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

DRAFT STATUTORY INSTRUMENTS

2008 No. XXXX

SEX DISCRIMINATION

The Sex Discrimination (Amendment of Legislation) Regulations 2008

Made - - - - ***

Coming into force in accordance with Regulation 1(1).

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

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

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Sex Discrimination (Amendment of Legislation) Regulations 2008 and come into force on the fifth day after the day on which they are made, or on 6th April 2008, whichever is the later.

(2) Regulations 2(1) and 4 extend to Great Britain only.

(3) Regulations 1(7), 2(2) and 5 extend to Northern Ireland only.

(4) Regulation 3 extends to England and Wales only.

(5) The remainder of these Regulations extend to the whole of the United Kingdom.

(6) In these Regulations—

"the 1975 Act" means the Sex Discrimination Act 1975(**c**) and;

"the 1976 Order" means the Sex Discrimination (Northern Ireland) Order 1976(**d**).

(7) The Interpretation Act (Northern Ireland) 1954(**e**) shall apply to regulations 1(3), 2(2) and 5 and Schedule 2 as it applies to an Act of the Northern Ireland Assembly.

Amendment of the 1975 Act and the 1976 Order

2.—(1) The 1975 Act shall be amended in accordance with Schedule 1.

(**a**) 1972 c.68.
(**b**) S.I. 2007/2914.
(**c**) 1975 c.65.
(**d**) S.I. 1976/1042 (N.I.15)
(**e**) 1954 c.33 (N.I.)

(2) The 1976 Order shall be amended in accordance with Schedule 2.

Amendment of the Public Heath Act 1936

3. In subsection (3)(c) of section 87 of the Public Health Act 1936(**a**) (provision of public conveniences) omit ", other than urinals,".

Transitional provisions in respect of the 1975 Act

4.—(1) The amendment made by paragraph 17 of Schedule 1 (burden of proof) shall not apply in relation to proceedings where the act complained of took place before the date on which these Regulations come into force.

(2) The amendment made by paragraph 18 of Schedule 1 (time for answering questions from aggrieved persons) shall not apply in the case of a question served on a respondent before the date on which these Regulations come into force.

(3) Section 45(3)(a)(iv) of the 1975 Act, inserted by paragraph 13 of Schedule 1 (insurance) shall not apply to contracts entered into before 22nd December 2008.

Transitional provisions in respect of the 1976 Order

5.—(1) The amendment made by paragraph 17 of Schedule 2 (burden of proof) shall not apply in relation to proceedings where the act complained of took place before the date on which these Regulations come into force.

(2) The amendment made by paragraph 18 of Schedule 2 (time for answering questions from aggrieved persons) shall not apply in the case of a question served on a respondent before the date on which these Regulations come into force.

(3) Article 46(3)(a)(iv) of the 1976 Order, inserted by paragraph 13 of Schedule 2 (insurance), shall not apply to contracts entered into before 22 December 2008.

Signed by authority of the Lord Privy Seal

[Name to be inserted]
Parliamentary Secretary
Government Equalities Office

Date

SCHEDULE 1

Regulation 2(1)

Amendment of the 1975 Act

Indirect discrimination

1. In section 1(**b**) (direct and indirect discrimination against women), after subsection (3)(a) insert—

"(aa) sections 29 to 31, except in so far as they relate to an excluded matter,".

(**a**) 1936 c.49; section 87(3) was amended by the Local Government Act 1972 (c.70), section 180 and Schedule 14, paragraph 9(2).
(**b**) Section 1 was substituted by S.I. 2001/2660.

Discrimination on the grounds of gender reassignment

2. In section 2A(**a**) (discrimination on the grounds of gender reassignment), in subsection (1), after paragraph (a) insert—

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

Pregnancy and maternity

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

"3B Discrimination on the ground of pregnancy or maternity: goods, facilities, services or premises

(1) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if he treats her less favourably—

(a) on the ground of her pregnancy, or

(b) within the period of 26 weeks beginning on the day on which she gives birth, on the ground that she has given birth.

(2) A person (P) is taken to discriminate against a woman on the ground of her pregnancy if—

(a) P refuses to provide her with goods, facilities or services because P thinks that providing them would, because of her pregnancy, create a risk to her health or safety, or

(b) P provides or offers to provide them on conditions intended to remove or reduce such a risk because P thinks that provision of them without the conditions would create such a risk.

