



Sexual Orientation Discrimination Law in Northern Ireland - A Short Guide

Equality Commission

FOR NORTHERN IRELAND

Sexual orientation discrimination law in Northern Ireland - a short guide

This short guide provides some information about sexual orientation discrimination law in Northern Ireland. It does not attempt to describe every detail and should not be taken as an authoritative statement of the law. Further information is available from the Equality Commission. Details of some of our other publications and how to contact us are given at the back of this booklet.

The Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland has responsibility for enforcing the [Employment Equality \(Sexual Orientation\) Regulations \(NI\) 2003](#) and the [Equality Act \(Sexual Orientation\) Regulations \(NI\) 2006](#). These Regulations confer on the Equality Commission the general duties of working towards the elimination of discrimination, promoting equality of opportunity between persons of different sexual orientation and keeping the working of the Regulations under review.

IMPORTANT NOTICE

Please note that, following a judicial review of the Equality Act (Sexual Orientation) Regulations (NI) 2006, the harassment provisions of the Regulations no longer stand. This means that explicit protection from harassment is limited to that provided for in the Employment Equality (Sexual Orientation) Regulations (NI) 2003 which apply only to the field of employment and vocational training. References to harassment in this short guide should be interpreted in light of the judicial review decision. It should be noted, however, that a person may still be able to pursue a complaint of discrimination/less favourable treatment on grounds of sexual orientation should they experience harassment in any of the areas covered by the 2006 Regulations.

For more information on this issue, please contact the Equality Commission's Enquiry line – 028 90 890 890

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The law

There are two main pieces of legislation on sexual orientation discrimination in Northern Ireland:

The Employment Equality (Sexual Orientation) Regulations (NI) 2003 came into force on 2 December 2003. These Regulations 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 Equality Act (Sexual Orientation) Regulations (NI) 2006 came into force on 1 January 2007. These Regulations make it unlawful to discriminate on grounds of sexual orientation in the provision of:

- goods, facilities or services;
- premises;
- education; and
- public functions.

Please also note the **Civil Partnership Act 2004** which enables same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. The effect is to make the status of civil partner comparable to that of a spouse.

What is sexual orientation discrimination?

Discrimination is not simply unfairness. To be discriminated against means to be treated less favourably than others. Sexual orientation discrimination is discrimination against people because they either have, or are perceived to have, a particular sexual orientation. It is unlawful to discriminate against people because they are homosexual (gay, lesbian), bisexual or heterosexual (straight). The law also covers individuals who are treated less favourably than others based on incorrect assumptions about their sexual orientation and individuals who are treated less favourably because they are associated with people of a particular sexual orientation.

The Regulations outline four types of discrimination:

- **Direct discrimination** is where someone is treated less favourably than others in the same or similar circumstances and the reason for that treatment is sexual orientation.

Example – the best candidate at interview is not offered a job because the employer suspects he is gay whilst a less able candidate, who the employer believes to be straight, is offered the post. This is less favourable treatment and would constitute discrimination.

Example – a same-sex couple is asked to leave a restaurant because they are holding hands and the restaurant manager says their behaviour is making other customers uncomfortable. Heterosexual couples who are holding hands are not asked to leave. This is less favourable treatment and would constitute discrimination.

- **Indirect discrimination** – there are two definitions of indirect discrimination:

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- a) indirect discrimination exists where a provision, criterion or practice is applied 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.
 - b) indirect discrimination occurs when a requirement or condition is applied which only a considerably smaller proportion of people of the same sexual orientation can comply with, which is not justifiable and which is to the complainant's detriment because s/he cannot comply with it.

Definition a) applies to employment, vocational training, further and higher education, the provision of goods, facilities or services, the management and disposal of land or premises and the provision of education.

Definitions a) **and** b) apply to the provision of goods, facilities or services, the management and disposal of land or premises and the provision of education.

Example – a female applicant who is a lesbian applies for a high profile job. She is well qualified and experienced for the post. Part of the recruitment exercise includes an interview with her partner, as partners are considered to play an important social role at work related events. The applicant refuses to disclose details about her partner on the grounds that the information is private. Shortly afterwards she is advised that her application is unsuccessful.

If the employer fails to appoint her because they suspect she is a lesbian, this is likely to amount to direct discrimination on grounds of sexual orientation. If they fail to appoint her because she refuses to disclose details about her partner, she may also be able to argue that she has been indirectly discriminated against. She could possibly argue that people who are gay, lesbian or bisexual are less willing to provide information about their partners than people who are heterosexual.

