

Eliminating Sexual Orientation Discrimination in Northern Ireland:

A Guide on the Provision of Goods, Facilities, Services, and Premises.

The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006

Equality Commission

FOR NORTHERN IRELAND



Eliminating Sexual Orientation Discrimination in Northern Ireland:

A Guide on the Provision of Goods, Facilities, Services, and Premises.

The Equality Act (Sexual Orientation) Regulations
(Northern Ireland) 2006

This Guide was developed by the Equality Commission for Northern Ireland and will be supplemented by sector specific guides, in the areas of:

- education;
- health and social care;
- hospitality;
- housing; and
- pensions/insurance (financial).

These may be added to or updated at a later date.

For further information please consult the website or contact us at the numbers detailed below.

This Guide is available in a range of accessible formats on request from the Equality Commission. If you would like a copy in an alternative format please contact us and state which alternative format you require.

This Guide applies only to Northern Ireland

The Equality Commission for Northern Ireland
Equality House
7 – 9 Shaftesbury Square
Belfast
BT2 7DP

Enquiry Line: 028 90 890 890 (general enquiries)
Textphone: 028 90 500 589
Fax: 028 90 248 687
Email: information@equalityni.org
Website: www.equalityni.org

ISBN: 978-1-906414-13-9

September 2008

Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998.

Our mission is:

- To advance equality, promote equality of opportunity, encourage good relations and challenge discrimination through promotion, advice and enforcement.

The Commission’s main duties include:

- working towards the elimination of discrimination;
- promoting equality of opportunity and encouraging good practice;
- promoting affirmative/positive action;
- promoting good relations between people of different racial groups;
- overseeing the implementation and effectiveness of the statutory duty on public authorities;
- keeping the relevant legislation under review.

The Commission has a general duty to keep equality legislation in Northern Ireland under review and to advise Government on recommendations for change. The Commission promotes equality of opportunity and provides advice and guidance in relation to:

- age discrimination;
- disability discrimination;
- equal pay;
- religious belief or political opinion discrimination;
- race discrimination;
- sex discrimination;
- sexual orientation discrimination; and
- the public sector statutory duties under Section 75 of the Northern Ireland Act 1998, and disability duties under the Disability Discrimination (Northern Ireland) Order 2006 (DDO).

Foreword

The law is the expression of the will of society at any given time and, in that respect, the existence of a law is an important statement of policy and practice. That is all the more true when the law sets out clear entitlements, for individuals or groups of individuals, not to be discriminated against and makes unlawful differential treatment based solely on the criterion of being a member of a particular category of person.

The coming into force of The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 was, therefore, a welcome and important statement of public policy. But the law will lose much of its potential if it serves simply as such a statement. Its purpose is to make a difference in people's lives. Thus, it is its implementation on a day to day basis that offers the opportunity to have real impact. Therein also, however, may lie the challenge. Clear guidance will help to make the law part of the daily reality.

The Regulations placed new duties upon the providers of goods, facilities and services in Northern Ireland and afford new protections for individuals on grounds of sexual orientation. Discrimination in such provision is made unlawful as is discrimination on grounds of sexual orientation in education, disposal and management of premises and exercise of public functions.

As with other anti discrimination legislation, these measures should provide real benefits to people's everyday lives. It cannot be acceptable that a restaurant denies service to an individual on grounds of her or his sexual orientation, or that a child is denied the best possible education on grounds of either their or their parent's sexual orientation. These are rights that the majority of people take for granted.

This guidance provides practical advice on what the legislation means for service providers, public authorities, religious organisations, providers of education and those managing, selling and letting premises, as well as for society at large. For many, there may be no need to change current practices because these desirable principles are already embedded in



organisational life. For all, there is the opportunity to review all policies and practices to ensure that they are in accordance with the law.

This guidance offers clear advice on how the provisions work from a range of perspectives; it includes examples to illustrate the principles and concepts used in the legislation; and it also offers advice to individuals on what to do if they are being discriminated against on the ground of sexual orientation.

I commend it to all for whom it has any relevance and I urge that its advice on good practice be adopted as the standard approach of all.

Bob Collins

Chief Commissioner

Contents

1 Introduction	1
Public authorities	3
Purpose of the Guide	3
Status of the Guide	3
How to use this Guidance	4
Examples	4
References in the Guidance	5
Further information	5
2 Explaining the law	6
What is discrimination on grounds of sexual orientation?	6
Discrimination and civil partners	6
Are transsexual people covered by the legislation?	7
What the law says	8
Direct discrimination	8
Indirect discrimination	9
Understanding the definitions of indirect discrimination	10
Justification for indirect discrimination	10
Comparators	11
Victimisation	11
3 Goods, facilities and services	13
What is unlawful?	13
Refusal of service	13
Standard (quality) or manner of service	14
Terms of service	15
Less favourable treatment	16
A service provider's legal liability for its employees	17
To what and to whom does the law apply?	18
Are all service providers covered?	21
Access to and use of a public place	22

4 Disposal or management of premises	23
What do the Regulations make unlawful?	23
Disposal of premises	23
What is 'disposal' under the legislation?	24
What is meant by the term 'estate agent' in the legislation?	25
What is meant by 'premises' and 'tenancy'?	25
Management of premises	25
Who is a 'person managing a premises'?	26
Benefits and facilities	26
Eviction	26
Licence or consent	27
Exceptions	28
Exceptions for owner-occupiers	28
Exception for small dwellings	28
When are premises 'small premises'?	29
When does the small dwellings exemption apply?	30
Exception for care and attention	31
Bed and breakfasts	31
5 Discrimination in Education	32
Introduction	32
Teaching and the curriculum	32
Discrimination by bodies in charge of educational establishments	34
Admissions	34
Discrimination against existing pupils/students	35
What is meant by the term 'pupil' under the Regulations?	36
What is an 'establishment' and corresponding 'responsible body'?	36
Other discrimination by Education and Library Boards and the Council for Catholic Maintained Schools	37
Harassment and bullying	37
General duty in the public sector of education	38
Enforcement of general duty by directions	39

6 Public authority functions	40
Functions of a public authority	40
What public authorities are covered by the Regulations?	40
What is a 'function' and is it covered by the Regulations?	41
Public authorities as employers	42
Section 75 duties	42
Procurement	43
Interaction with the goods, facilities and services provisions	43
Exceptions to the public authority provisions	44
7 Organisations relating to religion or belief	45
Exception for religious organisations	45
Ministers of Religion	46
When the exception does not apply	47
Complying with the doctrines of the organisation	47
Commercial organisations	48
Delivering a service on behalf of the state	48
Use of religious organisations' premises	49
8 Associations and private members clubs	50
What is a private club?	50
Members of the public	50
What do the Regulations make unlawful?	51
Application for membership	51
Terms of membership	51
Refusal of membership	52
Members of private clubs	53
Guests and potential guests	55
Exception to the above	55
9 Other unlawful provisions under the Regulations	57
Other unlawful acts	57
Discrimination after a relevant relationship has come to an end	57
Discriminatory practices	58
Discriminatory advertisements	59

Instructions to commit unlawful acts	61
Pressure to commit unlawful acts	62
Aiding unlawful acts	63
Liability of employers	64
Validity and revision of contracts	66
Exceptions to the Regulations	66
Charities	66
Statutory authority and national security	67

10 Promoting good practice for service providers and educational establishments **68**

Introduction	68
Service providers	68
Business case	68
Vicarious liability	69
Public bodies	69
Good practice measures	70
Develop inclusive policies, practices and procedures in the provision of service	72
Consult on all policies, practices and procedures	72
Communicate all policies, practices and procedures	72
Commitment from management	73
Provide training and guidance on all policies, practices and procedures	73
Address acts of sexual orientation discrimination by staff	74
Service provision policy	74
Inform all customers of policies	75
Customer complaints procedure	76
Monitor and review all policies, practices and procedures	76
Good practice guidance for educational establishments	78

11 Role of the Equality Commission **81**

General powers and duties under the Regulations	81
Powers and duties relating to the Regulations	81
Formal investigations	82
Non-discrimination notices	82
Undertakings by persons not contravening the Regulations	83
Education	83

12 How complaints of discrimination are made	84
Making a complaint	84
Time limits for lodging a complaint	84
Burden of proof	85
Remedies	85
Jurisdiction of county court	85
Appeals	86
Equality Commission - advice and assistance	86
13 Further information, advice & support	88
Other statutory organisations	89
Employer organisations and trade unions	90
Advice & support groups	91
Great Britain organisations	96
Organisations in Ireland	96

1 Introduction

Sexual Orientation discrimination legislation in Northern Ireland.

- 1.1 **The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 ('the Regulations')** came into force on 1 January 2007. **The Regulations** prohibit discrimination on grounds of sexual orientation in the provision of goods, facilities, and services, management and disposal of premises, the provision of education and exercise of public functions. The Regulations also apply to housing, advertisements and private clubs. These Regulations make it unlawful for anyone who is concerned with the provision of services to the public, or a section of the public, to discriminate on grounds of sexual orientation, by refusing or deliberately omitting to provide access to them, or as regards the quality, manner or terms on which they are provided. The Regulations provide individuals with the right to protection from discrimination on grounds of sexual orientation and the right to challenge discriminatory treatment.
- 1.2 Following the introduction of the Regulations, they were subjected to a Judicial Review¹. As a result of the Judicial Review changes were made to the original Regulations, namely the specific provisions relating to harassment were removed, and this has been taken into account in this Guide.

Legislation amending the Regulations in order to give effect to the Judicial Review will be posted on our website along with any relevant changes to the Guide, if required.

- 1.3 **The Employment Equality (Sexual Orientation) Regulations (NI) 2003** make it unlawful for employers and others to discriminate on grounds of sexual orientation in the areas of employment and vocational training, including further and higher education. The employment Regulations also specifically prohibit harassment on

¹ A copy of the Judicial Review judgement may be obtained from the Northern Ireland Court Service reference WEAC5888 at <http://www.courtsni.gov.uk>

grounds of sexual orientation. For further information on these Regulations see the Equality Commission's Guidance 'Sexual Orientation Discrimination in Northern Ireland – The Law and Good Practice', available from the Equality Commission's website www.equalityni.org.

1.4 **The 2006 Regulations** prohibit discrimination on grounds of sexual orientation in the provision of goods, facilities or services. Examples include:

- access to/use of a public place, which members of the public are permitted to enter;
- accommodation in a hotel, boarding house or similar establishment;
- facilities by way of banking, insurance, grants, loans, credit or finance;
- facilities for education;
- facilities for entertainment, recreation, or refreshment;
- facilities for transport/travel;
- the services of any professional, or trade, or local or other public authority.

The Regulations also cover the following areas:

- disposal or management of premises;
- private clubs;
- exercise of public functions;
- educational establishments;
- where a relationship has come to an end;
- discriminatory practices;
- discriminatory advertisements; and
- instructions/pressure to discriminate.

Public authorities

- 1.5 Public authorities, including government departments, local councils and institutions of further and higher education, who are designated under Schedule 9 of the Northern Ireland Act 1998, are already under a duty, when carrying out their functions, to have due regard to the need to promote equality of opportunity between persons of different sexual orientation. The Regulations, which apply to all service providers, are different in that they grant individual rights to anyone who believes that they have been discriminated against on grounds of sexual orientation.

Purpose of the Guide

- 1.6 This Guide gives advice on how to prevent discrimination against individuals on grounds of sexual orientation in accessing services, public functions and/or premises. It describes the duties on those providing services to the public and those selling, letting or managing premises. It is also designed to help individuals who believe that they have been less favourably treated on grounds of sexual orientation, to understand the law and how to take a complaint of discrimination. It also aims to advance the elimination of discrimination against individuals on grounds of sexual orientation and to encourage good practice.

Status of the Guide

- 1.7 The Guide provides general guidance only and should not be regarded as a complete or authoritative statement of the law. This Guide does not of itself impose legal obligations. Authoritative interpretation of the Regulations is a matter for the Courts.
- 1.8 It is the Equality Commission's intention to update the web version of the Guide on an ongoing basis to reflect case law and other legislative developments and advise readers to consult the web version (www.equalityni.org).

How to use this Guidance

1.9 This chapter gives a general introduction to the Guide.

Chapters 2-8 outline the implications of the Regulations for service providers; those with responsibility for disposal, management and letting of premises; education establishments; public authorities; religious organisations and private member clubs. Chapter 9 details other unlawful provisions under the Regulations.

Chapters 10-13 provide guidance on promoting good practice for service providers and educational establishments, outline the role of the Equality Commission, the process of how complaints of discrimination are made, and details further information such as lists of advice and support groups.

Examples

1.10 Throughout this Guide, examples of how the Regulations are likely to work are given in boxes. They are **intended simply to illustrate** the principles and concepts used in the legislation that could amount to discrimination under the Regulations. **They should not be treated as complete or authoritative statements of the law.**

1.11 While the examples refer to particular situations, they should be understood more widely as demonstrating how the law is likely to be applied generally. It is not possible to offer generalised solutions. Individual circumstances will always require individual solutions. Changes to specific circumstances in any of the examples given might well change the solution or outcome.

References in the Guidance

1.12 Throughout this Guide references to the 'Regulations' mean 'The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006'.

The guidance refers to the Regulations as at the date of publication. Any future changes to the legislation, may have an effect on the advice given in this Guide. Service providers and others will need to ensure that they keep up to date with any developments that may affect the Regulations. Relevant information can be obtained from the Equality Commission.

Further information

1.13 Further information on the law and good practice in promoting equality of opportunity with respect to sexual orientation can be obtained by contacting the Equality Commission.

1.14 The Equality Commission provides a free and confidential information and advice service and produces advisory booklets covering many aspects of Northern Ireland's equality framework. Information and publications are also available on the Equality Commission's website at www.equalityni.org, or by contacting the enquiry line, 028 90 890 890.

1.15 Information and advice can also be obtained by contacting organisations which represent the lesbian, gay, and bisexual community. Details of these organisations can be found in Chapter 13 'Further information, advice and support'.