(3) Subsection (2) does not apply if—

(a) it is reasonable for P to think as mentioned in paragraph (a) or (b), and

(b) P applies an equivalent policy.

(4) An equivalent policy is—

(a) for the purposes of subsection (2)(a), refusing to provide the goods, facilities or services to persons with other physical conditions because P thinks that to do so would, because of such physical conditions, create a risk to the health or safety of such persons;

(b) for the purposes of subsection (2)(b), imposing conditions on the provision of goods, facilities or services to such persons which are intended to remove or reduce the risk to their health or safety because P thinks that the provision without the conditions would create such a risk.

(5) Subsection (1) applies to sections 29 to 31, except in so far as they relate to an excluded matter.".

(2) In section 5(**c**) (interpretation), subsection (1)(b), for "or 3A" substitute ", 3A or 3B".

Goods, facilities or services

4. In section 29 (discrimination in provision of goods, facilities or services)—

(a) after subsection (2) insert—

(**a**) Section 2A was inserted by S.I. 1999/1102.
(**b**) Section 3A was inserted by S.I. 2005/2467.
(**c**) Section 5(1)(b) was amended by S.I. 2005/2467.

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

(a) a woman who seeks to obtain or use those goods, facilities or services, or

(b) a woman to whom he provides those goods, facilities or services.";

(b) in subsection (4)(**a**) omit "to vocational training".

Premises

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

(a) after subsection (1) insert—

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

(b) after subsection (2) insert—

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

(c) after subsection (3) insert—

"(4) Subsections (1A) and (2A) apply in relation to an application for or occupation of premises except in so far as they relate to an excluded matter.".

Consent for assignment or sub-letting

6. In section 31 (discrimination: consent for assignment or sub-letting), subsection (1), for the words from "to discriminate" to the end substitute—

"(a) to discriminate against a woman by withholding the licence or consent for disposal of the premises to her, or

(b) in relation to such a licence or consent, to subject to harassment a woman to whom the disposal would be made if the licence or consent were given.".

Exception for voluntary bodies

7. In section 34 (exception for voluntary bodies), after subsection (4) insert—

"(5) Subsections (2) to (4) do not apply to discrimination under section 1 or 2A in its application to sections 29 to 31 unless the treatment mentioned in those subsections is—

(a) a proportionate means of achieving a legitimate aim, or

(b) for the purpose of preventing or compensating for a disadvantage linked to sex.".

Further exceptions from sections 29(1) and 30

8. In section 35(**b**) (further exceptions from sections 29(1) and 30)—

(a) in subsection (1) omit paragraphs (a) to (c) and insert "any of the conditions in subsections (1A) to (1C) is satisfied.",

(b) after subsection (1) insert—

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

(a) a hospital, or

(b) any other establishment for persons requiring special care, supervision or attention.

(**a**) Section 29(4) was inserted by S.I. 1999/1102.
(**b**) Section 35(1) was amended by the Social Security Act 1980 (c.30), section 20, Schedule 4, paragraph 11.

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

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

(a) the facilities or services are such, or those persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or

(b) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.".

(c) after subsection (2) insert—

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

(d) in subsection (3)(**a**), after "discrimination" (in each place where it occurs), insert "or harassment".

Excluded matters

9.—(1) After section 35 (further exceptions from sections 29(1) and 30) insert–

"35ZA Excluded matters

Each of the following is an excluded matter for the purposes of sections 29 to 31–

(a) education (including vocational training);

(b) the content of media and advertisements;

(c) the provision of goods, facilities or services (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.".

(2) In section 5 (interpretation), after subsection (3) insert—

"(4) In this Act, references to an excluded matter must be construed in accordance with section 35ZA.".

(3) In section 82 (general interpretation provisions), after the definition of "estate agent" insert—

""excluded matter" shall be construed in accordance with section 5(4);".

Relationships which have come to an end

10. In section 35C(**b**) (relationships which have come to an end), in subsection (2), before paragraph (a) insert—

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

Charities

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

(**a**) The Table in section 35(3) was amended by S.I. 2005/2467.
(**b**) Section 35C was inserted by S.I. 2003/1657. Section 35C(4) was inserted by S.I. 2005/2467.
(**c**) Section 43 was amended by S.I. 1977/528.