If a requirement to disclose details of their partners is considered by a Tribunal to place lesbians at a particular disadvantage, the employer would have to objectively justify such a requirement.

Example – as part of their services for a client company, an events company arranges a conference in a country where homosexuality is illegal and there is no good reason for it to be held there. This could be classed as indirect discrimination against any homosexual clients.

- **Victimisation** means treating someone less favourably than others because they have complained of discrimination on grounds of sexual orientation or assisted someone else to do so.

Example – an employee is dismissed because s/he has made an allegation of sexual orientation discrimination to his/her employer. Provided the complaint is made in good faith and not false, they have been victimised contrary to the Regulations.

Example – a bisexual woman agrees to give evidence in a case being taken by a lesbian who has been repeatedly refused appointments at a health spa. When the bisexual 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 troublemakers. This is victimisation.

- **Harassment** is unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. Harassment takes place where, taking into account all the circumstances, the harasser's conduct should reasonably be considered as having violated a person's dignity or created such an environment for him/her. Examples of harassment might include name calling, using a feminine pronoun for a gay male member of staff, or isolating gay, lesbian or bisexual employees.

Employment provisions

The Employment Equality (Sexual Orientation) Regulations (NI) 2003 apply to all employers, regardless of size. They also apply to:

- vocational organisations, for example, trade unions and professional bodies;
- employment agencies and bodies that confer qualifications which are needed to facilitate employment;
- people providing vocational training or services;
- partnerships;
- people for whom work is done under contract;
- police and armed services;
- barristers;
- trustees and managers of occupational pension schemes;
- office holders; and
- institutions of further and higher education.

The Regulations make it unlawful to discriminate on grounds of sexual orientation against employees, job applicants, and in some cases, former employees. It is unlawful for an employer to discriminate:

- in **recruitment and selection** including arrangements for deciding who should be offered employment; in the terms on which employment is offered; or by refusing or deliberately omitting to offer a person employment;
- in the **terms and conditions** of employment;

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- in relation to **access to benefits**, including opportunities for promotion, transfer, training or any other benefits, or the refusal of those opportunities; or
 - by **dismissing** an employee or causing him/her any other detriment.

It is also unlawful to **harass** an employee or job applicant on grounds of sexual orientation.

The Regulations apply to all employees regardless of how long they have been employed. Agency workers and office holders are also covered. In addition, in certain circumstances, former employees have rights under the Regulations.

Example – it is unlawful for an employer to refuse to provide a work reference for a former employee because s/he did not approve of the ex-employee's sexual orientation.

Employers are liable for acts of discrimination committed by their employees in the course of their employment whether or not the acts were done with the employer's knowledge or approval – unless the employer can show that he took such steps as were reasonably practicable to prevent the discrimination occurring.

Vocational training

The 2003 Regulations make it unlawful for people who provide training to help fit others for employment to discriminate against them in relation to such training. This includes access to training, refusing training, terminating training or subjecting a trainee to harassment. Training in this context also includes the use of facilities for training and practical work experience provided by an employer for people who are not that organisation's employees. However, training providers can refuse to offer training on grounds of sexual orientation if the training is for employment where a particular sexual orientation is a genuine occupational requirement (see section on exceptions).

Exceptions to the 2003 Regulations

In very limited circumstances, an employer or training provider can treat a job applicant or trainee differently on grounds of sexual orientation, if possessing a particular sexual orientation is a **genuine occupational requirement** for that post. This exception applies when recruiting, promoting, transferring or training persons for a post in respect of which a genuine occupational requirement applies. The Regulations do not provide a list of jobs for which exceptions to the law apply. Instead, should an employer wish, for example, to recruit a person of a particular sexual orientation, then the onus is on them to show that having a particular sexual orientation is a genuine and determining occupational requirement and that it is proportionate to apply that requirement in the circumstances.

Example – a small organisation is formed to provide advice and support to members of the gay, lesbian and bisexual community. They decide to recruit a part-time counsellor whose primary role is to provide a counselling service to members of that community. In its advert, the organisation indicates that the successful candidate must be gay, lesbian or bisexual. The organisation seeks to rely on a genuine occupational requirement exception in relation to the post. They claim that due to its size and resources it has no other employees who are gay, lesbian or bisexual who are capable of carrying out the counselling duties in question. In those circumstances, the organisation is likely to be able to rely on the genuine occupational requirement exception.