2 Explaining the law

2 What is discrimination on grounds of sexual orientation?

2.1 Under the Regulations, it is important to note that 'sexual orientation' means a sexual orientation towards:

- persons of the same sex (this covers gay men and lesbians);
- persons of the opposite sex (this covers heterosexual men and women);
- persons of both sexes (this covers bisexual men and women).

2.2 The legislation protects individuals who have been discriminated against because they **either have or are perceived** to have a particular sexual orientation. Therefore, individuals can bring a complaint even if the discrimination was based on incorrect assumptions about their sexual orientation.

2.3 In addition, a person can suffer discrimination not just because of their own sexual orientation or perceived sexual orientation but also **by reason of** the sexual orientation of someone else. For example, a person can be discriminated against because they associate with gay friends or because they are related to someone who is bisexual, or are a child whose parents are gay or lesbian.

Discrimination and civil partners

2.4 The Civil Partnership Act 2004 enables same sex couples to obtain legal recognition of their relationship by forming a civil partnership. The effect is to make the status of a civil partner comparable to that of spouse. The 2004 Act permits same sex couples to enjoy many of the rights and responsibilities which those people who are married enjoy, such as, rights to survivor's pension, benefit packages from employers like private health care, rights under inheritance laws, and entitlement to income related benefits.

- 2.5 The Regulations do not change the existing legal position regarding where and how civil partnerships can be formed. The Regulations will however allow civil partners to bring a discrimination claim, if discrimination is on the grounds of sexual orientation against providers of goods, facilities and services who deny them access to a service or benefit, or where discrimination arose out of a previous relationship, or a service being offered to married persons in similar situations.

Example 1

The local health club is currently running an offer of reduced joining and membership fees for married couples. It emerges that this offer of couple-membership is not available to same-sex partners.

This is likely to amount to discrimination on grounds of sexual orientation.

Are transsexual people covered by the legislation?

- 2.6 Under the Sex Discrimination Gender Reassignment Regulations (NI) 1999, it is unlawful to discriminate against job applicants or employees on the ground that they intend to undergo treatment to change their sex, are undergoing treatment to change their sex, or have undergone such treatment. The 1999 Regulations only apply to discrimination in employment and vocational training.
- 2.7 The Sex Discrimination (Amendment of Legislation) Regulations 2008 extend protection against direct discrimination and harassment on grounds of a person's gender reassignment in the provision of goods, facilities, services and premises. For further information on this legislation contact the Equality Commission's enquiry line, on 028 90 890 890 or visit our website at www.equalityni.org.
- 2.8 Transsexual people may however also have rights under the sexual orientation Regulations if they are treated less favourably because of their actual or perceived sexual orientation.

What the law says

2.9 The Regulations impose a duty on service providers and others to ensure that individuals are not unlawfully treated less favourably on grounds of sexual orientation than other people when using their services. There are several types of sexual orientation discrimination outlined below.

Direct discrimination

2.10 This arises where one person, or more, (or an organisation) treats or would treat another less favourably than others on grounds of sexual orientation in the same or similar circumstances. Direct discrimination is unlawful whether it is intentional or not.

2.11 Lesbian, gay, bisexual and heterosexual people may be subjected to less favourable treatment in a number of areas. The Commission has received complaints about refusal of entry/service, or individuals have encountered discourteous/hostile treatment, in bars, pubs and restaurants. Concerns have also been raised about being denied accommodation in hotels/guesthouses and refusal by tour operators to take bookings. Heterosexuals may also experience discrimination, for example, they may be refused entry to gay friendly venues.

Example 2

A gay man was refused service in the bar of his local hotel due to his sexual orientation and was asked by a member of staff to leave, prior to closing time. No other customers in the bar were asked to leave.

He believed that the refusal of service was due to the fact that he was known to be gay. Under the Regulations, this is likely to constitute direct discrimination as he is being treated less favourably on grounds of sexual orientation.

Example 3

A bar refuses entry to a heterosexual woman because she was accompanied by her sister who is known to the bouncer at the door to be a lesbian.

Under the Regulations, individuals can suffer discrimination not just because of their own sexual orientation, but also by reason of the sexual orientation of someone else.

Indirect discrimination

2.12 Indirect discrimination occurs where:

- **a provision, criterion or practice** is applied or would apply equally in a situation which puts people of a particular sexual orientation at a disadvantage and which cannot be shown to be a proportionate means of achieving a legitimate aim; or
- **a requirement or condition** is applied or would apply equally in a situation:
 - where a considerably smaller proportion of people of the same sexual orientation can comply with it;
 - which is not justifiable; and
 - which is to the detriment of the individual because they cannot comply with it.

2.13 Like direct discrimination, indirect discrimination is unlawful whether it is intentional or not. For any comparisons to take place under indirect discrimination the circumstances in the case should be the same or not materially different.

Example 4

An insurance company refuses to provide its services to customers who have had an HIV test. This is likely to be indirect sexual orientation discrimination as gay men may be perceived as more likely to have had such tests than heterosexual men, women and lesbians.

Example 5

A gay man applies for life assurance to cover loss of income should he become ill. During a telephone consultation with a nurse he answers a question that he has tested negative for hepatitis at a clinic. He then receives a letter from the insurance company inquiring as to why he had attended a clinic.

This treatment is likely to amount to indirect discrimination, as such questioning places a gay man at a particular disadvantage, as he may have to reveal his sexual orientation to answer the inquiry. It would be difficult for the insurance company to justify such an inquiry.

Understanding the definitions of indirect discrimination

2.14 The phrase 'provision, criterion or practice' included in the first definition is broader than the phrase 'requirement or condition' in the second definition. The phrase 'provision, criterion, or practice' covers the full range of rules, policies, and practices, be they formal or informal. It would therefore apply to decisions that are made regularly by those working in the area of service provision where there may not necessarily be written formal policies.

Justification for indirect discrimination

2.15 In contrast to direct discrimination, indirect discrimination is permitted where the service provider (including a housing and/or accommodation provider) can demonstrate that the provision, criteria, practices, requirements or conditions are lawfully justified.

- 2.16 If a complaint is made against a service provider the courts will balance the discriminatory effect of the provision, criterion, practice, requirement or condition against the reasonable business needs of the service provider.
- 2.17 Service providers should be aware that treating individuals less favourably because they are not married, or in a civil partnership, are unwilling to disclose details about their relationship status, or do not have children, has the potential to be indirectly discriminatory on a number of equality grounds including sexual orientation.

Comparators

- 2.18 Discrimination is generally deemed to occur where one person is treated less favourably than other persons, or is placed at a disadvantage compared to other persons in the same or similar circumstances. Therefore, comparison must be made between how one person is treated, or would be treated, compared to another, or how one group of persons is treated, or would be treated, compared to another group. These persons or groups are usually known as comparators.
- 2.19 Comparators may also be hypothetical persons. It is not always necessary to compare the person who complains of discrimination with an actual other person. It is possible for the person alleging discrimination to argue that someone else, who is of a different sexual orientation, would be treated more favourably in the same or similar circumstances.

Victimisation

- 2.20 This occurs when someone is treated less favourably because they have already made a complaint (undertook proceedings or threatened to bring proceedings) under the Regulations, or have helped someone else to do so (provided evidence in proceedings, acted as a witness or provided documentation), or alleged that a service provider or others has committed an unlawful act under the Regulations.

2.21 Victimisation offers protection to individuals from adverse treatment or consequences that they might experience as a reaction to their complaining of discrimination. Protection against victimisation does not apply to individuals who make allegations of discrimination which are false and are not made in good faith.

Example 6

A heterosexual woman agrees to give evidence in a case being taken by a lesbian who has been repeatedly refused appointments at a women only health spa due to her sexual orientation. When the heterosexual woman next tries to make an appointment for herself, her request is refused by the manager who says that they don't offer their services to trouble makers. This is likely to be victimisation.

3 Goods, facilities and services

- 3.1 Under the Regulations, it is unlawful for service providers to treat individuals less favourably than other people on grounds of sexual orientation, actual or perceived, when using their services. This Chapter explains what is made unlawful by the Regulations and what is meant by less favourable treatment.

What is unlawful?

- 3.2 The Regulations make it unlawful for anyone who is concerned with the provision of goods, facilities and services to the public or a section of the public, to discriminate against individuals on grounds of sexual orientation by:
- refusing or deliberately omitting to provide any service which it offers to or provides to members of the public, or a section of the public; or
 - providing service of a lower (inferior) standard or quality; or
 - providing service in a worse manner; or
 - providing service on less favourable terms.
- 3.3 Discrimination of this kind is unlawful whether or not the service is paid-for or provided free of charge. Service providers will be covered regardless of size, and whether they are in the public, private or voluntary sector. Chapter 6, 'Public authority functions', outlines the public bodies and functions not covered by the Regulations.

Refusal of service

- 3.4 A service provider cannot refuse to provide (or deliberately not provide) a service to a customer on grounds of sexual orientation (whether actual or perceived) which it offers to other people. The

service provider cannot refuse to provide services, even if the service provider thinks that serving that customer will upset or raise objections from other customers.

Example 7

A same-sex couple are asked to leave a restaurant because they are holding hands and the restaurant manager says their behaviour is making customers uncomfortable. Heterosexual couples who are also holding hands are not asked to leave the restaurant.

The restaurant is refusing to serve the same-sex couple on grounds of sexual orientation and treating them less favourably than heterosexual couples. This is likely to constitute discrimination.

Example 8

A local DIY store has a promotion which sells goods at a discount price to pensioners. On application for tickets to avail of this promotion, a gay pensioner is refused them by an assistant at the store. He believes this is because he is perceived as being gay by the assistant and refusal of this service because of his perceived sexual orientation is likely to amount to sexual orientation discrimination.

Standard (quality) or manner of service

- 3.5 A service provider must not offer an individual (or group of individuals, or an organisation) on grounds of sexual orientation (actual or perceived) a lower standard (quality) or inferior service that it offers other people, or serve an individual on grounds of sexual orientation in a worse manner. A lower standard of service may include being off hand, hostile, less courteous or rude towards them.

Example 9

A small country house hotel informs a same-sex couple that they cannot have accommodation in the main hotel but must go to one of the adjacent bungalows, with inferior services, as they might cause offence to other customers in the hotel.

The same-sex couple are being offered a lower standard of service than other occupants of the hotel and this is based on grounds of sexual orientation.

Example 10

A local housing authority is presently re-locating families to a new estate and offers the older houses, which are of a lower standard, to same-sex couples.

This is likely to be discriminatory as same-sex couples are being offered a lower standard of service.

Terms of service

3.6 A service provider should not provide a service to an individual on grounds of sexual orientation (actual or perceived) on terms which are worse than the terms offered to other people. These could include charging more for services or imposing extra conditions for using the service or imposing obstacles.

Example 11

A gay man rents an apartment from a private landlord. As part of the agreement he is charged an extra annual fee on top of his rent for use of a parking space. He subsequently discovers that other tenants in the same block are not being charged this extra fee.

The gay man believes that he is being treated differently than other tenants, on grounds of his perceived sexual orientation, in that the terms of service offered to him have extra conditions and this is likely to constitute discrimination under the Regulations.

Less favourable treatment

- 3.7 A service provider discriminates against a person on grounds of sexual orientation (actual or perceived) if, for a reason which relates to his/her sexual orientation, they treat, (or would treat) that person less favourably than others.

There must be a connection between the less favourable treatment and the person's sexual orientation.

- 3.8 Bad treatment is not necessarily the same as less favourable treatment although, where a service provider acts unfairly or inflexibly, or where there is no comparator, a court might draw inferences that discrimination has occurred. The legislation cannot be used as a pretext for disruptive or anti-social behaviour unrelated to a person's sexual orientation.
- 3.9 Service providers seeking to avoid discrimination should instruct their staff that their obligations under the legislation extend to everyone who falls within the definition of sexual orientation, including heterosexuals and individuals who have or have been perceived to have a particular sexual orientation. Remember an individual can bring a complaint even if the discrimination was based on incorrect assumptions about their sexual orientation or by reason of the sexual orientation of someone else. As a service provider, the focus of attention should be on meeting the needs of each customer, regardless of sexual orientation. For further information see Chapter 10 'Promoting good practice for service providers and educational establishments'.

Example 12

Claire wishes to book a hotel, which is licensed to carry out weddings, for her civil partnership ceremony. As part of the deal she is looking for accommodation for family and guests.

Claire met with the facilities manager and agreed a price for the event.

Several weeks later, Claire, along with other members of her family, visited the hotel again to finalise arrangements for the wedding reception. At the meeting, the hotel proprietor was also present. Upon disclosure by Claire that the ceremony and reception would be for a civil partnership, the manager refused to proceed with the booking. The manager then cancelled the booking.

This is less favourable treatment received by Claire on grounds of her sexual orientation from the hotel proprietor and may amount to sexual orientation discrimination.

A service provider's legal liability for its employees

- 3.10 Under the legislation, service providers are legally responsible for the actions of their employees carried out in the course of their employment. An employee who discriminates against a customer on grounds of sexual orientation will usually be regarded as acting in the course of their employment, even if the service provider has issued express instructions not to discriminate. This is known as vicarious liability.
- 3.11 However, in legal proceedings against a service provider based on the actions of an employee, it is a defence that the service provider took 'such steps as were reasonably practicable' to prevent such actions. A policy on sexual orientation which is communicated effectively to employees, reinforced and acted upon is likely to be central to such a defence. It is not a defence for the service provider simply to show that the action took place without its knowledge or approval.
- 3.12 Chapter 10 'Promoting good practice for service providers and educational establishments' sets out good practice guidance measures that can be adopted by service providers. These measures will help service providers to comply with their duties under the legislation and prevent their employees from discriminating against customers on grounds of sexual orientation.

To what and to whom does the law apply?

3.13 Under the Regulations, the provision of goods, facilities and services, subject to the exclusions set out in Chapters, 5, 6, 7 and 8 referring to education, public bodies, organised religions, and private clubs, apply to the provision of all services in Northern Ireland to the public, whether in the private, public or voluntary sectors. It does not matter that the services are provided free (for example, access to a public park), or in return for payment (for example, a meal in a restaurant).

