement was entered into, or the rule made, before or after 2 December 2003; but in the case of an agreement entered into, or a rule made, before 2 December 2003, that sub-paragraph does not apply in relation to any period before that date.

5. A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of paragraph 4 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 4(2)(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 unlawful by virtue of these Regulations if done in relation to him in present circumstances.

6. 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 within the meaning of paragraph 4(1)(b),

paragraph 5 applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

7. In the case of a complaint about a rule made by an organisation or body to which paragraph 4(1)(c) applies, paragraph 5 applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation or body;
- (b) on whom the organisation or body has conferred a professional or trade qualification (within the meaning of regulation 18); or
- (c) who is genuinely and actively seeking such a professional or trade qualification which

the organisation or body has power to confer.

8. (1) When an industrial tribunal finds that a complaint presented to it under paragraph 5 is well-founded the tribunal shall make an order declaring that the term or rule is void.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after 2 December 2003).

9. The avoidance by virtue of paragraph 4(2) 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.

10. In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992 (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.

Amendments to legislation

1. The Industrial Tribunals (Northern Ireland) Order 1996**(a)** is amended as follows.

In Article 20(1)(a) (cases where conciliation provisions apply)—

- (a) at the end of head (iii), there is omitted “or”, and
- (b) after head (iv), insert—

“or

- (v) regulation 34 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.”.

2. Article 160 (compensation for acts which are both unfair dismissal and discrimination) of the Employment Rights (Northern Ireland) Order 1996**(b)** is amended as follows—

- (a) in sub-paragraph (b) of paragraph (1)—

- (i) after “Disability Discrimination Act 1995” there is omitted “and”;
- (ii) after “Race Relations (Northern Ireland) 1997” there is inserted “and the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003”;

- (b) after “those Orders” insert “or Regulations”.

- 3.—(1) In Article 85(1) of the Fair Employment and Treatment (Northern Ireland) Order 1998**(c)** (procedure for matters within jurisdiction of industrial tribunal)—

- (a) in sub-paragraph (a) after head (iv) add—

- “(v) a person has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of any provision of Part II of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003; or”;

- (b) in paragraph (b) after “Order 1997” insert “or the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003”.

- (2) In Article 85(3)(b) of that Order, after head (iii), insert—

- “(iv) regulation 34(4) of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003,”.

(a) S.I.1996/1921 (N.I.18)
(b) S.I.1996/1919 (N.I.16)
(c) S.I.1998/3162 (N.I.21)

4. In the Employment Order (Northern Ireland) 2003**(a)** at the end of each of the following Schedules -

- (a) Schedule 2 (tribunal jurisdictions to which article 17 applies);
- (b) Schedule 3 (tribunal jurisdictions to which article 19 applies); and
- (c) Schedule 4 (tribunal jurisdictions to which article 27 applies),

insert –

“Regulation 34 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (discrimination in the employment field)”.

(a) S.I.2003/2902 (N.I.15)

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 (c.68), implement (in Northern Ireland) Council Directive 2000/78/EC of 27th 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. They prohibit direct discrimination, indirect discrimination, victimisation and harassment.

Sexual orientation is defined in regulation 2 as meaning a sexual orientation towards persons of the same sex, persons of the opposite sex, or to both persons of the same sex and of the opposite sex.

Direct discrimination, defined in regulation 3(1)(a), occurs where a person is treated less favourably than another on grounds of sexual orientation. Indirect discrimination, defined in regulation 3(1)(b), occurs where a provision, criterion or practice, which is applied generally, puts persons of a particular sexual orientation at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim. Victimisation, defined in regulation 4, occurs where a person receives less favourable treatment than others by reason of the fact that he has brought (or given evidence in) proceedings, made an allegation or otherwise done anything under or by reference to the Regulations. Harassment, defined in regulation 5, occurs where a person is subjected to unwanted conduct on grounds of sexual orientation with the purpose or effect of violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

Regulations 6 to 23 prohibit discrimination, victimisation and harassment in the fields of employment and vocational training. In particular, they protect employees (regulation 6), contract workers (regulation 9), office-holders (including constables) (regulations 12, 13 and 14), and partners in firms (regulation 16). They not only prohibit discrimination etc by employers, but also by trustees and managers of occupational pension schemes (regulation 11 and Schedule 1), trade organisations (regulation 17), bodies conferring professional and trade qualifications (regulation 18), training providers (regulation 19), employment agencies (regulation 20), and further and higher education institutions (regulation 22). By virtue of regulation 23, discrimination, victimisation or harassment occurring after the relevant relationship has ended is unlawful if it arises out of, and is closely connected to, the relationship. The Regulations also apply to Crown servants (regulation 43). Regulation 42 and Schedule 4 address the validity of discriminatory terms in contracts and collective agreements.

Not all differences of treatment on grounds of sexual orientation are unlawful. There are exceptions in regulations 26 to 29 for differences of treatment related to safeguarding national security or protecting public order or public safety, to benefits which are dependent on marital status, and positive action. Regulation 8 provides an exception where being of a particular sexual orientation is a genuine and determining occupational requirement for a post, if it is proportionate to apply the requirement in the particular case. Regulation 8 also provides an exception for employment for purposes of an organised religion, where a requirement related to sexual orientation is applied so as to comply with the doctrines of the religion or to avoid

conflicting with the religious convictions of its followers.

Regulations 30 to 32 confer powers and duties on the Equality Commission for Northern Ireland in relation to the ground of sexual orientation. Regulation 30 confers a general duty of working towards the elimination of discrimination, promoting equality of opportunity between persons of differing sexual orientations and keeping the Regulations under review. Regulation 31 permits the Commission to undertake research or educational activities, and Regulation 32 permits it to issue codes of practice in the field of employment.

Regulations 33 to 41 provide remedies for individuals, including compensation, by way of proceedings in industrial tribunals and in the county courts. There are special provisions about the burden of proof in those cases in regulations 35 and 38, which transfer the burden to a respondent to a case once a complainant has established facts from which a court or tribunal could conclude, in the absence of an adequate explanation, that an act of discrimination or harassment has been committed by the respondent. Regulation 39 and Schedules 2 and 3 include a questionnaire procedure to assist complainants in obtaining information from respondents, and regulation 40 enables the Commission at its discretion to assist individuals in the preparation and presentation of their complaints under the Regulations where there is some special reason for affording assistance.

A Regulatory Impact Assessment in relation to these Regulations has been placed in the Library of the Northern Ireland Assembly. A copy may be obtained from: Anti Discrimination Division, Office of the First Minister and deputy First Minister, Room E3.18, Castle Buildings, Stormont, Belfast BT4 3SR.