"(2A) But subsection (1) does not apply to discrimination under section 1 or 2A in its application to sections 29 to 31 unless the conferral of benefits is—

(a) a proportionate means of achieving a legitimate aim, or

(b) for the purpose of preventing or compensating for a disadvantage linked to sex.".

Sport

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

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

(a) fair competition, or

(b) the safety of competitors,

at such events.".

Insurance

13. At the end of section 45 (insurance) (which becomes subsection (1)) insert—

"(2) In the case of discrimination under section 29, 30 or 31, subsection (1) applies only in so far as that section relates to—

(a) an excluded matter; or

(b) differences in premiums and benefits applicable to a person under a contract of insurance or related financial services entered into before the appropriate date.

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

(a) in the case of discrimination under a contract entered into on or after the appropriate date which relates to differences in premiums and benefits, each of the following conditions is satisfied—

(i) the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data;

(ii) the data referred to in subparagraph (i) are compiled, published (whether in full or in summary form) and regularly updated in accordance with guidance issued by the Treasury;

(iii) the differences in treatment are proportionate having regard to the data mentioned in subparagraph (i);

(iv) the differences do not result from costs related to pregnancy or to the fact that a woman has given birth at any time in the period of 26 weeks ending on the day the treatment occurs or begins; or

(b) insurance or related financial services are provided only to members of one sex in relation to risks which only affect that sex.

(4) Subsection (3)(a) applies to discrimination under section 2A as if, in subsection (1) of that section, after "other persons" there were inserted "of B's sex".

(5) For the purposes of this section, "the appropriate date" means the date on which the Sex Discrimination (Amendment of Legislation) Regulations 2008 came into force."

Communal accommodation

14. In section 46 (communal accommodation) —

(a) in subsection (4)—

(i) at the end of paragraph (b) insert "; and", and

(ii) after that paragraph insert—

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

(b) in subsection (8), for "section 35(1)(c)" substitute "section 35(1) and (1C)".

Acts done for purposes of protection of women

15. In section 51(**a**) (acts done for purposes of protection of women)—

(a) after subsection (1)(a) insert—

"(aa) sections 35A and 35B,";

(b) at the beginning of subsection (1)(b) insert "the remainder of".

Acts done under statutory authority

16. In section 51A(**b**) (acts done under statutory authority to be exempt from certain provisions of Part 3)—

(a) in subsection (1), before paragraph (a) insert—

"(za) sections 21A to 27, 32 and 33,";

(b) in subsection (2), for "except so far as they apply to vocational training" substitute "(except sections 21A to 27, 32 and 33) in so far as they relate to an excluded matter".

Burden of proof

17.—(1) In section 66A(**c**) (burden of proof: county and sheriff courts), subsection (2), for paragraph (a) substitute—

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

(i) section 29, 30 or 31, or

(ii) any other provision of Part 3 so far as it applies to vocational training, or".

Time for answering questions from aggrieved persons

18. In section 74(**d**) (help for aggrieved persons in obtaining information etc), after subsection (2A)(a)(i) insert—

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

SCHEDULE 2

Regulation 2(2)

Amendment of the 1976 Order

Indirect discrimination

1. In Article 3(**e**) (direct and indirect discrimination against women)—

(a) at the end of paragraph (3)(a) omit "and";

(**a**) Section 51 was amended by the Employment Act 1989 (c.38), section 3(1).
(**b**) Section 51A was amended by the Employment Act 1989, section 3(2).
(**c**) Section 66A was inserted by S.I. 2001/2660. Section 66A(2)(a) was amended by S.I. 2005/2467.
(**d**) Section 74(2A) was inserted by S.I. 2005/2467.
(**e**) Article 3 was substituted by S.R. 2001 No. 282.

(b) after paragraph (3)(a) insert—

"(aa) Articles 30 to 32, except in so far as they relate to an excluded matter, and".

Discrimination on the grounds of gender reassignment

2. In Article 4A(**a**) (discrimination on the grounds of gender reassignment)—

(a) at the end of paragraph (1)(a) omit "or";

(b) after paragraph (1)(a) insert—

"(aa) Article 30, 31 or 32, except in so far as it relates to an excluded matter, or".

Pregnancy and maternity

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

"**Discrimination on the ground of pregnancy or maternity: goods, facilities, services or premises**

5B.—(1) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if he treats her less favourably—

(a) on the ground of her pregnancy, or

(b) within the period of 26 weeks beginning on the day on which she gives birth, on the ground that she has given birth.