3.14 Although not defined in the Regulations, the term ‘goods, facilities and services’, denotes a wide range of activities carried out by an organisation:

- ‘goods’ (such as a computer, car, groceries) covers the ordinary meaning of the term, i.e. items for sale;
- ‘facilities’ covers anything from resources for doing something (such as use of meeting rooms, hire of equipment, entertainment facilities for functions) to banking facilities for saving money;
- ‘services’ covers help or work from another, such as supply of electricity to your home by a public or private company, or supply of food at a restaurant.

3.15 The Regulations give the following examples of facilities and services covered by the legislation:

- access to and use of a public place, that the public is permitted to enter;
- accommodation in a hotel, boarding house or similar establishment;
- financial services, banking, insurance, grants, loans, credit or finance;

- facilities for education;
- facilities for entertainment, recreation, or refreshment;
- facilities for transport or travel;
- services of a profession or trade;
- services of a local or public authority.

3.16 Services covered include those provided by shops, petrol stations, restaurants, pubs and clubs, hotels and guesthouses including self catering, theatres, cinemas, sports and leisure facilities (golf courses, leisure centres), bus/railway stations, and airports.

Example 13

A department store provides a gift registration service for couples planning to marry. They refuse to offer a similar service to couples planning a civil partnership.

This is likely to amount to discrimination under the Regulations.

Example 14

A local town swimming pool complex offers reduced fare entry to families according to a “mom-dad and kids” concept. The reduced entry fare is not available to same-sex families and they are consequently being treated less favourably on grounds of sexual orientation.

This is likely to amount to discrimination under the Regulations. Any reduced fare entry system used by the leisure complex, such as “parent and kids” should be available to all families regardless of sexual orientation.

3.17 The law also applies to services provided to the public by local councils, government departments and agencies, hospitals, clinics, doctors’ and dentist surgeries, libraries and museums (including places of interest, such as historic buildings).

Example 15

A bisexual woman requests a cervical smear test at her local surgery. She is told that she cannot be given an appointment unless she is currently in a heterosexual relationship, because the surgery receptionist mistakenly assumes she would not otherwise have any need for a medical smear.

Under the Regulations this is likely to amount to less favourable treatment on grounds of sexual orientation.

3.18 Financial institutions that are covered include banks, post offices, building societies and insurance companies.

Example 16

A mortgage lender, as part of their application process, asks individuals who reveal themselves to be gay, lesbian or bisexual to take an HIV test.

By asking gay, lesbian or bisexual individuals to take an HIV test while others are not, the mortgage lender is treating individuals less favourably on grounds of sexual orientation and this is likely to amount to discrimination under the Regulations.

3.19 Services by solicitors and advice agencies are also covered.

Example 17

A lesbian woman, who is in a civil partnership, is considering having fertility treatment and has approached her advice agency for help. She and her partner are informed that they are not in a heterosexual relationship and accordingly will be ineligible for any advice.

The advice agency is treating the same-sex couple less favourably than heterosexual couples by not offering the same service. This is likely to constitute discrimination under the Regulations.

3.20 The Regulations also cover both public and private service providers, such as the Northern Ireland Housing Executive, housing associations, and owners of hostels, private landlords, estate agents, property developers, managing agents and owner-occupiers. Further details of how the Regulations apply to the disposal and management of premises are contained in Chapter 4, 'Disposal and management of premises'. This list is for illustration purpose only and does not cover all service providers falling under the Regulations.

Are all service providers covered?

3.21 All service providers (subject to exemption in paragraph 3.26) are covered by the Regulations regardless of size, whether public, private or voluntary. This includes organisations that provide public services, such as adoption or nursing home places, which are discussed in Chapter 7 'Organisations relating to religion and belief'.

3.22 All those involved in providing services have responsibilities under the Regulations, including senior management and front line staff, whether full or part-time, permanent or temporary.

3.23 It does not matter whether the service in question is being provided by a sole trader, firm, company or other organisation, or whether the person involved in providing the services is self employed, an employee, contractor or agent.

3.24 It is important to remember that it is the provision of the service which is affected and not the nature of the service or business, or the type of establishment from which it is provided. In many cases a service provider is providing a service by a number of different means. In some cases, however, each of those means of service might be regarded as a service in itself and subject to the Regulations.

3.25 The Regulations allow the provision of goods, facilities and services to meet the specific and justified needs of a person of a particular sexual orientation in regard to their education, welfare, or any ancillary benefits.

3.26 This enables groups to specifically set up to provide services to the gay, lesbian and bisexual sector in order to meet specific and justified needs. For more information on private clubs/associations, please refer to Chapter 8 'Associations and private member clubs'.

3.27 It should be noted that it is not unlawful under the Regulations for service providers who have designed services/products that are more likely to appeal to customers/users of a particular sexual orientation, such as bars/travel clubs which target the lesbian, gay and bisexual community, to do so. However, it would be unlawful for that service provider to turn away customers/users on grounds of their sexual orientation or to place advertisements that implies that clients of a particular sexual orientation are unwelcome, such as heterosexual customers/users. For more information on discriminatory advertisements please refer to Chapter 9 'Other unlawful provisions under the Regulations'.

Access to and use of a public place

3.28 The Regulations cover 'access to and use of any place which members of the public are permitted to enter'. Thus, a person who permits members of the public to enter such a place is providing a service to people accessing or using that place.

3.29 The Regulations do not define who are 'members of the public' except to the extent that the definition of service provider refers to provision of services to 'the public or to a section of the public'.

3.30 Members of the public are clearly permitted to enter some places such as a shopping mall. The owner of the shopping mall will lease shop units to individual retailers, and the owner would be responsible for the common areas, such as car parks. By allowing members of the public to use these common parts, the owner is providing services to the public and is subject to the Regulations.

4 Disposal or management of premises

- 4.1 The Regulations make it unlawful to discriminate against individuals on grounds of sexual orientation in the disposal or management of premises (which includes land of any description) in certain circumstances. Those involved in the disposal and management of premises may also have duties as service providers where they are providing services to the public and these are discussed in the preceding Chapter. This Chapter explains the particular responsibilities that apply to landlords and other persons when selling, letting or managing premises. Such persons may include a legal entity, for example, a company.
- 4.2 The Regulations cover the provision of housing and accommodation. This includes the NI Housing Executive, housing associations, hostels, private landlords, estate agents, property developers, managing agents and owner-occupiers.

What do the Regulations make unlawful?

Disposal of premises

- 4.3 It is unlawful for a person (a person includes a legal entity such as a company) with **power to dispose** of any premises to **discriminate** against a person on grounds of sexual orientation:
- in the terms on which they offer to dispose of those premises;
 - by refusing an application for those premises; or
 - in the treatment of those on a list requiring housing, such as overlooking or giving priority to people of a certain sexual orientation.

The disposal of premises includes selling or letting them.

Example 18

A same-sex couple are looking for a one-bedroom flat to rent together. When they approach local letting agencies to register their interest in leasing this type of property, some refuse to keep their details on file, saying that their clients would not want to let a property to a gay couple.

This is likely to amount to discrimination under the Regulations.

What is 'disposal' under the legislation?

4.4 The Regulations cover both the sale and lease (rent) of premises (including land), and any other form of legal disposal (for example, by licence). It includes the grant of a right to occupy the premises. Where the premises are part of, or subject of a tenancy, they include:

- assigning (or the assignation of) the tenancy;
- sub-letting the premises or any part of them; or
- parting with possession of the premises or any part of them.

4.5 Disposing of premises does not however include the hire of premises or the booking of rooms in hotels or guesthouses. These are covered by the provisions relating to services (see Chapter 3 'Goods, facilities and services' and Chapter 7 'Organisations relating to religion or belief').

Example 19

A local farmer is selling land and instructs the local estate agent not to accept any offers or viewings from 'those gay people'.

This is likely to amount to discrimination under the Regulations. If the estate agent acts on these instructions, then the estate agent's actions are also likely to be unlawful under the Regulations.

What is meant by the term 'estate agent' in the legislation?

- 4.6 For the purposes of the legislation an 'estate agent' is anyone carrying on a trade or profession who;
- provides services for the purpose of finding premises for people seeking to acquire them; or
 - assists in the disposal of premises. This includes letting agents.

What is meant by 'premises' and 'tenancy'?

- 4.7 The legislation only applies to premises in Northern Ireland. Premises include land of any description. For example, dwelling houses, office blocks, flats, bed-sits, factory premises, industrial or commercial sites and agricultural land are covered by these provisions. It is important to note that tenancies do not have to be in writing to be covered.

Management of premises

- 4.8 It is also unlawful for a person managing any premises to discriminate on grounds of sexual orientation against a person occupying those premises, such as tenants, other occupier or someone who is associated with them:
- in the way that they afford them access to any benefits or facilities;
 - by refusing (or deliberately omitting) to afford them access to any benefits or facilities; or
 - by evicting or subjecting them to any other detriment.

This covers all aspects of a manager's duties towards a tenant, or other occupier, or someone associated with them. A person includes a legal entity such as a company.

Who is a 'person managing a premises'?

4.9 The Regulations do not only cover property owners. Property management agencies, accommodation bureaux, housekeepers, estate agents, rent collection services, and the managing agents of commercial premises, are also covered under the Regulations.

Benefits and facilities

4.10 Benefits or facilities may include, for example, laundry facilities, access to a garden, parking facilities or any other commercial activities.

Example 20

A property management company manages and controls a residential block of flats on behalf of the landlord-owner. The block of flats has a basement swimming pool for use by all tenants and their guests. A lesbian tenant is told that she can only use the swimming pool at restricted times, because other tenants feel uncomfortable in her presence. This is likely to be unlawful under the Regulations.

Example 21

A hostel manager allocates rooms to gay people in a separate annex, with lesser facilities, because he believes that the rest of the residents would be uncomfortable with their presence and that he would be protecting them from homophobic abuse. Treating individuals less favourably in this way on grounds of their sexual orientation is likely to amount to discrimination by the hostel manager.

Eviction

4.11 It is unlawful for a person managing any premises to discriminate on grounds of sexual orientation (actual or perceived) against a person

occupying those premises by evicting them. This prohibition does not prevent the eviction of gay, lesbian, bisexual or heterosexual tenants where the law allows it, for example, where they are in rent arrears or have breached other terms of the tenancy, or where the reason for the eviction is not related to sexual orientation. It should be noted that any differential treatment in the eviction process could lead to a breach of the Regulations.

Example 22

On the death of her same-sex partner, a female tenant of a house is given four weeks notice to quit, although she is not in arrears of rent or otherwise in breach of the tenancy. However, on the death of a partner, heterosexual tenants in the house, whether married or not, are allowed to continue to live in the house and the tenancy agreement is changed to the surviving individual's name.

The female tenant is being treated less favourably on grounds of sexual orientation and this is likely to be unlawful under the Regulations. If the tenant had been in arrears of rent, or broken the terms of the tenancy, then the landlord may be within his/her rights to evict.

Licence or consent

4.12 It is also unlawful for a person whose licence or consent is required for the disposal of any premises comprised in a tenancy, to discriminate against a person on grounds of sexual orientation by withholding the licence or consent. This applies to tenancies created before and after the coming into force of the Regulations.

Example 23

A tenant of a house occupies the premises under a tenancy agreement with a right to sub-let the house with the prior consent of the landlord-owner. The tenant is being posted to work abroad for a year and wishes to sub-let the house to a same-sex couple. The owner of the house refuses consent to the sub-letting. This is likely to be unlawful under the Regulations.

Exceptions

4.13 The Regulations do not apply to every disposal of premises. As set out below the Regulations contain certain exceptions to the provisions relating to the disposal or management of premises.

Exceptions for owner-occupiers

4.14 The provisions which prohibit discrimination against individuals on grounds of sexual orientation by a person with a power to dispose of premises do not apply to an owner-occupier if:

- that person owns an estate or interest in the premises; and
- wholly occupies the premises.

4.15 However, if the owner-occupier:

- uses the services of an estate agent; or
- publishes, or arranges to be published, an advertisement or notice (whether to the public or not);

The exception does not apply. So, for example, a person giving or selling a house privately to someone they know, and not using the services of an estate agent or advertising the sale, would not be covered by the Regulations.

Exception for small dwellings

4.16 The Regulations prohibiting discrimination in the provision of accommodation and in the disposal of premises do not apply to certain small dwellings. The exception applies only to residential accommodation and is in place to preserve an individual's right to privacy in their own home. A number of conditions must be satisfied before a small dwelling is exempted.

4.17 **First**, the person with the **power to dispose** of the premises (or whose **licence or consent** is required for the disposal) referred to as the 'relevant occupier' (this includes a near relative) must:

- reside on the premises;
- intend to continue to reside on the premises; and
- be sharing accommodation on the premises with other people who are not members of the relevant occupier's household (such as a bathroom or kitchen).

For the purposes of the legislation, 'a near relative' of the relevant occupier means a person's spouse (i.e. husband or wife), civil partner, parent, child, grandparent, grandchild, or brother or sister (whether of full or half blood or by affinity).

4.18 **Second**, the shared accommodation must not be storage accommodation or a means of access.

4.19 **Third**, the premises must be '**small premises**'.

When are premises 'small premises'?

4.20 Premises are 'small premises' if the following conditions are satisfied:

- only the relevant occupier and members of his/her household reside in the accommodation occupied by him/her; and
- the premises include, in addition to the accommodation occupied by the relevant occupier, residential accommodation for a least one other household; and
- that other residential accommodation, for each other household is let (or available for letting) on a separate tenancy or similar agreement for each other household; and
- there are not normally more than two such households.

4.21 Premises are ‘small premises’ if there is not normally residential accommodation on the premises for **more than six people**, in addition to the ‘relevant occupier’ and any members of their household.

When does the small dwellings exemption apply?

4.22 The small dwelling exemption is likely to apply to a multi-occupancy residential building with shared accommodation. All the conditions in the preceding paragraphs must be satisfied if the exemption is to apply.

Example 24

The owner of a four bed-roomed detached house has converted two bedrooms into bed-sit accommodation for two people. The owner continues to live in the house with their family. The house satisfies the Regulation’s definition of ‘small premises’.

