

**DRAFT FOR CONSULTATION TO BE READ WITH ANNEX B OF THE CONSULTATION DOCUMENT “A FRAMEWORK FOR FAIRNESS: PROPOSALS FOR A SINGLE EQUALITY BILL FOR GREAT BRITAIN”.**

**(Please note: As from 25 June 2007 these draft regulations replace the version posted on this website on 12 June 2007. This draft reflects the correct version of draft Regulation 12 and the policy set out in the Annex B of the above consultation document.)**

*Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2007 No. XXXX**

**SEX DISCRIMINATION**

**The Sex Discrimination Act 1975 (Amendment) Regulations  
2007**

*Made* - - - - - \*\*\*  
*Coming into force* - - - - - \*\*\*

A draft of these Regulations was laid before Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972 and was approved by resolution of each House of Parliament.

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

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Sex Discrimination Act 1975 (Amendment) Regulations 2007 and shall come into force on 21 December 2007.

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

(3) In these Regulations, “the 1975 Act” means the Sex Discrimination Act 1975(c).

**Amendment of the 1975 Act**

2.The 1975 Act shall be amended in accordance with regulations 3 to 20.

**Indirect discrimination**

3. In section 1 (direct and indirect discrimination against women)—

(a) in subsection (3) after paragraph (a) insert—

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(a) See the European Communities (Designation) (No.3) Order 2002 (S.I.2002/1819)  
(b) 1972 c.68.  
(c) 1975 c.65.

- “(aa) sections 29 to 31, except in so far as they relate to an excluded matter;”;
- (b) after subsection (3) insert—
  - “(3A) In subsection (3)(aa), the excluded matters are—
    - (a) education (other than vocational training);
    - (b) the content of media and advertisements;
    - (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”

### **Discrimination on the grounds of gender reassignment**

- 4. In section 2A (discrimination on the grounds of gender reassignment)(a)—
  - (a) in subsection (1), after paragraph (a) insert—
    - “(aa) sections 29, 30 or 31, except in so far as it relates to an excluded matter.”.
  - (b) after subsection (1), insert—
    - “(1A) But for the purposes of discrimination in the provision of insurance under section 29, A discriminates against B if—
      - (a) he treats B less favourably than he treats or would treat other persons of the sex to which B’s gender has been reassigned and does so on the ground that B has undergone gender reassignment; or
      - (b) he treats B less favourably than he treats or would treat other persons of B’s sex, and does so on the ground that B intends to undergo, or is undergoing gender reassignment.”
  - (c) after subsection (5) insert—
    - “(6) In subsection (1)(aa) the excluded matters are—
      - (a) education (other than vocational training);
      - (b) the content of media and advertisements;
      - (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”

### **Pregnancy and maternity**

- 5.—(1) After section 3A (discrimination on the ground of pregnancy or maternity leave)(b), insert—

#### **“3B Discrimination on the ground of pregnancy or maternity: goods, facilities or services(c)**

- (1) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if—
  - (a) on the ground of the woman’s pregnancy he treats her less favourably than he would treat her had she not become pregnant, or
  - (b) on the ground that she has given birth at any time in the period of [52] weeks ending on the day the discrimination occurs or begins he treats her less favourably than he would treat her had she not given birth in that period.”

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(a) Section 2A was inserted by SI 1999/1102, regulation 2(1).  
 (b) Section 3A was inserted by SI 2005/2467, regulation 4.  
 (c) Regulation 5 is subject to change following the ruling in *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin). See Annex B of the consultation document *A Framework for Fairness: Proposals for a Single Equality Bill*, available at [www.communities.gov.uk](http://www.communities.gov.uk).

- (2) Subsection (1) applies to sections 29 to 31, except in so far as they relate to—
- (a) education (other than vocational training);
  - (b) the content of media and advertisements; or
  - (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”
- (2) After section 5, in subsection 1, after paragraph (b), for “or 3A” substitute “, 3A or 3B”.

### **Goods, facilities or services**

**6.** In section 29 (discrimination in provision of goods, facilities or services) after subsection (2) insert—

“(2A) It is unlawful in connection with the provision of goods, facilities or services to the public or a section of the public (except in so far as they relate to an excluded matter) for any person to subject to harassment(a)—

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

(2B) The excluded matters are—

- (a) education (other than vocational training);
- (b) the content of media and advertisements; or
- (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”

### **Premises**

**7.** In section 30 (discrimination in disposal or management of premises)—

(a) after subsection (1) insert—

“(1A) It is unlawful for such a person to subject to harassment another who applies for the premises.”;

(b) after subsection (2) insert—

“(2A) It is unlawful for such a person to subject to harassment another who occupies the premises.”;

(c) after subsection (3) insert—

“(4) Subsections (1A) and (2A) do not apply in relation to an application for or occupation of premises in so far as it relates to—

- (a) education (other than vocational training);
- (b) the content of media and advertisements; or
- (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”.