(2) A person (P) is taken to discriminate against a woman on the ground of her pregnancy if—

(a) P refuses to provide her with goods, facilities or services because P thinks that providing them would, because of her pregnancy, create a risk to her health or safety, or

(b) P provides or offers to provide them on conditions intended to remove or reduce such a risk because P thinks that provision of them without the conditions would create such a risk.

(3) Paragraph (2) does not apply if—

(a) it is reasonable for P to think as mentioned in paragraph (2)(a) or (b), and

(b) P applies an equivalent policy.

(4) An equivalent policy is—

(a) for the purposes of paragraph (2)(a), refusing to provide the goods, facilities or services to persons with other physical conditions because P thinks that to do so would, because of such physical conditions, create a risk to the health or safety of such persons;

(b) for the purposes of paragraph (2)(b), imposing conditions on the provision of goods, facilities or services to such persons which are intended to remove or reduce the risk to their health or safety because P thinks that the provision without the conditions would create such a risk.

(5) Paragraph (1) applies to Articles 30 to 32, except in so far as they relate to an excluded matter.".

(**a**) Article 4A was inserted by S.R. 1999 No. 311.
(**b**) Article 5A was inserted by S.R.2005 No. 426.

(2) In Article 2 (interpretation), paragraph (7)(b)(**a**), for "or 5A" substitute ", 5A or 5B".

Goods, facilities or services

4. In Article 30 (discrimination in provision of goods, facilities or services)—

(a) after paragraph (2) insert—

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

(a) a woman who seeks to obtain or use those goods, facilities or services, or

(b) a woman to whom he provides those goods, facilities or services.";

(b) in paragraph (4)(**b**) omit "to vocational training".

Premises

5. In Article 31 (discrimination in disposal or management of premises)—

(a) after paragraph (1) insert—

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

(b) after paragraph (2) insert—

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

(c) after paragraph (3) insert—

"(4) Paragraphs (1A) and (2A) apply in relation to an application for or occupation of premises except in so far as they relate to an excluded matter.".

Consent for assignment or sub-letting

6. In Article 32 (discrimination: consent for assignment or sub-letting), paragraph (1), for the words from "to discriminate" to the end substitute—

"(a) to discriminate against a woman by withholding the licence or consent for disposal of the premises to her, or

(b) in relation to such a licence or consent, to subject to harassment a woman to whom the disposal would be made if the licence or consent were given.".

Exception for voluntary bodies

7. In Article 35 (exception for voluntary bodies), after paragraph (4) insert—

"(5) Paragraphs (2) to (4) do not apply to discrimination under Article 3 or 4A in its application to Articles 30 to 32 unless the treatment mentioned in those paragraphs is—

(a) a proportionate means of achieving a legitimate aim, or

(b) for the purpose of preventing or compensating for a disadvantage linked to sex.".

Further exceptions from Articles 30(1) and 31

8. In Article 36 (further exceptions from Articles 30(1) and 31)—

(a) for paragraph (1) substitute—

(**a**) Article 2(7)(b) was amended by S.R 2005 No. 426.
(**b**) Article 35(4) was inserted by S.R.1999 No. 311.

"(1) A person who provides at any place facilities or services restricted to men does not for that reason contravene Article 30(1) if any of the conditions in paragraphs (1A) to (1C) is satisfied.";

(b) after paragraph (1) insert—

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

(a) a hospital, or

(b) any other establishment for persons requiring special supervision, attention or care.

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

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

(a) the facilities or services are such, or those persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or

(b) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.",

(c) after paragraph (2) insert—

"(2A) In their application to discrimination falling within Article 4A, paragraphs (1A), (1C) and (2) shall apply to the extent that any such discrimination is a proportionate means of achieving a legitimate aim."; and

(d) in paragraph (3)(**a**), after "discrimination", (in each place where it occurs), insert "or harassment".

Excluded matters

9.—(1) After Article 36 (further exceptions from Articles 30(1) and 31) insert–

"Excluded matters

36ZA Each of the following is an excluded matter for the purposes of Articles 30 to 32—

(a) education (including vocational training);

(b) the content of media and advertisements;

(c) the provision of goods, facilities or services (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion."