Example 25

The owners of a very large house in the Belfast area have converted their house into bed-sit accommodation for eight people.

The owner and his family continue to occupy the house. In this situation the house would not fall under the definitions of ‘small premises’ as defined in the Regulations as there is accommodation for eight people.

Example 26

A large Victorian house has the basement and ground floor converted into two self-contained flats, which are let to tenants under separate tenancies by the house owner. The house owner and the family continue to reside exclusively in the remaining floors of the house.

This house would satisfy the Regulation’s definition of small premises.

The converted house has a communal entrance door and hallway giving private access to the two flats and the remainder of the house. Although the house satisfies the definition of 'small premises', the small dwelling exception does not apply. This is because the owner of the house resides on the premises, but does not share any accommodation (other than means of access) with the tenants of the two self-contained flats.

Withholding licence or consent

4.23 The small dwelling exemption explained in the above paragraphs also applies to discrimination under the Regulations in relation to the withholding of a licence or consent.

Exception for care and attention

4.24 The Regulations also have an exception for persons who make arrangements to take into their home (for reward or not) persons who they treat as members of their family, such as children, elderly persons, or persons requiring a special degree of care and attention.

Bed and breakfasts

4.25 Bed and breakfasts are covered by the Regulations unless they satisfy the conditions set out in the small dwellings exemption.

5 Discrimination in Education

Introduction

- 5.1 This Chapter describes how the Regulations apply to educational establishments.
- 5.2 Schools, colleges and universities cannot discriminate against pupils/students on grounds of sexual orientation. All schools including special schools, grant aided, and independent schools are covered by the Regulations.
- 5.3 The Employment Equality (Sexual Orientation) Regulations (NI) 2003 make it unlawful for employers and others to discriminate on grounds of sexual orientation in the areas of employment and vocational training. This includes institutions of further and higher education, which incorporates universities and colleges. The 2006 Regulations extend protection to cover a broader range of educational situations.
- 5.4 It is recommended that schools make every effort to ensure that gay, lesbian or bisexual pupils or children of gay, lesbian or bisexual people, or same-sex couples are not treated less favourably than other pupils or singled out for different treatment. To do this all policies and practices should be checked to ensure they do not treat pupils less favourably on grounds of sexual orientation, contrary to the Regulations. Schools will need to ensure that homophobic bullying is taken seriously and dealt with as firmly as bullying on any other grounds.

Teaching and the curriculum

- 5.5 It was made clear in the Judicial Review² that the Regulations do not apply to the school curriculum.

² A copy of the Judicial Review judgement (reference WEAC5888) is available from <http://www.courtsni.gov.uk>.

In the Northern Ireland Curriculum³ (revised 2007), Relationships and Sexuality (RSE) are covered in the area of Personal Development and Mutual Understanding at primary level and Learning for Life and Work at post primary level.

- 5.6 The Department of Education's 'Relationships and Sexuality Education' guidance⁴ advises that RSE 'should be taught in a sensitive manner which is in harmony with the ethos of the school and in conformity with the moral and religious principles held by parents and school management authorities'. The Department of Education proposes to issue a new guidance circular on RSE in the near future. For further information see the Department's website⁵.
- 5.7 If schools continue to adhere to this guidance, dealing sensitively and appropriately with issues around sexuality, then they should not be in breach of the Regulations.
- 5.8 It was also made clear in the Judicial Review that 'articulating the orthodox religious view on homosexuality in the classroom does not relate to access, a benefit or a detriment' under the Regulations. However if a school conveyed its belief in a way that involved haranguing, bullying or berating a particular pupil or group of pupils then this would be unacceptable and might constitute unlawful discrimination under these Regulations.

³Information on the Revised Curriculum and Personal Development and Mutual Understanding and Learning for Life and work is available at www.nicurriculum.org.uk

⁴Relationships and Sexuality Education, Department of Education, Circular Number 2001/15 (August 2001) available at www.deni.gov.uk

⁵Department of Education's web site: www.deni.gov.uk

Discrimination by bodies in charge of educational establishments

Admissions

5.9 It is unlawful for the 'responsible body' of an educational establishment to discriminate (either directly, indirectly or by victimisation) against a pupil on grounds of sexual orientation:

- as regards the terms of admission to the establishment, or
- by refusing or deliberately omitting to accept an application for admission to the establishment.

Example 27

As part of the admission process to a local primary school, parents and prospective pupils are invited to attend an open morning. After attending the open morning, written applications are then submitted to the school for places. At the open morning it becomes evident that a same-sex couple, who are hoping to enrol their child at the school, are being ignored and not given the same treatment as other parents. Their subsequent application to the school for a place is rejected due to their perceived sexual orientation.

Under the Regulations, it is unlawful to treat a pupil's application for admission less favourably on grounds of sexual orientation. In the above case, the prospective pupil is being less favourably treated because of their parent's sexual orientation. This is likely to amount to discrimination under the Regulations.

5.10 Should a parent or carer of a child believe they have been discriminated against on grounds of sexual orientation in obtaining a place at a school, they should contact the relevant Education and Library Board (or Education Skills Authority⁶ from 2009) to obtain information on the appeals procedures in operation.

⁶ At the time of publication (September 2008) it is anticipated that the Education Skills Authority (ESA) will take over responsibility from the Education and Library Board.

5.11 Under the Regulations, the parent or carer or child can also, or alternatively, seek redress through the County Court in relation to any discrimination by an educational body. For details on how an individual can make a complaint, please see Chapter 12 'How complaints of discrimination are made'. However complaints relating to education in the public sector must first be referred to the Department of Education for Northern Ireland.

Discrimination against existing pupils/students

5.12 Where the individual is already a pupil or student in the establishment, it is unlawful to discriminate (either directly, indirectly or by victimisation) on grounds of sexual orientation in:

- the way that it affords them access to any benefits (facilities, services) or by refusing or deliberately omitting to afford such access. For example, the chance to be a prefect or the opportunity to take part in a school trip, or making a pupil who is gay or perceived as gay change separately;
- by excluding such a pupil or student from the establishment or subjecting them to any other detriment. It is recommended that schools check that their disciplinary policies and procedures do not unlawfully differentiate on grounds of sexual orientation.

Example 28

Jane is a pupil at the local all girls secondary school. A student has discovered through her own parents that a fellow student's mother is perceived as being a lesbian. Lately Jane has been the subject of gossip and hostile comments from this pupil at school concerning her parents, who, it has emerged, are a same-sex couple. Despite raising the matter with the school, Jane's complaint about the pupils' behaviour is ignored. As a result of the behaviour, and the school's refusal to deal with the problem when brought to their attention, Jane's mother has been forced to remove her from the school.

The school's liability under the Regulations arises when they ignore complaints on grounds of sexual orientation and not other discrimination complaints.

What is meant by the term ‘pupil’ under the Regulations?

5.13 For the purposes of these Regulations, a ‘pupil’ includes any person (of any age) who receives an education at an establishment (detailed below) to which the Regulations apply.

What is an ‘establishment’ and corresponding ‘responsible body’?

5.14 The categories of educational establishment (*and corresponding responsible bodies*) to which the requirements described in this section apply are listed below:

- (a) education establishments which are grant aided (*Education and Library Boards (Education and Skills Authority from 2009) or managers or governors, according to which of these has the function in question*).

Grant-aided schools include special schools and mainstream schools, such as controlled schools, controlled integrated schools, voluntary (maintained schools), voluntary grammar schools, grant-maintained integrated and Irish medium schools.

- (b) Independent schools (*proprietors*).

Independent schools which are funded totally by fees paid by parents and sometimes charitable trust funds. There are very few independent schools in Northern Ireland;

- (c) universities (*governing bodies*);
- (d) an establishment providing further education in respect of which grants are paid under Further Education (Northern Ireland) Order 1997 (*governing bodies*).

This category includes colleges/institutes of further and higher education;

- (e) colleges of education – maintained in pursuance of arrangements made by the Department of Education under the Education and Libraries (NI) Order 1986 (in respect of which grants are paid by the Department of Education (*a, the Department of Education, and b, the Managers*)).

This includes institutions providing teacher training.

Other discrimination by Education and Library Boards and the Council for Catholic Maintained Schools

5

5.15 It is unlawful for the following bodies to discriminate on grounds of sexual orientation:

- an Education and Library Board in the performance of those of its functions under the Northern Ireland Education Orders which do not fall within the scope of the provisions as described in the above paragraphs. Examples of these functions in the case of education and library boards are the award of discretionary grants and the provision of facilities for social and physical recreation; and
- the Council for Catholic Maintained Schools in the performance of those of its functions under the Education Orders.

Harassment and bullying

5.16 The 2003 Regulations which cover institutions of further and higher education prohibit harassment on grounds of sexual orientation against employees and office holders. Institutions of further and higher education may also be liable for the discriminatory conduct of their employees towards lesbian, gay and bisexual students. For further information, see the employment guide 'Sexual Orientation

Discrimination in Northern Ireland, The Law and Good Practice’ (www.equalityni.org).

- 5
- 5.17 The Education and Libraries (Northern Ireland) Order 2003 places specific duties on Boards of Governors of grant aided schools to ‘safeguard and promote the welfare of registered pupils at all times when the pupils are at school or in the control or charge of a member of school staff; to determine the measures to be taken to protect pupils from abuse; and to consult with pupils and parents before making any changes to the disciplinary policy and before determining measures to encourage good behaviour and to prevent bullying’.
- 5.18 As set out in Chapter 10 ‘Good practice guide for service providers and educational establishments’, it is recommended that all education establishments and responsible bodies adopt anti-discrimination policies, practices and procedures and put them into effective practice to minimise the risk of sexual orientation discrimination.

General duty in the public sector of education

- 5.19 Without prejudice to complying with other provisions in the Regulations, a general duty is imposed upon certain responsible bodies for education establishments to ensure that facilities for education provided by them, and any ancillary benefits and services, are provided without discrimination on the grounds of sexual orientation.

This general duty applies to:

- an Education and Library Board (Education and Skills Authority from 2009); and
- managers or governing bodies of education establishments that are grant-aided, governing bodies of establishments providing further and higher education, and managers of colleges of education.

Enforcement of general duty by directions

5.20 To enforce the general duty, the Department of Education has powers to give directions (as conferred on it by Article 101 of the Education and Libraries (Northern Ireland) Order 1986) to Education and Library Boards, managers, and governing bodies of educational establishments to comply with the Regulations. These powers are also available to the Department to deal with discrimination by educational establishments under the provisions described above.

The general duty, described above, is only enforceable by directions from the Department of Education.

6 Public authority functions

6.1 This Chapter looks at the implications of the Regulations on public authorities when carrying out their public functions.

Functions of a public authority

6.2 The Regulations make it unlawful for a public authority, in carrying out its functions (activities), to discriminate on grounds of sexual orientation. This covers activities that are not otherwise caught by the goods, facilities and services provisions of the Regulations, see Chapter 3 'Goods, facilities and services'.

6.3 The functions (activities) covered by the Regulations consist of:

- providing any form of social security;
- healthcare;
- any form of social protection; or
- any form of social advantage.

What public authorities are covered by the Regulations?

6.4 The public authority function provisions of the Regulations only apply where the treatment is not covered by any other part of the Regulations. In this sense, they are **'residual' provisions**.

6.5 This means that the Regulations will extend to most activities in the public sector, including decisions of ministers and work of local councils, government departments and agencies, the NI Housing Executive, and health and social care organisations, and certain police functions. The above list is for illustrative purpose and is not an exhaustive list of all the public authorities falling under the Regulations.

- 6.6 Exceptions to the public authority provisions are detailed at the end of this Chapter.
- 6.7 The term ‘public authority’ includes any person whose functions are of a public nature, including where the functions are being undertaken by a private or voluntary body on a public authority’s behalf. However if the nature of the act is private, they are not covered. For instance, a private security company will be covered in respect of its functions relating to that of a public authority, but will not be covered in respect of anything it carries out in a private company, such as provision of security in shops or banks.

What is a ‘function’ and is it covered by the Regulations?

- 6.8 ‘Function’ is the term used to describe the activities of public authorities, and includes a public authority’s powers and duties. All activities of a public authority are functions, including activities such as budgeting decisions, procurement, or decisions of who is entitled to the payment of state benefits.
- 6.9 Public authorities must ensure that all their functions are provided in such a way that no one is disadvantaged on grounds of their sexual orientation (actual or perceived). They will need to ensure that their employees or agents carrying out work for the authority do not discriminate on grounds of sexual orientation. This will mean that providers of publicly funded functions, such as health care, or housing services, when providing their services need to ensure that lesbian, gay, bisexual, or heterosexual people are not treated any differently in accessing those services.

Example 29

A gay man has been a patient at his local doctor’s surgery since he moved into the area ten years ago. He recently has ‘come out’ and this is common knowledge in the local community. Subsequently he has

received a letter from the surgery stating that he has been struck off their patients' list. No explanation is given to him as to why this has happened, nor have any friends who are heterosexual received such correspondence. He can only assume that this has happened as a result of 'coming out'.

Under the Regulations this is likely to constitute discrimination on grounds of sexual orientation, as the gay man is being treated differently than other patients in the surgery and being denied access to a public service.

Public authorities as employers

6.10 Public authorities are also employers who have responsibility in relation to the actions of their employees. Employers have responsibility for any unlawful discriminatory acts of their employees carried out in the course of their employment, whether or not they knew of the discriminatory acts or approved of them.

6.11 Employers must take such steps as are reasonably practicable to prevent employees discriminating. Chapter 10 'Promoting good practice for service providers and educational establishments' sets out good practice measures that can be adopted by service providers, including public authorities. These measures will help service providers to comply with their duties under the Regulations and prevent employees from discriminating against customers/clients/users on grounds of sexual orientation.

Section 75 duties

6.12 Public authorities, including government departments, health boards and trusts, local councils, and institutions of further and higher education, who are designated under Section 75 of the Northern Ireland Act 1998, are already under a duty, when carrying out their functions in relation to Northern Ireland, to have due regard to the need to promote equality of opportunity between persons of different sexual orientation.

