



Equality Commission

FOR NORTHERN IRELAND

Eliminating Sexual Orientation Discrimination in Northern Ireland

Short Guide - Education

A guide for education establishments on
the implications of the sexual orientation
Regulations on the provision of goods,
facilities, services and premises.

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

Introduction

Legislation introduced in Northern Ireland on 1 January 2007, 'The Equality Act (Sexual Orientation) Regulations (NI) 2006', (the Regulations) makes it unlawful for service providers to discriminate against people because of their sexual orientation in the provision of goods, facilities and services, the management and disposal of premises (including land), the provision of education and the exercise of public functions. The Regulations also apply to housing, advertisements and private members clubs.

This short guide looks at the implications of the legislation for educational establishments and is one of a series of sector specific guides produced by the Commission. Other guides in the series cover Health and Social Care, Hospitality, Housing and Financial (pensions/insurance).

This guide gives general guidance only and should not be regarded as a complete and authoritative statement of the law.

Detailed information on the Regulations is available from the Equality Commission's publication '**Eliminating Sexual Orientation Discrimination in Northern Ireland: A Guide on the Provision of Goods, Facilities, Services and Premises**' which can be found on the Commission's website, along with the sector specific guides at www.equalityni.org.

Background

Lesbian, gay, and bisexual students are part of every student body and contribute to the life of schools, colleges and universities. However, in many establishments their sexual identity may not be recognised or they may be subjected to harassment and bullying, a problem that is not addressed adequately by management. Research (Rivers¹) into harassment and bullying experienced by gay and lesbian people while at school found 82% were subjected to name calling; 71% were ridiculed; and 60% were kicked. Rivers² also found that lesbian, gay and bisexual pupils are more likely to leave school at 16 despite having the required GCSEs to return. Research in Northern Ireland by ShOut³ found that 44% of gay students had experienced homophobic bullying at school and 63% experienced negative attitudes.

¹ The bullying of sexual minorities at school: Its nature and long-term correlates, Rivers (2001)

² Social exclusion, absenteeism and sexual minority youth, Rivers, (2000)

³ ShOut Report: Needs of young people living in Northern Ireland who identify as LGBT (2003)

All students/pupils have the right to learn in a safe environment, to be treated with respect and dignity and not be treated any less favourably on grounds of their actual or perceived sexual orientation.

What is sexual orientation discrimination?

Sexual orientation discrimination is where people are treated less favourably because of sexual orientation. This includes people who are:

- homosexual (gay, lesbian)
- bisexual
- heterosexual.

It also covers:

- perceived sexual orientation, even if incorrect assumptions are made about a person's sexual orientation;
- people who are associated with others of a particular sexual orientation.

Discrimination and civil partners

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 a spouse. The 2004 Act permits same-sex couples to enjoy many of the rights which those people who are married enjoy, such as rights to a survivor's pension or benefits packages from employers such as private health care.

Civil partners are able to bring a sexual orientation discrimination claim against providers of goods, facilities and services who deny them access to a service or benefit, or if the service is being offered to married persons in similar situations.

Types of discrimination

The Regulations cover several types of discrimination on grounds of sexual orientation.

Direct discrimination

Is where someone 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.

Indirect discrimination

Occurs where:

- **a provision, criterion or practice** is applied equally 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 equally 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.

Victimisation

Occurs when someone is treated less favourably than others because:

- they have already made a complaint (brought 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 have committed an unlawful act under the Regulations.

Implications of the Regulations for the education sector

The Employment Equality (Sexual Orientation) Regulations (NI) 2003 (the 2003 employment Regulations) **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 broaden existing sexual orientation legislation and have specific implications for education as they extend protection to cover a broader range of educational situations.

It is recommended that schools make every effort to ensure that gay, lesbian, or bisexual pupils or children of gay, lesbian, or bisexual parents 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 need to ensure that homophobic bullying is taken seriously and dealt with as firmly as any other form of bullying.

Educational establishments covered by the Regulations

The Regulations cover the following:

- schools run by Education and Library Boards (Education Skills Authority from 2010)⁴. These include grant aided schools, special schools, controlled schools, controlled integrated schools, voluntary (maintained schools), voluntary grammar schools, grant maintained integrated and Irish medium schools;
- independent schools, which are totally funded by fees paid by parents or sometimes charitable trust funds;
- universities;
- establishments run by governing bodies providing further education such as colleges/institutions of further and higher education;
- colleges of education including institutions providing teacher training.

⁴ At the time of publication (March 2009) it is anticipated that the Education Skills Authority (ESA) will take over responsibility from the Education and Library Boards in January 2010.

Discrimination covered by the Regulations

It is unlawful for an educational establishment to discriminate on grounds of sexual orientation against a pupil in:

- the admissions process to an establishment; and
- against existing pupils/students.

Admissions

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

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

Existing pupils/students

It is unlawful for an educational establishment to discriminate (directly, indirectly or by victimisation) on grounds of sexual orientation against an existing pupil or student:

- in the way it affords them access to any benefits (facilities, or services) or by refusing or deliberately omitting to afford such access. Example of such benefits include the chance to be a prefect or the opportunity to take part in a school trip, or making a pupil/student who is gay or perceived as gay change separately from other pupils/students.
- by excluding such a pupil/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 discriminate on grounds of sexual orientation.

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

It is unlawful for an Education and Library Board or the Council for Catholic Maintained Schools to discriminate on grounds of sexual orientation in the performance of those of its functions, under the Northern Ireland Education Orders, which do not fall under the scope of the provisions described above.

Examples of these functions include, in the case of Education and Library Boards the award of discretionary grants and the provision of facilities for social and physical recreation.