The only explicitly stated exception in the Regulations is where the employment is for the purposes of an organised religion. If a religious body or organisation does not wish to recruit people of a particular sexual orientation, then they will need to establish that this is necessary to comply with the doctrines of the religion. Alternatively they will need to show that, because of the nature of the work and the context in which it is carried out, the requirement is necessary to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

Example – a gay Christian man wishes to become a priest in the Catholic Church. The Catholic Church considers that homosexual acts are immoral and, in order to comply with the religious doctrines of that faith, the Church refuses to allow him to train as a priest.

It would, however, be less easy to establish a genuine occupational requirement for a post such as church cleaner, warden or accountant.

Positive action

Employers, training bodies and trade organisations can take positive action in certain circumstances to counteract the effect of disadvantage against members of the gay, lesbian and bisexual communities. The positive action should prevent or compensate for disadvantages linked to sexual orientation. The disadvantage may be that persons of a particular sexual orientation are under-represented or it may be that there is evidence of harassment or homophobic attitudes.

Examples – encouraging gay, lesbian or bisexual people to take advantage of opportunities for doing particular work; placing advertisements in the press welcoming gay, lesbian and bisexual people; or offering training facilities in the workplace aimed at combating disadvantage.

Education

The 2003 and 2006 Regulations make it unlawful for schools, colleges and other educational establishments to discriminate on grounds of sexual orientation. It is unlawful to discriminate:

- as regards terms of admission to the establishment;
- by refusing or deliberately omitting to accept an application for admission;
- in the way a pupil or student in the establishment is afforded access to any benefits, facilities or services, or by refusing or deliberately omitting to afford such access; or
- by excluding a pupil or student from the establishment or treating such a pupil or student unfavourably in any other way.

It is also unlawful to harass, on grounds of sexual orientation, a pupil or student who is at or seeking admission to the establishment. In some cases, discrimination against former students will also be unlawful.

Example – a gay pupil is excluded from school activities because a teacher is uncomfortable with the fact that he is overtly gay. This is discrimination on grounds of sexual orientation.

The SO Regulations place a general duty on Education and Library Boards and other bodies responsible for educational establishments in the public sector to ensure that educational facilities are provided without discrimination on grounds of sexual orientation.

Goods, facilities or services

The Equality Act (Sexual Orientation) Regulations (NI) 2006 outlaw discrimination and harassment on grounds of sexual orientation in the provision of goods, facilities or services which are available to the public or a section of the public – this includes refusal of a service or the provision of a lower standard of service. Discrimination of this kind is unlawful whether the service provided is paid for or not.

Examples include:

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

Example – a same-sex couple reserve a double room in a hotel. When they arrive and go to the hotel reception to check in, they are told that the hotel will not provide a same-sex couple with a double room because this might cause offence to other customers. This is discrimination.

Example – a department store provides a gift registration service for couples planning to marry. They refuse to offer a similar service to same-sex couples planning a civil partnership. This is discrimination.

The SO Regulations apply to discrimination by those who provide goods, facilities or services to the public and do not apply where the transaction is of a purely private nature, for example, entertainment or refreshment provided to members of a genuinely private small club.

Public authorities

Under the 2006 Regulations, it is unlawful for a public authority to discriminate against a person on grounds of his/her sexual orientation, or to subject a person to harassment, in the course of carrying out any functions of the authority. Such functions include the provision of any form of social security, healthcare, social protection or any form of social advantage.

Example – a lesbian 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 that she would not otherwise have any medical need for a smear. This is discrimination.

Land and premises

Under the 2006 Regulations, it is unlawful for anyone selling or managing property or premises to discriminate against a person on grounds of their sexual orientation.

Example – a same-sex couple is 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 discrimination.

It is also unlawful for a landlord to harass a tenant or prospective tenant on grounds of their sexual orientation. However, there are exceptions in relation to small dwellings where the landlord occupies the premises (see section on exceptions).

Other unlawful acts

The 2006 Regulations also make it unlawful to apply discriminatory practices, publish discriminatory advertisements, make unlawful contracts, instruct or put pressure on a person to do anything contrary to the Regulations, or to knowingly aid another person to carry out such acts.

Example – discriminatory advertising: an advertisement appears in a magazine seeking a gay decorator. This is unlawful and the publisher would have committed an act of unlawful discrimination.

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

Example – instructions to discriminate: an employer instructs an employee not to provide services to gay customers and offers the employee a financial inducement for following those instructions.