6.13 The provisions within the Regulations, which apply to providers of goods, facilities and services (as described in Chapter 3), are different from the duty under Section 75, in that they grant individual rights to people who have been unlawfully discriminated against on the grounds of sexual orientation. For further information on Section 75 see the Equality Commission's publication, 'Section 75 of the Northern Ireland Act 1998: Guide to Statutory Duties' (2005), available on the Equality Commission's website www.equalityni.org or contact our enquiry line on 028 90 890 890.

Procurement

6.14 Public authorities enter into a large numbers of contracts with voluntary and private organisations for goods, works, services and staff. As procurement is a function of public authorities, the Equality Commission, in conjunction with the Central Procurement Directorate of the Department of Finance and Personnel, has developed separate guidance on procurement which sets out how public authorities can build on good practice and capture opportunities, learning and experience to date. For further information please refer to the publication, 'Equality of Opportunity and Sustainable Development in Public Sector Procurement' (2008), which is available on the Equality Commission's website www.equalityni.org.

Interaction with the goods, facilities and services provisions

6.15 Whether or not an activity performed by a public body is a service to the public or a function for the purposes of the Regulations, will depend on the circumstances of the case. Many of the activities of a public authority will amount to the provision of goods, facilities and services to the public, such as the provision of library or leisure services, or access to information provided by the authority. In those circumstances, the activities will be covered by the Regulations relating to the provision of services to the public and are explained in Chapter 3 'Goods, facilities and services'.

6.16 Those activities which are covered by the public authority provisions, will be activities which can only be carried out by public authorities, and which are not similar in kind to the services that can be performed by private persons. An example of this activity would be the carrying out of law enforcement functions. Often, an authority will be acting in discharge of a statutory power or duty when performing such a function.

Exceptions to the public authority provisions

6.17 The Regulations do allow certain public authorities in carrying out their functions to treat individuals differently on grounds of sexual orientation.

The following public bodies and functions **are exempt from** the Regulations:

- all activities of either Houses of Parliament, or a person exercising functions in connection with proceedings in Parliament;
- all activities of the Northern Ireland Assembly, or a person exercising functions in connection with proceedings in the Assembly;
- the Security Service, the Secret Intelligence Service, the Government Communications Headquarters (GCHQ);
- any unit or part of a unit of any naval, military or air forces of the Crown which are required by the Secretary of State to assist the Government Headquarters in carrying out its functions.

6.18 The Regulations state that the public authority functions provisions do not apply to:

- judicial and legislative acts;
- any actions rendered unlawful by virtue of the provisions of the Employment Equality (Sexual Orientation) Regulations 2003; or
- decisions not to prosecute.

7 Organisations relating to religion or belief

7.1 This Chapter looks at how the Regulations apply to organisations relating to religion or belief.

Exception for religious organisations

7.2 The Regulations include an exemption relating to the activities of religious organisations.

7.3 Differences of treatment on grounds of sexual orientation are permitted for a wide range of organisations relating to religion or belief. The exception applies to an organisation and to persons acting on behalf of, or under the auspices of, an organisation which has the following purposes:

- to practice a religion or belief;
- to advance a religion or belief;
- to teach the practice or principles of a religion or belief;
- to enable persons of a religion or belief to engage in any activity or receive a benefit within the framework of that religion or belief.

The term ‘religious organisations’, therefore, includes ‘organised religions’, as well as a range of organisations relating to religion or belief.

7.4 Where the exemption applies, the Regulations allow for religious organisations to **lawfully restrict** on the grounds of sexual orientation:

- their membership;

- participation in the activities undertaken by the organisation or on its behalf or under its auspices;
- the provision of goods, facilities and services in the course of the organisation's activities, undertaken by the organisation or on its behalf or under its auspices; or
- the use or disposal of premises owned or controlled by the organisation.

Ministers of religion

7.5 A minister of religion or a person with a similar function in such an organisation (see definition below) may restrict on grounds of sexual orientation:

- participation in the activities carried on in the performance of his/her functions in connection with, or in respect of, a religious organisation; or
- the provision of goods, facilities, or services in the course of activities carried on in the performance of his/her functions in connection with, or in respect of, a religious organisation.

What is meant by minister of religion?

7.6 For the purposes of the legislation a “minister of religion” or “other person” is anyone who in a religious organisation:

- performs functions in connection with a religion or belief of an organisation; and
- holds an office or appointment in, or is accredited, approved or recognised.

When does the exception not apply?

7.7 Religious organisations and ministers of religion can only restrict activities and the provision of goods, facilities and services (as detailed above) if it is:

- necessary to comply with doctrine of the religious organisation; or
- so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

Complying with the doctrines of the organisation

7.8 Restrictions that would be lawful to impose on grounds of sexual orientation provided they are necessary to comply with the doctrine of the organisation, or so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers, could include:

- the decision by a minister of religion as to whom to administer religious rites (in the case of Christianity; baptism, marriage, Holy Communion, etc);
- who should attend prayer or theological study/support groups;
- who should be admitted to primarily religious residential (not commercial) accommodation/activities such as religious conference centres, retreats, faith based camps, and pilgrimages.

7.9 The Regulations also stipulate that the above exception for religious organisations **does not apply** to:

- organisations whose **sole or main purpose** is commercial (not that the particular activity is or is not commercial); or
- education establishments (see Chapter 5 'Discrimination in Education').

Commercial organisations

7.10 A commercial organisation is an organisation that has profit as a primary aim, rather than artistic value.

As stated above organisations whose sole or main purpose is commercial are not covered by the religious organisation exception in the Regulations. Even if the organisation markets itself as having a religious ethos, like other commercial organisations, it is required by the Regulations to offer and deliver services to the public on a non-discriminatory basis.

7.11 The Regulations further state that the **exception does not apply** where the religious organisation (such as faith based schools) contracts with a public authority to provide goods, facilities and services, or carries out public authority functions.

Delivering a service on behalf of the state

7.12 Agencies or other organisations that are providing services on behalf of public authorities, such as adoption agencies or nursing homes, will be required to comply with the Regulations.

Adoption agencies

7.13 Adoption agencies including health trusts and faith based agencies are covered by the Regulations. However, the Regulations will have no effect on the existing legal framework, or the criteria on which decisions are taken about placement of children with prospective adopters or foster carers.

7.14 In light of the Civil Partnership Act 2004 and the Regulations, a wide ranging review of adoption law and services is currently being carried out by the Department of Health, Social Services and Public Safety (DHSSPS) and new legislation dealing with these issues will follow accordingly.

Nursing homes

7.15 Nursing and residential homes can be run by the state or by organisations on behalf of the state. This could include religious organisations that run these enterprises on a commercial basis and, as a result, the religious exception would not apply.

Example 30

A gentleman, whose male partner has recently died, has now reached the age where it is not viable for him to continue living on his own and his family are looking at placing him in a residential care home. They have approached a number of homes and are in particular considering a home run by a local religious organisation. They are informed by the management that their male relative would be unable to have a place in the home, despite the fact that he meets all the required criteria. The home would have been aware that he was part of a same-sex couple and his family believe that he is not being offered a place on grounds of his sexual orientation.

As the home is being run by the religious organisation as a commercial venture and providing a service for the state, and receiving public funding, they are not covered by the religious organisation exception. The actions of the home are likely to be unlawful under the Regulations.

Use of religious organisation's premises

7.16 Many religious organisations provide halls to hire out for use by various community organisations, with a fee being levied. Examples of the type of use include play groups, sports clubs, leisure activities and friendship groups.

Any required restrictions on the hire of halls can only be imposed so as to avoid conflicting with the strongly held religious convictions of a significant number of the religions followers or in order to comply with the doctrines of the organisation.

8 Associations and private members clubs

8.1 This Chapter considers how the Regulations prohibit discrimination on grounds of sexual orientation by private members clubs and associations with 25 or more members in respect of their membership, associates, guests and prospective members and guests.

What is a private club?

8.2 A private club is an association of persons, whether incorporated or not, if:

- it has 25 or more members;
- admission to membership is regulated by its constitution (which may be in writing, but it does not have to be) and is so conducted that members do not constitute a section of the general public;
- it is not a trade organisation (such as a trade union, or professional organisation);
- it does not matter whether the club's activities are carried out for profit or not.

8.3 Private clubs and associations may include special interest clubs such as film clubs, golf clubs, bowling clubs, cricket clubs, political clubs and working men's clubs. Clubs which offer services to the general public, such as sports clubs, are also covered by the goods, facilities and services provisions of the Regulations.

Members of the public

8.4 A private club must run its affairs in such a way that its members do not constitute a section of the general public (otherwise the club is covered by the provisions relating to services to the public). This

means that private clubs must operate a policy of membership selection genuinely based on personal criteria. This could include applicants for membership being required to make a personal application, or being sponsored or nominated by other members on their good character and undergoing some form of selection process, such as voting by existing members.

What do the Regulations make unlawful?

8.5 The Regulations make it unlawful for a private club to discriminate against a potential or existing member, associate or guest on grounds of sexual orientation.

Application for membership

8.6 It is unlawful for a private club to discriminate on grounds of sexual orientation against a potential member:

- in the terms on which it is prepared to admit them to membership; or
- by refusing or deliberately omitting to accept their application for membership.

Terms of membership

8.7 A private club must not provide terms of membership to individuals on grounds of their sexual orientation (actual or perceived) which are less favourable than the terms offered to other individuals. These could include charging more for membership, or imposing extra conditions such as imposing times for use of facilities.

Example 31

A female member of a private health club has recently formed a civil partnership with her same-sex partner. As part of the terms of

membership, on marriage a partner can join the club at a reduced rate. The member's partner has not been offered this facility but has been asked to apply as a new member, with no discount offered.

This is differential treatment of the member and prospective new member on grounds of sexual orientation and is likely to be unlawful under the Regulations. Under the Civil Partnership Act 2004 same-sex couples are entitled to enjoy the same rights as married couples.

Refusal of membership

8.8 A private club cannot refuse (or deliberately not accept) an application for membership on grounds of sexual orientation (actual or perceived) which it offers to other people, even if they believe it will raise objections from current members.

Example 32

A private golf club, established to provide members with access to a private golf course, has as one of its membership criteria that individuals must possess a certain handicap.

A gay man, who holds this handicap has applied to join the club and has had his membership turned down. However, he has discovered that other applicants to the club with higher handicaps than required by the membership application have been admitted. He believes that he has not been admitted to the club due to his sexual orientation.

It is likely to be unlawful for the private club to exclude the gay man as a prospective member on grounds of his sexual orientation or to offer him terms of membership different from other members such as he is unable to invite his same-sex partner to attend club events.

Example 33

A female candidate who is a lesbian has applied to join a private club and they insist on interviewing her partner.

If the same-sex partner is interviewed and the female candidate is refused entry this could be direct discrimination on grounds of sexual orientation.

If the female candidate preferred not to allow her same-sex partner to be interviewed, and her application is rejected, this is likely to amount to direct discrimination on grounds of sexual orientation if the club suspect she is a lesbian.

There could also potentially be a case of indirect discrimination as lesbian, gay and bisexual people are less willing to reveal that their partners are of the same sex. If the requirement to disclose details of their partners is considered by a court to place lesbians at a particular disadvantage, the club would have to objectively justify such a requirement.

Members of private clubs

8.9 It is unlawful for a private club to discriminate against a person on grounds of sexual orientation (actual or perceived) who is a member or associate of the private club to which the Regulations apply:

- in the way they afford them access to any benefits;
- by refusing or deliberately omitting to afford them access to club benefits;
- in the case of a member, by depriving them of membership;
- or varying the terms on which they are a member;
- in the case of an associate, by depriving them of their rights as an associate;
- varying those rights; or
- by subjecting them to any other detriment.

8.10 Club benefits could include facilities or services provided by the private club such as access to bars and restaurants on the club premises or use of any club facilities off site such as holiday homes.

8.11 An individual is an associate of a private club if, not being a member of it, they have under the constitution some or all of the rights enjoyed by members (or would have apart from the provision in the constitution which authorises the refusal of those rights). Associates are often referred to as partners.

Access to benefits

8.12 It is unlawful for a private club to discriminate against a member on grounds of sexual orientation by refusing them access to or deliberately omitting them access to benefits. Benefits could include, for example, parking facilities, hire of club facilities for private functions, or promotional opportunities.

Example 34

The local bowls club allows its premises to be hired out by members for parties and private functions. A male member of the club has formally requested to hire the club premises to hold a party to celebrate the 60th birthday of his partner. His request has been formally turned down with no explanation given. However other members have successfully hired the hall for family functions with no questions asked. He believes his request has been refused on grounds of sexual orientation and that his terms of membership are different from fellow members.

Varying terms and rights of members and associates

8.13 It is unlawful for private clubs to discriminate on grounds of sexual orientation against members and associates (whichever is applicable) by depriving them of membership or rights and varying those terms and rights.

Varying terms and rights could include fees, access to use of facilities, functions rooms, or equipment.

Other detriment

8.14 It is unlawful for a private club or association to discriminate against a person on grounds of sexual orientation by subjecting them to any other detriment, for example, verbal abuse or other behaviour which deprives them of the enjoyment of the club/association.

Guests and potential guests

8.15 It is unlawful under the Regulations for private clubs to discriminate against guests and potential guests on grounds of sexual orientation:

- in the way it affords them access to club benefits; or
- by refusing them access to benefits; or
- the terms on which they are prepared to invite them to be a guest; or
- by not permitting a member or associate to invite them to be a guest.

Exception to the above

8.16 The Regulations do not apply to any private club where the main object of that club is to enable the benefits of membership to be enjoyed by persons of a particular sexual orientation.

8.17 To determine whether a private club or association falls within this definition, the following will be taken into account:

- the essential character of the association; and
- the relevant circumstances, such as the extent to which the affairs of the association are so conducted that the persons primarily enjoying the benefits of membership are of a particular sexual orientation.

8.18 Clubs and associations that have been established to meet the needs of the gay, lesbian and bisexual community are allowed to restrict membership, and the benefits, facilities and services they provide to members. Examples of these organisations include health networks, mutual support groups, and lesbian, gay or bisexual sports/social clubs. Privacy and/or a safe and supportive peer environment constitute important benefits for membership of such associations.