### **Consent for assignment or sub-letting**

**8.—(1)** In section 31 (discrimination: consent for assignment or sub-letting) in subsection (1), for the words “to discriminate” to the end substitute—

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(a) For any references to harassment for the purposes of these Regulations see Annex B of the consultation document *A Framework for Fairness: Proposals for a Single Equality Bill*, available at [www.communities.gov.uk](http://www.communities.gov.uk). This explains we intend to amend the existing harassment provisions so that harassment is not limited to conduct caused by the sex of the claimant, to follow the ruling in *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin).

- (a) to discriminate against a woman by withholding the licence or consent for disposal of the premises to her, or
- (b) in relation to such a consent or licence, to subject to harassment a woman who is seeking to have the premises disposed to her.”

### **Exception for small dwellings**

9. In section 32 (exception for small dwellings), in subsection (1) for “Sections 29(1) and 30 do not apply”, substitute “Section 30 does not apply”.

### **Gender reassignment**

10. In section 29 (discrimination in the provision of goods, facilities and services), in subsection (4) omit the words “to vocational training”.

### **Exception for voluntary bodies**

- 11.—(1) In section 34 (exception for voluntary bodies) after subsection (4), insert—
- “(5) Subsections (2) to (4) do not apply to discrimination under section 1 or 2A in its application to sections 29 to 31 unless the treatment complained of is a proportionate means of achieving a legitimate aim.”.

### **Further exceptions from sections 29(1) and 30**

- 12.—(1) In section 35 (further exceptions from sections 29(1) and 30) —
- (a) in subsection (1) leave out paragraphs (a) to (c) and insert “any of the conditions in subsections (1A) to (1C) is satisfied”.
  - (b) after subsection (1) insert—

“(1A) The condition is that the place is, or is part of—

    - (a) a hospital, or
    - (b) other establishment for persons requiring special care, supervision or attention,

and the restriction is a proportionate means of achieving a legitimate aim at the place.

(1B) The condition is that the place is (permanently or for the time being) occupied or used for the purposes of an organised religion, and the facilities or service are restricted to men so as to comply with the doctrines of that religion or avoid offending the religious susceptibilities of a significant number of its followers.

(1C) The condition is that the facilities or services are provided for, or are likely to be used by, two or more persons at the same time, and—

    - (a) the facilities or services are such, or the persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or
    - (b) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.”
  - (c) after subsection (2), insert—

“(2A) In their application to discrimination falling within section 2A, subsections (1A), (1C) and (2) shall apply to the extent that any such discrimination is a proportionate means of achieving a legitimate aim.”.

- (d) in subsection (3), after “discrimination”, (in each place where it occurs) insert “or harassment”.

### **Relationships which have come to an end**

**13.**—(1) In section 35C (relationships which have come to an end)(a)—

- (a) in subsection (2) , before paragraph (a), insert—

“(za) sections 29 to 31, except in so far as they relate to an excluded matter.”;

- (b) after subsection (4) insert—

“(5) In subsection (2)(za) the excluded matters are—

- (a) education (other than vocational training);  
(b) the content of media and advertisements; or  
(c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”.

### **Charities**

**14.** In section 43 (charities), after subsection (2) insert—

“(2A) But subsection (1) does not apply to discrimination under section 1 or 2A in its application to sections 29 to 31 unless the conferral of benefits is a proportionate means of achieving a legitimate aim.”.

### **Sport**

**15.** At the end of section 44 (sport etc) (which becomes subsection (1)) insert—

“(2) Subsection (1) applies to discrimination under sections 29 to 31 which falls within section 2A, only if the discrimination is necessary to secure—

- (a) fair competition, or  
(b) the safety of competitors,

at such events.”

### **Insurance**

**16.**—(1) Section 45 (insurance) is amended as follows.

- (2) The existing text becomes subsection (1).

- (3) After subsection (1) insert—

“(2) Subsection (1) does not apply to discrimination under sections 29 to 31, except in so far as they relate to—

- (a) education (other than vocational training);  
(b) the content of media and advertisements;  
(c) the provision of goods facilities or services or premises at any place (permanently or for the time being) occupied or used for the purposes of an organised religion;  
or  
(d) differences in premiums and benefits applicable to a person under a contract of insurance or related financial services entered into on or before 21st December 2007.

- (3) Despite subsection (2), the treatment is not unlawful under section 29(1) if—

- (a) in the case of discrimination under a contract entered into after 21st December 2007 which relates to differences in premiums and benefits, each of the following conditions is satisfied—
  - (i) the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data;
  - (ii) the data referred to in paragraph (i) are compiled, published (whether in full or in summary form) and regularly updated in accordance with guidance issued by the Treasury;
  - (iii) the differences in treatment are proportionate having regard to the data in paragraph (i);
  - (iv) the differences do not result from costs related to pregnancy or the fact that a woman has given birth at any time in the period of [52] weeks ending on the day the treatment occurs or begins; or
- (b) insurance or related financial services are provided only to members of one sex in relation to risks which only affect that sex.”

### **Communal accommodation**

**17.**—(1) Section 46 (communal accommodation) is amended as follows.

(2) In subsection (4) —

- (a) at the end of paragraph (b) insert “; and”, and
- (b) after that paragraph, insert—

“(c) in respect of discrimination falling within section 2A, whether and how far such discrimination is a proportionate means of achieving a legitimate aim.”.