(2) In Article 2 (interpretation)—

(a) in paragraph (2), after the definition of "estate agent" insert—

""excluded matter" shall be construed in accordance with paragraph (8);" and

(b) after paragraph (7) insert—

"(8) In this Order, references to an excluded matter must be construed in accordance with Article 36ZA.".

Relationships which have come to an end

10. In Article 36A(**b**) (relationships which have come to an end), in paragraph (2) for the words from "under" to the end substitute—

(**a**) The Table in Article 36(3) was amended by S.R. 2005 No. 426.
(**b**) Article 36A was inserted S.R. 2004 No 172 and was amended by S.R. 2005 No.426.

"under—

(a) Articles 30 to 32, except in so far as they relate to an excluded matter, or

(b) any other provision of this Part, so far as the provision applies to vocational training.".

Charities

11. In Article 44 (charities), after paragraph (2) insert—

"(2A) But paragraph (1) does not apply to discrimination under Article 3 or 4A in its application to Articles 30 to 32 unless the conferral of benefits is —

(a) a proportionate means of achieving a legitimate aim, or

(b) for the purpose of preventing or compensating for a disadvantage linked to sex.".

Sport

12. At the end of Article 45 (sport etc) (which becomes paragraph (1)) insert—

"(2) Paragraph (1) applies to discrimination under Articles 30 to 32 which falls within Article 4A, only if the discrimination is necessary to secure—

(a) fair competition, or

(b) the safety of competitors,

at such events.".

Insurance

13. At the end of Article 46 (insurance etc) (which becomes paragraph (1)) insert—

"(2) In the case of discrimination under Article 30, 31 or 32, paragraph (1) applies only in so far as that Article relates to—

(a) an excluded matter, or

(b) differences in premiums and benefits applicable to a person under a contract of insurance or related financial services entered into before the appropriate date.

(3) Despite paragraph (2), the treatment is not unlawful under Article 30(1) if—

(a) in the case of discrimination under a contract entered into on or after the appropriate date which relates to differences in premiums and benefits, each of the following conditions is satisfied—

(i) the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data;

(ii) the data referred to in head (i) are compiled, published (whether in full or in summary form) and regularly updated in accordance with guidance issued by the Treasury;

(iii) the differences in treatment are proportionate having regard to the data mentioned in head (i);

(iv) the differences do not result from costs related to pregnancy or to the fact that a woman has given birth at any time in the period of 26 weeks ending on the day the treatment occurs or begins; or

(b) insurance or related financial services are provided only to members of one sex in relation to risks which only affect that sex.

(4) Paragraph (3)(a) applies to discrimination under Article 4A as if, in paragraph (1) of that Article, after "other persons" there were inserted "of B's sex".

(5) For the purposes of this Article, "the appropriate date" means the date on which the Sex Discrimination (Amendment of Legislation) Regulations 2008 came into force."

Communal accommodation

14. In Article 47 (communal accommodation)—

(a) in paragraph (4)—

(i) at the end of sub-paragraph (b) insert "; and", and

(ii) after that sub-paragraph insert—

"(c) in respect of discrimination falling within Article 4A, whether and how far such discrimination is a proportionate means of achieving a legitimate aim.".

(b) in paragraph (8) for "Article 36(1)(c)" substitute "Article 36(1) and (1C)".

Acts done under statutory authority

15. In Article 52A(**a**) (acts done under statutory authority to be exempt from certain provisions of Part IV)—

(a) in paragraph (1), before sub-paragraph (a) insert—

"(za) Articles 24 to 28, 33 and 34;";

(b) in paragraph (2), for "except so far as they apply to vocational training" substitute "(except Articles 24 to 28, 33 and 34) in so far as they relate to an excluded matter".

Duties of the Equality Commission

16. In Article 54 (establishment and duties of Commission), in paragraph (1)(bb)(**b**) omit the words ", in the field of employment and of vocational training,".

Burden of proof

17. In Article 66A(**c**) (burden of proof: county court), in paragraph (2), for sub-paragraph (a) substitute—

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

(i) Article 30, 31 or 32, or

(ii) any other provision of Part IV so far as it applies to vocational training, or".

Time for answering questions from aggrieved persons

18. In Article 74 (help for aggrieved persons in obtaining information etc)—

(a) at the end of paragraph (2A)(a)(i)(**d**) omit "or";

(b) after paragraph (2A)(a)(i) insert—

"(ia) Article 30, 31 or 32, except in so far as it relates to an excluded matter; or".