General duty

A general duty is imposed on educational establishments to ensure that facilities for education provided by them, and any ancillary benefits and services, are provided without discrimination on grounds of sexual orientation.

This duty applies to Education and Library Boards, managers or governing bodies of educational establishments that are grant aided, governing bodies of establishments providing further and higher education, and managers of colleges of education.

Teaching and the curriculum

The courts⁵ have ruled that the Regulations do not apply to the school curriculum.

In the Northern Ireland Curriculum (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.

The Department of Education's 'Relationships and Sexuality Education' guidance⁶ 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 website⁷.

⁵ Following the introduction of the Regulations, they were subjected to a Judicial Review. As a result of the Judicial Review changes were made to the original Regulations, namely the specific provisions relating to harassment were removed. A copy of the Judicial Review judgement (reference WEAC5888) is available from <http://www.courtsni.gov.uk>.

⁶ Relationships and Sexuality Education, Department of Education, Circular Number 2001/15 (August 2001) available at www.deni.gov.uk

⁷ Department of Education's web site: www.deni.gov.uk

If schools adhere to the Department's guidance, dealing sensitively and appropriately with issues around sexuality, then they should not be in breach of the Regulations.

The courts have also held 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 conveys 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.

Examples of sexual orientation discrimination

The examples given 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.

Refusal of admission to a primary school

As part of the admission process to a primary school, parents and prospective pupils are invited to attend an open morning. After attending the open morning, written applications for places are then submitted to the school. 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 because of 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 this example, the prospective pupil is being treated less favourably because of their parent's sexual orientation. This is likely to amount to discrimination under the Regulations.

Less favourable treatment because of parent's sexual orientation

Jane is a pupil at an 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 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 is forced to remove her from the school.

The school's liability under the Regulations arises when it ignores complaints made relating to sexual orientation.

School trip to France

Pupils from years 12 and 13 have been offered the opportunity to go on an activity holiday to France. Details and cost of the trip are sent home to parents and anyone interested must send in a deposit by a set date. Michael, a pupil in year 13, is very keen to go on the trip and his parents have sent in the deposit as requested by the required date.

The following week confirmation letters are issued to all pupils who applied for the trip, except Michael, who is informed that there were not enough places and that he will be unable to go. He subsequently discovers that other pupils, who applied after his application was submitted, have been given a place.

Michael believes that he has been denied a place on the trip as it is widely rumoured in the school that he is gay. This is likely to amount to discrimination as it is unlawful to treat a pupil less favourably on grounds of sexual orientation in the way it affords them access to any benefit.

Complaints of discrimination

Complaints relating to discrimination in respect of education, must be made to the county court within **six months** of the date the alleged discrimination took place.

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 time limit is extended to **eight months**.

Other areas covered by the Regulations

The Regulations apply to 'organisations relating to religion and belief' and also make discrimination unlawful on grounds of sexual orientation in the following areas:

- **provision of goods, facilities and services to the public.** It is unlawful for anyone who is concerned with the provision of 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, or providing the service at a lower standard, worse manner or on less favourable terms. Service providers are covered regardless of size, whether they are private, public or in the voluntary sector and whether the service is paid for or provided free of charge;
- **the disposal or management of premises** (including land);
- **public authorities** when carrying out any of their public functions; and
- **private members clubs** with 25 or more members in respect of their membership, application for membership, guests and prospective members and guests.

Anyone involved in the education sector should also be aware of a number of other provisions in the Regulations that afford protection to individuals on grounds of their sexual orientation.

- **Discrimination after a relevant relationship has come to an end**

Where a previous relationship existed, such as customer/client relationships, it is unlawful to discriminate on grounds of sexual orientation against someone after such a relationship has come to an end, where the discrimination arises out of and is closely connected to that relationship.

- **Discriminatory advertisements**

It is unlawful for a person to publish, or cause to be published, an advertisement for goods, facilities, 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. An advertisement may include any publication or notification whether public or not, such as newspaper advertisements, displays, posters, notices, leaflets, announcements on websites, e-mails and internal newsletters.

- **Instructions/aiding unlawful acts**

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

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

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

Examples could include a café owner instructing staff not to serve gay customers, or hotels instructing reception staff not to let rooms to 'gay couples'.

It is also unlawful for a person to pressurise, induce or attempt to induce another individual to commit an act which is unlawful under the Regulations. Bringing pressure on individuals includes providing or offering any benefit, or subjecting them to any other detriment.

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

- **Employer liability**

Many educational establishments are also employers. 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.

Further information on all of the above areas may be found in the Equality Commission's publication 'Eliminating Sexual Orientation Discrimination in Northern Ireland: A Guide on the Provision of Goods, Facilities, Services and Premises' available on the Commission's website, www.equalityni.org.

Good practice measures

The 2003 Employment Regulations which apply to institutions of further and higher education prohibit discrimination and harassment on grounds of sexual orientation in employment and vocational training. These Regulations include harassment provisions which are not included in the 2006 Regulations. It should be remembered that all educational establishments are employers and would be covered by the harassment provisions.

It is recommended that all educational establishments develop good practice measures to prevent sexual orientation discrimination (and discrimination on any other grounds).

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.

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 homophobic language by pupils/students.
- 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/students, 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 that schools, colleges and universities promote a culture of respect for different sexual orientations and respect for differences. Schools should make use of 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 discrimination

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 encouraged 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, bisexual pupils in raising complaints and fear of further victimisation and bullying.

The adoption of good practice measures 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.



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'. Our advisory services are free of charge and we can also provide training for service providers.

For further information, please contact us at:

Telephone: 028 90 890 890 (enquiry line)

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Sector specific short guides are available in the areas of:

Health & Social Care
Hospitality
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