Example 35

A club is established to enable gay and bisexual men to form friendships and provide mutual support. As the club is established for gay and bisexual men for social networking and support, it would fall under the exception described above.

9 Other unlawful provisions under the Regulations

- 9.1 This Chapter looks at a number of other unlawful provisions under the Regulations that afford protection to individuals on grounds of sexual orientation in respect of services and premises. These provisions also assist service providers (and those selling, letting or managing premises) to appreciate the extent of their responsibility under the Regulations.
- 9.2 The Chapter also deals with charities and the exception relating to conferring benefits on persons of a particular sexual orientation.

This chapter is divided into the two sections:

- other unlawful acts
- exceptions relating to charities and statutory authority.

Other unlawful acts

Discrimination after a relevant relationship has come to an end

- 9.3 The Regulations give protection from discrimination on grounds of sexual orientation to people in circumstances where a previous relationship existed. This could include customer relationships and those arising out of the management and disposal of premises (landlord/tenant).
- 9.4 It is unlawful to discriminate against someone after such a relationship has come to an end, where the discrimination arises out of and is closely connected to that relationship.

It should be noted that this also includes acts of discrimination that arise out of a 'relevant relationship' that ended prior to January 2007.

9.5 For the purposes of the Regulations, a ‘relevant relationship’ is a relationship, during which an unlawful act of discrimination on grounds of sexual orientation is carried out by one party (the relevant party) against another in the relationship.

Example 36

A bisexual male’s membership of a private health club has lapsed. On applying for renewal, he is informed that it has not been approved and he cannot use the facilities of the club. He believes that his application for renewal of membership is rejected due to his sexual orientation, as comments have been made to him by staff that other clients were not happy with him using the club.

This could amount to sexual orientation discrimination as he is being less favourably treated on the grounds of sexual orientation.

Example 37

A lesbian is currently in the process of obtaining a flat to rent. Her prospective landlord has asked for a reference from a previous landlord. Despite the fact she always paid her rent on time and caused no damage to the property, a reference is refused. Other previous tenants have been supplied with references.

The female believes that this less favourable treatment is because she is a lesbian and the previous landlord had often made comments to other tenants about her.

Discriminatory practices

9.6 The Regulations make it unlawful for a person to apply or operate a discriminatory practice.

The provisions of the Regulations which make indirect discrimination unlawful (see Chapter 2 ‘Explaining the law’) are complemented by the provision which deals with discriminatory practices.

- 9.7 A discriminatory practice is where a provision, criterion, or practice, or requirement or condition, is applied which results or is likely to result in unlawful indirect discrimination (as outlined in Chapter 2 'Explaining the law') if applied to persons of a particular sexual orientation, but for the fact that there is not an individual victim of the practice in question.
- 9.8 Application of the above criteria may be so effective a deterrent to individuals of a particular sexual orientation that it prevents them from applying.
- 9.9 An individual acts in contravention of the Regulations if:
- they apply a discriminatory practice; or
 - operate a practice or other arrangements which in any circumstances would call for the application by them of a discriminatory practice.
- 9.10 Enforcement of discriminatory practices can only be brought by the Equality Commission through its powers of formal investigations, and non-discrimination notices, as detailed in Chapter 11 'Role of the Equality Commission'.

Discriminatory advertisements

- 9.11 The Regulations make it unlawful for a person to publish, or cause to be published, an advertisement for goods, facilities or services, and premises that can reasonably be understood to indicate an intention to do an act which is, or might be, unlawful sexual orientation discrimination.
- 9.12 However, advertisements that are published (or placed for publication) that are not covered by the Regulations include:
- a club/organisation primarily established to benefit members of the gay, lesbian or bisexual community;

- a charity which provides benefits and restricts benefits to members of a particular sexual orientation (see definition of charity at the end of this Chapter); or
- any act done in pursuance of a statutory provision, or condition imposed by a government department/minister by virtue of the statutory provision (see definition at the end of this Chapter).

Example 38

A letting agency advertises a flat for rent, but explicitly states that no gay, lesbian or bisexual people should apply. This would contravene the Regulations which set out specific protection for individuals as detailed in Chapter 4 'Disposal, letting and managing of premises'.

9.13 The term advertisement is very wide and includes any publication or notification whether public or not. Examples of advertisements include newspaper advertisements, displays in estate agents' windows, cards in newsagents' windows, announcement on websites, e-mails and internal newsletters.

9.14 There will be cases where it is difficult for a publisher of advertisements to know whether or not a particular advertisement is unlawful. The advertisement might, for example, appear discriminatory, but the publisher may not know whether the discrimination in question would in fact be unlawful. If organisations such as newspapers, magazines, internet sites, publish an advertisement which is unlawful under the Regulations, they are not liable if they can prove that:

- the advertisement had been published in reliance on a statement from the person who placed it stating that the advert is allowed under the exceptions stated in paragraph 9.12,;
- it is reasonable for the publisher to rely on such a statement.

9.15 Any person who knowingly or recklessly makes a statement mentioned in paragraph 9.14, which is false or misleading, is committing a criminal offence.

Example 39

A travel agent places an advertisement in the local paper stating that their services are 'gay friendly'.

Under the Regulations, this type of advertising would be lawful. However if the travel agent's advert indicated that heterosexual clients would be refused access to their services, then this is likely to be unlawful under the Regulations.

9.16 Enforcement of the provisions can only be brought by the Equality Commission by formal investigations and non-discrimination notices, as detailed in Chapter 11 'Role of the Equality Commission'.

Instructions to commit unlawful acts

9.17 It is unlawful for a person involved in the provision of goods, facilities, services, education, the exercise of public functions, the management and disposal of land or premises, and private clubs:

- who has authority over another person (superior); or
- who has influence over another person;

to instruct that person to do an unlawful act of discrimination under the Regulations, or to procure or attempt to procure the doing of such an act by that person.

Example 40

A café owner instructs their staff not to provide services to any gay, lesbian or bisexual customers.

This is likely to be unlawful discrimination under the Regulations. Instructions alone can constitute unlawful sexual orientation discrimination.

Example 41

A hotel instructs its reception staff to offer only twin bedded rooms to two guests of the same-sex. In order to enforce this they state that staff will be disciplined if they fail to follow the instructions.

Instructions to carry out discriminatory actions are likely to be unlawful discrimination under the Regulations. If this policy is applied only to perceived lesbian, gay and bisexual couples, this is likely to be direct discrimination.

9.18 Enforcement of this provision can only be brought by the Equality Commission and is dealt with in Chapter 11 'Role of Equality Commission'. An individual who is denied the service could bring an individual complaint as detailed in Chapter 12 'How complaints of discrimination are made'.

Pressure to commit unlawful acts

9.19 It is unlawful for a person to pressurise, or induce or attempt to induce another individual to do an act which is unlawful under the Regulations. Bringing pressure on an individual includes:

- providing or offering any benefit; or
- to subject him or her to any other deterrent.

An inducement can be made directly to the person concerned, or made in such a way that he or she is likely to hear it.

Example 42

An individual selling their house through a local estate agent threatens that they will take their business elsewhere if any of the viewers sent to the house are from the gay community.

9.20 Pressure can amount to no more than persuasion and need not involve a benefit or loss. The discriminatory pressure or instruction is in itself unlawful, whether or not the person who was instructed or put under pressure goes on to commit an act of unlawful discrimination.

9.21 Enforcement of this provision can only be brought by the Equality Commission and is dealt with in Chapter 11 'Role of Equality Commission'. Individuals who are pressurised can also bring an individual complaint of discrimination as detailed in Chapter 12 'How complaints of discrimination are made'.

Aiding unlawful acts

9.22 A person who knowingly aids another person to carry out an act of discrimination or victimisation under the Regulations shall be treated as if they themselves had carried out the unlawful act.

Example 43

A bar owner instructs an employee not to serve a group of lesbians who are presently in the pub. The employee knows that this is likely to be against the law, but feels compelled to comply with the instruction. When the individuals who are lesbian approach the bar and request drinks they are refused.

Under the Regulations, it is likely that the bar owner is acting unlawfully, and the employee may also be liable for knowingly aiding the owner's unlawful act.

9.23 A person **does not** knowingly aid someone else to do something unlawful if:

- they act in reliance on a statement made to them by another person, that the act would not be unlawful and that by reason of any of the provisions of the Regulations, the act which he/she aids is not unlawful; and
- it is reasonable to rely on the statement.

Example 44

The owners of a small restaurant inform their staff that the provisions of the sexual orientation Regulations on goods, facilities and services do not apply to small businesses such as themselves. The owners know this is not legally correct, but continue to instruct their staff to refuse to serve any customers that are gay and holding hands.

Under the Regulations the restaurant owners are acting unlawfully. However it is unlikely that the staff will be liable for knowingly aiding an unlawful act, provided they relied on a statement made by the owners and it was reasonable for them to rely on it.

9.24 A person who knowingly or recklessly makes such a statement which is false or misleading in order to secure someone else's assistance, is committing a criminal offence.

Liability of employers

9.25 Employers are liable for the actions of employees carried out in the course of their employment (often referred to as 'vicarious liability') whether the act was done with or without the employer's knowledge or approval. A service provider (and a person selling, letting or managing premises) may also be an employer. If the employer is liable for the act of an employee in this way, the employee might also be treated as having knowingly aided the employer to do the act (see Aiding unlawful acts).

Defence of employer's liability

1. Employees

9.26 If a claim under the Regulations is made against the employer based on the actions of an employee, it is a defence that the employer took such steps as were **reasonably practicable** to prevent the employee from doing that act in breach of the Regulations, or doing such an act in the course of their employment.

9.27 All staff should be made aware that it is unlawful to discriminate against individuals on grounds of sexual orientation. For more information on good practice in this area, see Chapter 10 'Promoting good practice for service providers and educational establishments'

Example 45

A gay student at a university is being refused access to housing accommodation. Unknown to his employer, the housing officer has refused to house the student as he believes that the other students in the accommodation would not be happy with a gay student sharing with them. The student is entitled to be considered for housing along with all other students. Advice from the university states that all students should be treated in a fair and consistent manner and that only defined criteria outlined by the university is used to allocate accommodation.

The university will be liable for the actions of the housing officer unless it can show it took all reasonably practicable steps to prevent him acting in this way.

It is unlikely that the university could rely on the fact that they have issued policies to staff. However, additional steps could include issuing clear instructions to its staff about their obligations under the legislation, having appropriate policies and procedures in place and effectively communicating them through, for example, sexual orientation awareness training. The university should also ensure that any complaints are dealt with effectively and appropriately and disciplinary action is taken against the housing officer in relation to any discriminatory conduct.

Ultimately it would be for the courts to decide what reasonably practicable steps the university should have taken.

2. Agents

9.28 Service providers (and those selling, letting or managing premises) are also liable for anything done by their agents, if done with their authority. The authority may be expressed or implied and may have been given before or after the act in question. The agent may also be taken to have aided the service provider (or those selling, letting or managing premises) to have committed an unlawful act.

Validity and revision of contracts

9.29 Any term in a contract agreement is void (unable to be enforced by the law) where:

- its inclusion makes the contract unlawful under the Regulations;
- it is included to further an act which is unlawful under these Regulations; or
- it provides for such a contravention.

Example 46

A DIY store has a contractual arrangement with a building company that provides a fitting service for kitchens and bathrooms bought at that store. The contract has a clause that requires the store to refuse to offer the builder's services to gay customers. This would be an unlawful requirement and the term of that contract would be invalid.

Exceptions to the Regulations

Charities

9.30 There is an exception for charities in that they may lawfully provide benefits only to persons of a particular sexual orientation, if acting in

the pursuance of a charitable instrument (as defined under legislation in Northern Ireland), and if the restriction is imposed by reason of, or on the grounds of, the charitable instrument.

9.31 Examples of such charities may include:

- a helpline for lesbian, gay, or bisexual young people with mental health issues;
- a charity supporting victims of homophobic hate crimes; or
- a charity campaigning for equal treatment for lesbian, gay and bisexual people.

9.32 However if the charity's objectives are not specifically designed to benefit persons of a particular sexual orientation, then the charity cannot discriminate on grounds of sexual orientation. For example, a charity which aims to help homeless people cannot refuse to provide a bed for the night to a man on grounds that he is gay or perceived as being gay.

Statutory authority and national security

9.33 A service provider (or person letting or managing premises) is not required to do anything under the Regulations that will result in a breach of legal obligations under any other legislation or enactment. Acts done for the purpose of safeguarding national security, protecting public safety or public order, provided justified for that purpose, are exempt under the Regulations.

10 Promoting good practice for service providers and educational establishments

Introduction

- 10.1 This Chapter sets out guidance on good practice measures that can be adopted by service providers in order to be more inclusive and to ensure that employees, customers, clients, tenants, etc, are not discriminated against on grounds of sexual orientation, or indeed on any of the grounds protected under equality legislation.
- 10.2 The Chapter also sets out good practice for educational establishments in adopting anti-discrimination policies, practices and procedures in order to minimise the risk of sexual orientation discrimination.

Service providers

Business case

- 10.3 The Regulations make it clear that organisations have specific duties and responsibilities in relation to the provision of services to members of the gay, lesbian, bisexual and heterosexual communities. Good practice measures, as outlined in this guidance will help service providers develop an environment in which employees, customers/clients, etc. understand in clear terms what behaviour is and is not acceptable and that appropriate disciplinary action will be taken against those who act in a discriminatory manner.
- 10.4 The guidance will also assist service providers to build an environment in which customers/clients can raise complaints of discrimination.
- 10.5 There is a sound business case for adopting good practice measures. They will enhance the image of the business as a

proactive equality organisation in the eyes of clients and customers; increase the reputation of the organisation, resulting in business benefits, such as increased profits, improved general performance, reduced staff turnover and encourage more individuals to seek employment in the organisation.

- 10.6 In contrast, failure to promote practices encouraging equality of opportunity can have serious repercussions for organisations. These could include expensive and time-consuming litigation, and adverse publicity.