(3) In subsection (8) for “section 35(1)(c)” substitute “section 35(1) and (1C)”.

### **Acts done under statutory authority**

**18.** In section 51A (acts done under statutory authority to be exempt from certain provisions of Part 3), in subsection (2) for “except so far as they apply to vocational training” substitute “in so far as they relate to—

- (a) education (other than vocational training);
- (b) the content of media and advertisements;
- (c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion;
- (d) section 21A; and
- (e) sections 35A and 35B.”

### **Burden of proof**

**19.**—(1) Section 66A (burden of proof: county and sheriff courts)(a), in subsection (2), for paragraph (a) substitute—

“(a) has committed an act of discrimination or harassment against the claimant which is unlawful by virtue of—

- (i) section 29, 30 or 31, or
- (ii) any other provision of Part 3 so far as it applies to vocational training, or”.

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(a) Section 66A was inserted by SI 2001/2660, regulations 2(2) and 6.

### **Time for answering questions from aggrieved persons**

**20.** In section 74(2A) (help for aggrieved persons in obtaining information etc)(a)—

(a) in paragraph (a), after sub-paragraph (i) insert—

“(ia) section 29, 30 or 31, except in so far as it relates to an excluded matter.”.

(b) after subsection (5) insert—

“(5A) In subsection (2A)(a)(ia) the excluded matters are—

(a) education (other than vocational training);

(b) the content of media and advertisements; or

(c) the provision of goods, facilities or services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”.

### **Transitional provisions**

**21.**—(1) The amendment made by regulation 19 (burden of proof) shall not apply in relation to proceedings where the act (within the meaning of the 1975 Act) complained of took place before the date on which these Regulations come into force.

(2) The amendment made to section 74 by regulation 20 (time for answering questions from aggrieved persons) shall not apply in the case of a question served on a respondent before the date on which these Regulations come into force.

(3) In paragraph (2) “question” and “respondent” shall be construed in accordance with section 74.

Signed by the authority of the Secretary of State for Communities and Local Government

[Date]

[  
Department for Communities and Local Government

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations, which are made under section 2(2) of the European Communities Act 1972, implement in Great Britain Council Directive 2004/113 EC of 13 December 2004 (“the Directive”) and come into force on 21 December 2007. The Directive is concerned with implementing the principle of equal treatment between men and women in the access to and supply of goods and services which are available to the public.

The Directive necessitates amendment of the Sex Discrimination Act 1975 (“the 1975 Act”), in particular to reflect the provisions of the Directive which deal with discrimination, harassment and sexual harassment, the burden of proof in court proceedings, and the amendment of statutory provisions which would otherwise be contrary to the requirements of the Directive.

Regulation 3 applies the Directive-based definition of indirect discrimination to the areas of the 1975 Act with which the Directive is concerned, namely section 29 (discrimination in the provision of goods, facilities or services), section 30 (discrimination in disposal or management of premises) and 31 (discrimination: consent for assignment or sub-letting), except in so far as these provisions relate to an “excluded matter”. The excluded matters are: (a) education (other than vocational training); (b) the content of media and advertisements; and (c) the provision of goods, facilities, services at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.

Regulation 4 extends protection from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services and premises and makes provision as to how that protection works in the context of insurance.

Regulation 5 extends protection from discrimination on grounds of pregnancy and introduces protection from discrimination on grounds of maternity in the provision of goods, facilities, services and premises.

Regulations 6 to 9 make it unlawful for any person in the connection with the provision of goods, facilities, services or premises to subject another to harassment.

Regulation 10 clarifies that subsection 29(1)(b) (discrimination in the provision of goods, facilities or services) can apply to discrimination on grounds of gender reassignment.

Regulations 11, 12, 14, 15 and 17 provide exceptions from the principle of equal treatment in the provision of single-sex goods, facilities, services and premises in the areas with which the Directive is concerned.

Regulation 13 provides that in the provision of goods, facilities and services and premises, where there has been a relationship in which certain acts of discrimination, or harassment, would have been unlawful, it is also unlawful to subject a person to a detriment or harassment by reference to that relationship after the relationship has ended.

Regulation 16 amends section 45 of the 1975 Act (insurance) to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women, in the areas with which the Directive is concerned.

Regulation 18 removes the exception for acts which are done under statutory authority in the areas with which the Directive is concerned.

Regulation 19 reverses the burden of proof in court proceedings relating to discrimination in the areas with which the Directive is concerned.

Regulation 20 ensures that respondents must reply to a claimant’s preliminary questions relating to discrimination or harassment in the areas with which the Directive is concerned, within eight weeks of being served with them.

Regulation 21 sets out transitional provisions.

An initial regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been conducted alongside an assessment of the proposals for a Single Equality Bill. See Annex C of *Proposals to simplify and modernise discrimination law: Initial Regulatory Impact Assessment*, which is available at [www.communities.gov.uk](http://www.communities.gov.uk).