Exceptions to the 2006 Regulations

There are some exceptions to the general principle of discrimination on grounds of sexual orientation and the 2006 Regulations exempt:

- religious organisations whose main purpose is to practice, advance or teach a religion or belief or to enable people of a religion or belief to receive a benefit or to engage in an activity, within the framework of that religion or belief. This exemption does not apply to organisations with a commercial purpose or to educational bodies;
- charities which have been legitimately established to provide services to specific groups, with an identifiable need, on the basis of their sexual orientation;
- acts which relate to the provision of accommodation in, or disposal of, small premises. This exception allows a landlord to discriminate against a potential tenant if they, or a near relative, live in another part of the house and where parts of the premises – such as kitchen or bathroom – will be shared by all residents. This exception does not apply to the letting of rooms in a private home which is being used as a commercial business, such as a bed and breakfast or guesthouse;
- clubs or associations which exist in order to provide a genuine benefit or opportunity to a group linked to their sexual orientation.

Example – a gay men’s social and support group which exists particularly to enable gay and bisexual men to form friendships and provide mutual support is allowed to require that its members be gay or bisexual;

- acts done under national security, or to protect public safety or public order; and
- acts done under statutory authority.

Making a complaint

Employment related complaints

Anyone who believes they have been discriminated against on grounds of sexual orientation can lodge a complaint with an industrial tribunal. There are **time limits** for lodging a claim. The **time limit** can be as short as **three months** less one day from the date of the act complained about. In exceptional cases, a tribunal has the discretion to extend a time limit but simply not knowing that there were deadlines is an insufficient reason for granting an extension. It is therefore important to seek advice as soon as possible about any matter that could be the subject of an industrial tribunal claim.

All employers should have procedures to deal with workplace grievance and disciplinary matters. Before a claim is lodged with the tribunal, an applicant should consider whether they need to use their **employer's grievance procedure**. If a person fails to use or complete the grievance procedure, the tribunal can reduce any award of compensation by up to 50%.

For more information relating to grievance procedures, please contact the Labour Relations Agency – tel: 028 90 321 442. The Equality Commission can provide further advice about pursuing discrimination complaints.

Non-employment complaints

Complaints relating to discrimination in respect of education, premises, the provision of goods, facilities or services, or where an employment relationship has come to an end must be made to the county court within **six months** of the date the discrimination took place.

Where a complaint relates to certain public sector educational establishments, there is a requirement to give two months' notice to the Department of Education and, in these circumstances, the time limit is extended from six to eight months.

Advice and assistance

The Equality Commission can provide **free and confidential** advice and assistance to people who believe that they have been discriminated against on grounds of sexual orientation - see contact details at the end of this booklet.

Assistance by the Equality Commission may range from simply giving information or advice to arranging for legal representation in some cases. The Equality Commission does **not** decide whether discrimination has occurred; this is for an independent industrial tribunal or court to decide.

Help for employers and service providers

The Equality Commission can provide general information and advice to employers, vocational training providers, service providers and others on recommended good practice under the Employment Equality (Sexual Orientation) Regulations (NI) 2003 and the Equality Act (Sexual Orientation) Regulations (NI) 2006 - see contact details at the end of this booklet.

The following relevant publications are available, free of charge, from the Commission:

- Sexual Orientation Discrimination in NI: The Law and Good Practice, 2004
- Sexual Orientation in the Workplace: Your Rights, 2004
- Sexual Orientation Discrimination in Northern Ireland: A Guide to the Sexual Orientation Discrimination Provisions in Goods, Facilities and Services, 2008, and sector-specific short guides
- Model Equal Opportunities Policy - revised 2006

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- Harassment and Bullying in the Workplace, 2006
 - Model Harassment Policy and Procedure – revised 2006

The Equality Commission also provides a range of publications in a variety of formats in other areas of equality:

- religious and political opinion discrimination
- sex discrimination and equal pay
- racial discrimination
- disability discrimination
- special educational needs and disability
- age discrimination
- s75 statutory duties on public authorities
- DDA duties on public authorities.

All our publications and further information for individuals, service providers and employers are available on our website www.equalityni.org



Contacting the Equality Commission

If you need information or advice on any aspect of anti-discrimination and equality law, or would like to request copies of available publications, please contact us:

Enquiry line: 028 90 890 890
Reception: 028 90 500 600
Text phone : 028 90 500 589
Email: information@equalityni.org
Website: www.equalityni.org

Information can be made available in other languages and formats on request.

The Commission's information and advisory services are free and confidential.

We can also provide a range of training to employers, service providers, community and voluntary groups, and the education sector.

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

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