(**a**) Article 52A was inserted by S.I. 1990/246 (N.I. 2)
(**b**) Article 54(1)(bb) was inserted by of S.R 1999 No 311.
(**c**) Article 66A was inserted by S.R. 2001 No. 282.
(**d**) Article 74(2A) was inserted by S.R. 2005 No. 426.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in the United Kingdom Council Directive 2004/113 EC of 13th December 2004 ("the Directive") and come into force on the fifth day after the day on which they are made, or on 6th April 2008, whichever is the later. The Directive is concerned with implementing the principle of equal treatment between men and women in the access to and supply of goods and services which are available to the public.

The Sex Discrimination Act 1975 ("the 1975 Act") and the Sex Discrimination (Northern Ireland) Order 1976 ("the 1976 Order") already meet many of the Directive's requirements. However, to fully implement the Directive amendments are needed to the 1975 Act and 1976 Order, in particular to reflect the provisions of the Directive which deal with: discrimination, harassment and sexual harassment, the burden of proof in court proceedings, and the amendment of statutory provisions which would otherwise be contrary to the requirements of the Directive. The amendments to the 1975 Act and 1976 Order can be found in Schedules 1 and 2 respectively.

In each of Schedules 1 and 2, paragraph 1 applies the Directive-based definition of indirect discrimination to the areas of the 1975 Act and the 1976 Order with which the Directive is concerned. Those areas are, respectively, section 29 and Article 30 (discrimination in the provision of goods, facilities or services), section 30 and Article 31 (discrimination in disposal or management of premises) and section 31 and Article 32 (discrimination: consent for assignment or sub-letting), except in so far as these provisions relate to an "excluded matter". The excluded matters, set out at paragraph 9 in each of Schedules 1 and 2 are: (a) education (including vocational training); (b) the content of media and advertisements; and (c) the provision of goods, facilities or services (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.

In each of Schedules 1 and 2, paragraph 2 introduces protection from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraph 3 introduces protection from discrimination on grounds of pregnancy and maternity in the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraphs 4 to 6 prohibit harassment in connection with the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraphs 7, 8, 11, 12 and 14 amend existing exceptions concerning the provision of single-sex goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraph 10 amends the respective provisions to which they relate to provide that in the provision of goods, facilities, services or premises with which the Directive is concerned, where there has been a relationship in which certain acts of discrimination, or harassment, would have been unlawful, it is also unlawful to subject a person to a detriment or harassment by reference to that relationship after the relationship has ended.

In each of Schedules 1 and 2, paragraph 13 amends the respective provisions to which they relate to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women, in the areas with which the Directive is concerned.

Paragraph 15 of Schedule 1 provides a statutory authority defence under section 51 of the 1975 Act (acts done for purposes of protection of women) in respect of section 35A (barristers) and section 35B (advocates). This clarification follows our implementation of Directive 2002/73/EC, which amends Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Paragraph 16 of Schedule 1 and paragraph 15 of Schedule 2 remove the statutory authority defence in the areas with which the Directive is concerned.

Paragraph 16 of Schedule 2 amends Article 54(1)(bb) of the 1976 Order. It extends the duties of the Equality Commission for Northern Ireland to promote equality of opportunity on grounds of gender reassignment in the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraph 17 reverses the burden of proof in court proceedings relating to discrimination or harassment in the provision of goods, facilities, services or premises with which the Directive is concerned.

In each of Schedules 1 and 2, paragraph 18 provides respondents must reply to a claimant's preliminary questions relating to discrimination or harassment in the provision of goods, facilities, services or premises with which the Directive is concerned, within eight weeks of being served with them.

Regulation 3 enables local authorities in England and Wales to charge fees for the use of urinals provided under the Public Health Act 1936 to comply with Article 13 of the Directive (compliance).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been prepared together with a Transposition Note setting out how the main elements of the Directive are transposed into UK law. Copies of these are annexed to the Explanatory Memorandum, laid before Parliament alongside this instrument. They are available from the Government Equalities Office website at www.equalities.gov.uk, the OPSI website and from the Government Equalities Office based at Floor 5, Eland House, Bressenden Place, London SW1E 5DU. Copies will also be available in the Libraries of both Houses of Parliament.

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

DRAFT STATUTORY INSTRUMENTS

2008 No. XXXX

SEX DISCRIMINATION

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