Vicarious liability

- 10.7 Service providers, housing and accommodation organisations, public bodies, and education establishments must also remember that they may have responsibilities as employers. An employer is liable for any act of discrimination carried out by employees in the course of their employment, even if the act is carried out without the employer's knowledge or consent. If proceedings are brought under these Regulations, it is a defence for employers to show that they have taken all reasonably practical steps to prevent an employee from carrying out acts of sexual orientation discrimination. It is not a defence for the service provider simply to show that the action took place without its knowledge or approval.

Public bodies

- 10.8 Public authorities, which include housing providers, government departments, councils, etc., have a duty under Section 75 of the Northern Ireland Act 1998, when carrying out their functions, to have due regard to the need to promote equality of opportunity between persons of different sexual orientation. Further information on this duty is available from the Equality Commission's website www.equalityni.org or the enquiry line on 028 90 890 890.

Good practice measures

10.9 Service providers are more likely to comply with their legal duties under the Regulations, prevent employees from discriminating against customers and to minimise the risk of legal action being taken against them if they implement the following steps:

- inform all staff that it is unlawful to discriminate against individuals on grounds of sexual orientation;
- establish policies, practices and procedures on the provision of service to customers;
- consult on service policies with lesbian, gay and bisexual representative groups;
- communicate all relevant policies to staff;
- provide regular training and guidance on sexual orientation awareness and service policies for all staff, including those not providing a direct service to the public;
- address acts of sexual orientation discrimination by staff as part of disciplinary rules;
- have a customer complaints procedure;
- monitor the implementation and effectiveness of such a policy;
- regularly review whether services are accessible and act on any findings.

10.10 It is important to stress that adopting good practice measures is not simply about avoiding discrimination. The measures outlined below are designed to help service providers **adopt a proactive rather than reactive approach to unlawful discrimination** on the grounds of sexual orientation in the provision of goods, facilities and services.

Good practice measures for staff

Develop inclusive policies, practices and procedures in the provision of services

- 10.11 All organisations need to look at how they currently provide their services and to see if any changes are required in light of the Regulations. Any new policies or practices that are about to be introduced should be scrutinised to ensure that they do not unlawfully discriminate on grounds of sexual orientation.
- 10.12 It is recommended that clear and comprehensive policies in relation to the provision of services to the public should be established ensuring that they include reference to discrimination on the grounds of sexual orientation.
- 10.13 Any policy developed should try and set out, both for those in the organisation and those outside the organisation, in clear terms the organisation's commitment to promoting sexual orientation equality and making it clear that discrimination on grounds of sexual orientation is unlawful and will not be tolerated.
- 10.14 The Equality Commission recommends that any policy developed includes reference to discrimination in the provision of services on grounds of race, religious belief/political opinion, gender, sexual orientation and disability. It should be noted that age discrimination legislation only relates to employment. However public authorities are covered by their Section 75 duties in relation to age.
- 10.15 The Equality Commission has developed a **Model Equal Opportunities Policy** that organisations may wish to use as a starting point. Please note that this policy has been developed for the use of employers. However, some organisations may wish to adapt it to apply more generally to customers or users/beneficiaries of their services. The same basic principles apply but organisations must take care to ensure that the wording of their policy is clear and accurate, and that they understand what they are committing to.

10.16 Organisations should implement a **Harassment and bullying policy and procedure**. They should have a clear, comprehensive, effective and accessible harassment and bullying policy and procedure which covers complaints on grounds of sexual orientation.

All service providers who are employers should promote a good and harmonious working environment in which all employees, clients and customers are treated with dignity and respect irrespective of their sexual orientation.

As part of any harassment policy employees should be informed that they should not harass, that their behaviour does not cause offence and could not in any way be considered to be bullying or harassment, or otherwise unlawfully discriminate against other employees, colleagues, customers, clients, or service users on grounds of sexual orientation.

Consult on all policies, practices and procedures

10.17 It is good practice for all service providers to consult on service provision policies with appropriate consultees such as advice and support groups that represent the lesbian, gay, bisexual communities in Northern Ireland. Details of these groups are found in Chapter 13 'Further information and advice'. Consultation with these groups could include present services and areas for improvement.

Communicate all policies, practices and procedures

10.18 To create an inclusive culture it is vital that service providers effectively communicate all policies relating to provision of services to customers, to all employees, agency staff, contractors, tenants, users and clients.

10.19 This could be done, for example, through staff briefings, contracts of employment, staff handbooks, notice boards, circulars, written

notifications to individual employees, sexual orientation awareness training, induction training, customer service training, management training, training manual, etc.

10.20 Service providers should take all available opportunities, especially when recruiting new staff, tenants, and clients to ensure that their policy, practices and procedures on the provision of services, are widely known. All staff, dealing with the public, and including those not dealing with the public, should be informed that it is unlawful to discriminate against customers on grounds of sexual orientation in the provision of goods, facilities and services.

10.21 It is recommended that service providers' policies and procedures are accessible to all, particularly disabled customers and in respect of their language (particularly for those whose first language is not English).

Commitment from management

10.22 The successful implementation of good practice measures requires the commitment of management, particularly senior management. Management must by words and actions demonstrate their commitment to the eradication of unlawful sexual orientation discrimination in the provision of services, and fully integrating equality of opportunity into the workings of an organisation.

Provide training and guidance on all inclusive policies, practices and procedures

10.23 Since service providers are also employers they may be liable for the actions of their staff. Therefore it is important that they make sure that all employees, particularly those who have contact with the public, are aware of and receive training and guidance on:

- The Regulations, ensuring that employees understand their responsibilities under the Regulations, and other equality legislation;

- Company policies, procedures, and practices, such as their customer service provision policy, customer complaints procedure, equal opportunity policy and harassment policy.

10.24 It is recommended that all training and guidance is regular, relevant and up-to-date. By itself, training is not sufficient and will only be successful if it is backed up by appropriate policies and procedures and commitment from senior management in the organisation.

10.25 Training should not just cover employees. Organisations that are involved in providing services, or management and disposal of premises, or bodies in charge of education or public authorities may also need to provide training for service user representatives, tenants, contractors, agency workers, etc.

Address acts of sexual orientation discrimination by staff

10.26 Employers should check disciplinary rules and/or procedures to ensure that unlawful sexual orientation discrimination is regarded as misconduct and could lead to disciplinary proceedings. They should take appropriate disciplinary action in relation to employees who discriminate contrary to the Regulations.

Good practice guidance for customers

Service provision policy

10.27 The Commission recommends that service providers should establish a positive policy on the provision of services, ensuring that they include reference to discrimination on grounds of sexual orientation.

10.28 When a service provider is providing services to its customers, users or beneficiaries, it will have established a particular way of doing this. Its practices (including policies and procedures) may be

set out formally or may have become established informally or by custom. A service provider therefore might have a practice which perhaps unintentionally discriminates against individuals on grounds of sexual orientation, such as a hotel only renting double rooms to heterosexual couples.

- 10.29 In such a case, the service provider must change the practice so that it no longer exists or has this effect. This can range from instructing staff to abandon the practice and/or amending existing policies.
- 10.30 Any policy is only as good as the procedures and practices that support its enactment. Any policy requires clear and unambiguous procedures to ensure that individuals on grounds of sexual orientation have the same rights as all people in, for example, access to services, and in management and disposal of accommodation.
- 10.31 Depending on the size of the service provider, procedures will vary in size. A small organisation may only require short statements while larger organisations need to have more detailed documents.

Inform all customers of policies

- 10.32 Service providers should communicate all policies in relation to service provision and customer complaints. This can be done for example:
- for tenants or residents, through meetings, tenant handbooks, tenancy contracts, circulars, individual notification;
 - for clients, through booking procedures for use of facilities, notices, brochures, circulars, annual reports;
 - for customers, through notices, brochures, circulars, annual reports, information packs, advertising materials;
 - for everyone through the organisation website.

Customer complaints procedure

- 10.33 It is essential that service providers deal effectively promptly, seriously, sympathetically, and confidentially with all complaints of sexual orientation discrimination. By dealing with complaints in this way organisations are reinforcing the message to all employees, service users, tenants, their agents, customers, clients, that they consider any complaint of sexual orientation discrimination a serious matter.
- 10.34 Businesses should develop a customer complaints procedure, and ensure that any individuals who raise complaints of discrimination are not victimised because of their complaint.
- 10.35 It is strongly recommended that any complaints procedures are accessible to all customers, clients, tenants etc.

Monitor and review all policies, practices and procedures

- 10.36 It is recommended that service providers monitor and review the implementation of all policies and procedures in the area of sexual orientation.
- 10.37 Equality monitoring is the process of collecting, storing and analysing information that is relevant to, and necessary for, the purpose of promoting equality of opportunity between different categories of persons.
- 10.38 Monitoring enables an organisation to identify or keep under review the existence or absence of equality of opportunity or treatment between different categories of persons. The basic purpose is to highlight possible inequalities, help investigate why these might be occurring and whether action needs to be taken to remove any unfairness or disadvantage.

- 10.39 An appropriate equality monitoring strategy for service providers will provide data useful for developing and improving customer services in terms of accessibility and equality of services as well as helping to identify customer markets for service development. Monitoring your services to different segments of the public helps you better understand what people want from the services you provide.
- 10.40 It should also be stressed that in order to monitor sexual orientation effectively and use the results of monitoring to their full potential, service providers must work towards creating an environment in which individuals are not fearful of disclosing their sexual orientation or of raising issues relating to their sexual orientation.
- 10.41 Public authorities have obligations under Section 75 to monitor for adverse impact of services which they provide to the public. Proactively reviewing any practices and procedures and monitoring these services will assist authorities in projecting a positive image. Where any changes are identified as a result of a review they need to be incorporated into policies and consulted upon where appropriate. Any resultant modifications to procedures in relation to handling or dealing with customers should be communicated to all employees, contractors etc. by way of formal training or briefings.
- 10.42 For further information on monitoring and the process involved please refer to The Equality Commission's guidance for public authorities "Section 75 of the Northern Ireland Act 1998 Monitoring Guidance for Use by Public Authorities" (July 2007). This is available from the Commission's website www.equalityni.org.

Good practice guidance for educational establishments

10.43 All educational establishments should develop good practice measures to prevent sexual orientation discrimination along with other areas of discrimination.

10.44 They should ensure that all pupils, students, and employees understand what behaviour is and is not acceptable and how to deal with any complaints effectively.

10.45 Good practice measures could include:

1. **Develop and update existing policies and procedures**

- Update **anti-bullying policies** to cover all equality grounds including sexual orientation. Universities, colleges and schools should ensure that their policies address homophobic bullying, stipulating what behaviour is and is not acceptable particularly as regards the use of anti-homophobic language by pupils.
- Ensure that all **Equal opportunity and harassment policies** for staff cover all the equality grounds, including sexual orientation.

2. **Communicate all policies**

All anti-bullying and harassment policies should be effectively communicated to all staff, those working with the authority of the school, college or university, pupils, their parents, and guardians.

This can be done, for example:

- for staff, through school/college ethos statements, staff briefings, staff handbooks, notice boards, contracts of employment, circulars, training, etc;

- for parents, through circulars sent home or accompanying school reports, parents' evenings and school brochures;
- for pupils, for example, through school assemblies, pastoral care, education and citizenship lessons. Students could be informed of policies through prospectuses, advertising material, student information packs and college handbooks.

It is recommended that when recruiting new staff educational establishments' policies, practices and procedures are promoted widely so that everyone is aware of their duties and responsibilities.

3. Raise awareness

Raise awareness of what homophobic bullying is and how the school, college, or university will respond to any incidents. It is recommended schools, colleges and universities promote a culture of respect for different sexual orientations and respect for differences. Schools should make use of the curriculum opportunities in order to instil respect for others. They should ensure that effective reporting systems are in place to enable pupils/students to report incidents.

4. Deal effectively with complaints of sexual orientation

It is essential that any complaints are dealt with promptly, seriously, sympathetically, confidentially and effectively. By dealing with complaints in this way, educational institutions are reinforcing their message to all students, pupils, and employees, that they consider any complaints of sexual orientation discrimination a serious matter.

It is vital that all reasonable steps are taken to ensure that individuals who do raise complaints of sexual orientation discrimination are not victimised because of their complaints.

5. Assess and monitor nature of complaints

It is recommended that educational establishments should monitor and review the implementation of policies and procedures and complaints.

They should identify any sexual orientation complaints, and evidence of homophobic bullying and attitudes. This can be done through anonymous staff and pupil surveys, and evaluating any complaints raised. Action should be taken following any monitoring to develop an anti-homophobic culture.

6. Train teachers/staff

Educational Institutions are recommended to provide training and guidance for all employees to ensure that they understand their responsibilities under the Regulations. As part of training they should be made aware of the sensitive nature of sexual orientation complaints, the difficulties of lesbian, gay and bisexual pupils in raising complaints and fear of further victimisation and bullying.

10.46 The adoption of good practice measures in is not simply about avoiding sexual orientation discrimination. It allows educational establishments to be proactive rather than reactive in their approach to unlawful sexual orientation discrimination.

11 Role of the Equality Commission

11.1 The Equality Commission (the Commission) has been given certain powers under the Regulations, and has a duty to offer advice and assistance to individuals and service providers on the workings of the Regulations.

General powers and duties under the Regulations

11.2 Under the Regulations, the Commission has a duty to:

- work towards the elimination of discrimination on grounds of sexual orientation;
- promote equality of opportunity between persons of different sexual orientation; and
- keep under review the Regulations and, if it considers it necessary, to submit proposals for amending the Regulations.

Powers and duties relating to the Regulations

11.3 In particular the Commission may:

- undertake or assist (financial or otherwise) research or educational activities, including assistance to any organisation involved in the promotion of equality of opportunity between persons of different sexual orientation;
- issue Codes of Practice containing such practical guidance as the Commission thinks fit, and from time to time revise the whole or part of Codes of Practice issued under the Regulations;
- conduct formal investigations;
- assist or support individuals who believe they have been discriminated against on grounds of sexual orientation;
- provide help for persons in obtaining information.

