



Equality Commission

FOR NORTHERN IRELAND

Eliminating Sexual Orientation Discrimination in Northern Ireland

Short Guide - Hospitality

A guide for the hospitality and leisure sector 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.

Discrimination on grounds of sexual orientation is already unlawful for employers and others (including institutions of further and higher education) in the areas of employment and vocational training under the Employment Equality (Sexual Orientation) Regulations (NI) 2003.

This legislation has a major impact on the hospitality, tourism and leisure sectors in Northern Ireland. This short guide looks at the implications of the legislation for providers of services in this sector and is one of a series of sector specific guides produced by the Commission. Other guides in the series cover areas such as Education, Health and Social Care, 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 people often face unacceptable prejudice in their everyday life. Research carried out in Northern Ireland found out that 41% had experienced homophobia when accessing goods, facilities and services (McNamee 2006¹).

¹ Out on Your Own: An examination of the mental health of young same-sex attracted men (McNamee 2006)

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 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 benefit 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 the grounds of sexual orientation.

Direct discrimination

Is where one person or more (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.

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.

Discrimination in goods, facilities and services

The Regulations place duties on organisations not to discriminate on grounds of sexual orientation in the provision of goods, facilities and services to members of the gay, lesbian, bisexual and heterosexual communities. 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 which it offers to or provides to members of the public, or a section of the public, such as refusing to serve a person in a restaurant; or
- providing those services at a lower (inferior) standard or quality, such as being offhand, hostile, less courteous or rude towards them; or

- providing services on less favourable terms or in a worse manner such as imposing obstacles or charging extra for a service.

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 term 'goods, facilities and services' is used to denote a wide range of activities carried out by organisations:

- 'goods' (such as a computer, car, groceries) covers the ordinary meaning of the term, ie, 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 by a public or private company, or supply of food at a restaurant.

Organisations in the hospitality and leisure sector that are covered include:

- shops/petrol stations;
- restaurants/bars & clubs;
- hotels, guesthouses (including self catering) and bed & breakfasts;
- gyms, sports & leisure facilities (golf courses, leisure centres);
- libraries & museums;
- bus & railway stations;
- airports;
- theatres & concert halls, facilities for entertainment;
- tourist attractions/cinemas.

This list is for illustration purpose only and does not cover all service providers falling under the 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.

Direct discrimination

A same-sex couple are off for a break to a country house hotel that has been recommended by friends. On arrival at the hotel they request a room with a double bed. The receptionist informs them that it is hotel policy not to allocate rooms with double beds to same-sex couples and they can either have a twin room or they may like to try another hotel.

Under the law, this is likely to constitute discrimination on grounds of sexual orientation as the hotel is treating the same-sex couple less favourably than heterosexual couples.

Less favourable treatment

A female 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.

A meeting is organised with the facilities manager and a price for the event is agreed. Several weeks later, along with other members of her family, the female visits the hotel again to finalise arrangements for the reception. At that meeting, the hotel proprietor is also present. Upon disclosure that the ceremony and reception would be for a civil partnership, the proprietor refuses to proceed with the booking. The proprietor then cancels the booking.

The hotel proprietor has treated the female less favourably and this could constitute sexual orientation discrimination under the Regulations.

Victimisation

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

Refusal of service

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

Direct discrimination

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

Under the Regulations, individuals can be subjected to discrimination because of the sexual orientation of someone else.

Discriminatory service

A travel agent advertises 'couple only resorts'. On enquiry it becomes apparent that they are only available to heterosexual couples and that the services of the agent do not extend to same-sex couples.

Under the Regulations this is likely to be unlawful. However, if the travel agent places an advertisement in the local paper stating their services are gay friendly, this would be lawful, as long as the advert did not indicate that clients of different sexual orientation would be refused access to their services.

Discriminatory service

A 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 families with same-sex parents 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.

Other areas covered by the Regulations

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

- **the disposal or management of premises** (including land);
- **the provision of education.** Schools, colleges and universities cannot discriminate against existing pupils/students in the way it affords them access to any benefits (facilities, services) or against prospective pupils/students as regards terms of admission;
- **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 hospitality and leisure sectors must also be aware of a number of other provisions in the Regulations that afford protection to individuals on grounds of their sexual orientation. These include:

- **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, posters, leaflets, displays, notices, announcements on websites, e-mails, and internal newsletters.

- **Instructions/pressure to commit 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 do 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 out 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 service providers in the hospitality/leisure sectors 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.

For detailed information on the implications of the Regulations please refer to the Equality Commission's guidance 'Eliminating Sexual Orientation Discrimination in Northern Ireland: A Guide on the Provision of Goods, Facilities, Services and Premises' which is available on the Commission's website, www.equalityni.org.

Good practice for service providers

It is estimated that Britain's 3 million gay and lesbian citizens earn over £70 billion a year². Coupled with the fact that gay and lesbian households have fewer children means that this section of the community has a greater disposable income to spend.

Discrimination against gay, lesbian and bisexual people is unlawful and catering for them makes good business sense. It is recommended that all service providers in the hospitality and leisure sector should adopt anti discrimination policies and procedures and put them into effective practice to minimise the risk of sexual orientation discrimination. Adoption of good practice measures will enhance the image of the business as a proactive equality organisation, increase the reputation of the organisation resulting in business benefits, such as increased profits, and improving general performance.

The implementation and application of such policies helps to develop an environment in which employees and customers/clients understand in clear terms what behaviour is and is not acceptable.

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;
- review all policies and procedures currently in operation;
- establish non discriminatory policies, practices and procedures on the provision of service to customers;
- consult on service provision policies with lesbian, gay and bisexual representative groups;

² Out Now Marketing Consultancy (January 2006) Diva and Gay Times Readers Survey.

- 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 all relevant policies;
- regularly review whether services are accessible and act on any findings.

For further information on good practice please refer to chapter 10 of the Equality Commission's guidance '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.

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:

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Sector specific short guides are available in the areas of:

Education
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