Formal investigations

- 11.4 The Regulations give the Commission powers to conduct formal investigations, as it thinks fit, or be directed to do so by the Office of the First Minister and Deputy First Minister.
- 11.5 Without prejudice to its general power to do anything requisite for the performance of its duties, under the general duties and powers described above, the Commission may conduct a formal investigation for any purpose connected with the carrying out of those duties. Formal investigations may be into organisations or actions of individuals. For further information on the process involved in a formal investigation contact the Equality Commission.

Non-discrimination notices

- 11.6 The Regulations allow the Equality Commission to issue and enforce 'non-discrimination notices' on persons concerned.
- 11.7 These notices can be served by the Commission if they are satisfied that a contravention of the Regulations has occurred such as unlawful sexual orientation discrimination in:
- discriminatory practices;
 - discriminatory advertisements;
 - instructions to commit unlawful acts; or
 - pressure to commit unlawful acts.

Undertakings by persons contravening these Regulations

11.8 If the Commission is satisfied that an individual has contravened the Regulations by carrying out an unlawful act of sexual orientation discrimination, or has carried out a discriminatory practice, published a discriminatory advertisement, applied pressure or given instructions to discriminate, then they may seek an undertaking from the individual concerned that they will:

- refrain from doing certain acts as specified in the undertaking;
- introduce practices or arrangements as specified;
- change existing practices or arrangements as specified.

11.9 Undertakings will be in writing, specifying the terms agreed with the Commission, or those required by the Commission, and the time scale for introduction of changes. If it appears to the Commission that a person who has given an undertaking is failing to comply with it, then the Commission can apply to the County Court for a decision about failure to comply with the undertaking.

Education

11.10 It should be noted that if the above practices (discriminatory practice or advertising, or applied pressure or instructions to discriminate) apply in the area of education, the Department of Education has authority, as described in Chapter 5, to carry out any enforcement. If the Commission becomes aware of any acts contravening the Regulations in this area, it will contact the Department of Education.

12 How complaints of discrimination are made

12.1 This Chapter deals with the rights of individuals who believe that they have been discriminated against on grounds of sexual orientation. It highlights the process involved in making a complaint of discrimination and help and advice that is available from the Equality Commission.

Making a complaint

12.2 A person who believes that they have been discriminated against on grounds of sexual orientation by a service provider, or a person with responsibility for disposal or managing premises, or complaints in respect of education, public functions, private clubs, or where the relevant relationship has come to an end, may bring civil proceeding in the County Court. This is similar to other claims of tort for breach of statutory duty. Similar proceedings may also be brought against a person who has aided unlawful acts and employers who are liable for the actions of their employees (see Liability of employers, paragraph 9.25).

Time limits for lodging a complaint

12.3 There are specific time limits for lodging complaints of discrimination on grounds of sexual orientation under the Regulations.

12.4 Complaints to the County Court must be brought within **six months** of the date on which the act of discrimination took place.

12.5 Where a complaint relates to certain public sector education, there is a requirement to give **two months' notice** to the Department of Education and, in these circumstances, the County Court time limit is extended **from 6 to 8 months**.

Burden of proof

- 12.6 In proceedings relating to sexual orientation discrimination before a County Court, the claimant has to prove the facts of the case. Once the claimant has established a prima facie case, ie, proved less favourable treatment, the onus falls on the respondent who is alleged to have committed such acts of unlawful discrimination to prove that they did not.

Remedies

- 12.7 Where a County Court finds in favour of the claimant, it may award compensation for injury to feeling, whether or not it includes compensation under any other head.
- 12.8 As regards acts of unlawful sexual orientation discrimination falling within indirect discrimination as defined in Chapter 2 'Explaining the law', no award of damages can be made if the respondent proves that the requirement or condition, provision, criterion or practice was not applied with the intention of treating the claimant unfairly on the grounds of sexual orientation.

Jurisdiction of County Court

- 12.9 A County Court has jurisdiction to hear proceedings with respect to acts done on a ship, aircraft, or hovercraft, including an act committed outside Northern Ireland.
- 12.10 The Regulations, as applicable to the provision of goods, facilities and services, do not apply to services outside Northern Ireland, except when the refusal or omission occurs on a:
- ship registered at a port registry in Northern Ireland; and
 - aircraft or hovercraft registered in the United Kingdom and operated by a person who has their principal place of business or is ordinarily a resident in Northern Ireland.

12.11 The Regulations do not apply to facilities by way of banking or insurance or for grants, loans, credit or finance where facilities are **outside Northern Ireland**.

Appeals

12.12 There is a right of appeal to the Court of Appeal against a decision of a County Court. If leave is granted, a further appeal can be made to the House of Lords.

Equality Commission advice and assistance

12.13 The Commission provides advice and assistance to individuals and organisations responsible for the provision of goods, facilities and services, management and disposal of premises and the provision of education in schools.

12.14 The Commission provides practical guidance and information on the Regulations and free and confidential training and guidance on the Regulations.

12.15 Any service providers interested in training should contact the Commission's Promotion and Education Division, via the enquiry line, for further information.

Individual advice and assistance

12.16 Individuals who believe that they have that they have been discriminated against by service providers on grounds of sexual orientation should seek advice as soon as possible. Individuals can contact the Equality Commission for free and confidential advice (details available at the back of this guidance).

12.17 Individuals, for example, can obtain advice on their rights under the Regulations or on how to lodge a discrimination case with the County Court. The Commission can also give advice on the

questionnaire procedure. This allows aggrieved individuals to serve a questionnaire on a service provider, private club, landlord, or public authority, etc, about an alleged act of discrimination.

12.18 As part of the process of handling a complaint the Commission will issue to prospective claimants a 'Discrimination Complaint Pack' which will include information and advice on lodging a complaint.

12.19 The Commission may also attempt to settle disputes and, in certain circumstances, may provide legal representation to individuals who believe they have been discriminated against contrary to the Regulations.

Other bodies providing advice and assistance

12.20 There are also a variety of groups in Northern Ireland which provide advice, assistance and support to members of the gay, lesbian and bisexual community. Some of these groups are listed in Chapter 13 of this Guide.

13 Further information, advice & support

For further advice and information, the following organisations can be contacted. It should be noted that this is not an exhaustive list.

Equality Commission for Northern Ireland

7 – 9 Shaftesbury Square
Belfast
BT2 7DP

Enquiry line: 028 90 890 890 (all information & enquiries)
Telephone: 028 90 500 600 (switchboard)
Text phone: 028 90 500 589
Fax: 028 90 248 687
Email: information@equalityni.org
Website: www.equalityni.org

The Equality Commission provides a range of information and advisory services for employers, service providers, employees and the general public.

- Other useful publications available from the Commission include:
- Sexual Orientation Discrimination in Northern Ireland ‘The Law and Good Practice’
- Sexual Orientation Discrimination in Northern Ireland – A short guide
- Sexual Orientation Discrimination – Your Rights
- A Model Equal Opportunities Policy
- A Model Harassment Policy and Procedure

The Commission produces information and advisory materials covering many aspects of equality in Northern Ireland. Further information can be found on the Commission’s website www.equalityni.org, or contact the enquiry line.

Other statutory organisations

Listed below are a number of other statutory bodies and organisations that can provide information and services for the public

Labour Relations Agency

2 – 8 Gordon Street

Belfast

BT1 2LG

Telephone: 02890 321442

Textphone: 02890 238411

Fax: 02890 330827

Email: info@lra.org.uk

Website: www.lra.org.uk

Or at:

1 - 3 Guildhall Street

Derry

Co. Londonderry

BT48 6BJ

Telephone: 02871 269639

Fax: 02871 267729

Email: info@lra.org.uk

Northern Ireland Commissioner for Children and Young People (NICCY)

Millennium House

17–25 Great Victoria Street

Belfast

BT2 7BN

Telephone: 02890 311616

Email: info@niccy.org

Website: www.niccy.org

Northern Ireland Human Rights Commission

Temple Court
39 North Street
Belfast
BT1 1NA

Telephone: 02890 243987

Fax: 02890 247844

Email: info@nihrc.org

Website: www.nihrc.org

Employer Organisations & Trade Unions

Institute of Directors

4 Royal Avenue
Belfast
BT1 1DA

Telephone: 02890 232880

Fax: 02890 232881

Email: iod.northernireland@iod.com

Website: www.iod.com

The Local Government Staff Commission for Northern Ireland

Commission House
18 – 22 Gordon Street
Belfast
BT1 2LG

Telephone: 02890 313200

Fax: 02890 313151

Email: info@lgsc.org.uk

Website: www.lgsc.org.uk

Staff Commission for Education and Library Boards Northern Ireland

Forest view
Purdy's Lane
Belfast
BT8 7AR

Telephone: 02890 491461
Fax: 02890 491744
Email: info@staffcom.org.uk
Website: www.staffcom.org.uk

Northern Ireland Committee – Irish Congress of Trade Unions

4-7 Donegall Street
Belfast
BT1 2FN

Telephone: 02890 247940
Fax: 02890 246898
Email: info@ictuni.org
Website: ictuni.org

Advice & support groups

Listed below are a number support groups that are available for advice and assistance.

Coalition on Sexual Orientation (CoSo)

64 Donegall Street
Belfast
BT1 2GT

Telephone: 028 90 890 201
Fax: 028 90 278 654
Email: Admin/general enquiries: admin@coso.org.uk

CoSo aims to represent the Lesbian, Gay, Bisexual and Transsexual communities in Northern Ireland on issues around sexual orientation.

Outlined below are the groups which it represents. These groups can be

contacted directly for information and advice.

Cara Friend

Cathedral Buildings

64 Donegal Street

Belfast

BT1 2GT

Tel: 028 90 890 202

E-mail: admin@cara-friend.org.uk

Website: www.cara-friend.org.uk

Branches of Cara Friend

- **Belfast Lesbian Line**

Tel: 028 90 238 668

Confidential counselling line: 077949765275

(Thursday 7.30 – 10.00 pm)

E-mail: helpline@lesbianlinebelfast.org.uk

Website: www.lesbianlinebelfast.org.uk

- **Gay Helpline**

Tel: 028 90 322023)

(Monday, Tuesday & Wednesday 7.30pm – 10.00pm)

E-mail: helpline@gayhelplinebelfast.org.uk

Website: www.gayhelplinebelfast.org.uk

- **Gay & Lesbian Youth NI (GLYNI)**

Tel: c/o Cara Friend 028 90 890202

Group meets Mondays & Fridays

E-mail: help@glyni.org.uk

Website: www.glyni.org.uk

Other CoSo Groups

Belfast Butterfly Club

PO Box 210

Belfast

BT1 1BG

Website: www.belfastbutterflyclub.co.uk

Belfast Out Resource Centre

Cathedral Buildings

64 Donegal Street

Belfast

BT1 2GT

Belfast Pride

Cathedral Buildings

64 Donegal Street

Belfast

BT1 2GT

Tel: c/o Cara Friend 02890 890201

E-Mail: Feedback@belfastpride.com

Website: www.belfastpride.com

LGB Committee of Unison

C/o Pamela Dooley

York Street

Belfast

Tel: 02890 270190

E-mail: pdooley@unison.co.uk

Website: www.unison.org.uk

Northern Ireland Gay Rights Association

46 Malone Avenue

Belfast

BT9 6ER

Tel: 02890 665257 (24 hours)

Email: alainlongchamp@hotmail.com

Queerspace

64 Donegall Street

Belfast

BT1 2GT

Website: www.queerspace.org.uk

Traveller and Gay

Tel: 0781 5099583

Email: travellerandgay@aol.com

The Rainbow Project

2-8 Commercial Court

Belfast

BT1 2NB

Tel: 028 9031 9030

Website: www.rainbow-project.org

ShOut

The Shout Project

Youthnet

Premier Business Centre

5th Floor

20 Adelaide Street

Belfast

BT2 8GD

Tel: 028 90 331880

LGB Branch NUS/USI

Ceann Aras na Mac Leinn

Gratten Street

Dublin 2

Tel: 00353 1435 3400

Website: www.usi.ie/lgb.htm

Also available to contact are;

Lesbian Advocacy Services Initiative (LASI)

Tel: 028 27 641463
Mobile: 0044 7913382718
Email: info@lasonline.org
Website: www.lasonline.org

Other organisations available for advice include

Northern Ireland Association of Citizens Advice Bureau (NIACAB)

Regional Office
Donegall Pass
Belfast
BT7 1BS
Telephone: 028 9023 1120
Fax: 028 9023 6522
Email: info@citizensadvice.co.uk

Children's Law Centre

3rd Floor
Philip House
123-127 York Street
Belfast
BT1 51AB
Telephone: 028 9024 5704
Website: www.childrenslawcentre.org

NUS-USI

29 Bedford Street
Belfast
BT2 7EJ
Telephone: 082 9024 4641
Textphone: 028 9032 4878
Fax: 028 9043 9659
Email: info@nistudents.org
Website: www.nistudents.org

Great Britain organisations

Lesbian and Gay Employment Rights (LAGER)

Unit 1G
Leroy House
436 Essex Road
London
NI 3QP
Tel: 02077048066
Email: lager@dircom.com.uk
Website: www.lager.dircom.co.uk

Stonewall

46 Grosvenor Gardens
London
SW1 OBE
Tel: 020 7881 9440
Email: infor@stonewall.org.uk
Website: www.stonewall.org.uk

Stonewall (Scotland)

9 Howe Street
Edinburgh
EH3 6TE
Scotland
Tel: 0131 557 3679
Email: infor@stonewallscotland.org.uk
Website: www.stonewall.org.uk

Organisations in Ireland

The Equality Authority

2 Clonmel Street
Dublin 2 Ireland
Tel: 00 353 1 4173333
Business queries: 00 353 1 4173336
Textphone: 00 353 1 4173385
Fax: 00 353 1 4173331
Email: infor@equality.ie
Website: www.equalityni.org

How can we help?

The Equality Commission for Northern Ireland can give advice and information on The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 through telephone and textphone advice, booklets and leaflets or we can meet with you.

For further information, please contact us at:
Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Enquiry line: 028 90 890 890
Telephone: 028 90 500 600
Textphone: 028 90 500 589
Fax: 028 90 248 687
Email: information@equalityni.org
Website: www.equalityni.org

Equality Commission

FOR NORTHERN IRELAND