



Equality Commission

FOR NORTHERN IRELAND

Eliminating Sexual Orientation Discrimination in Northern Ireland

Short Guide - Housing

A guide for the housing 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 in 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 cover 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 short guide looks at the implications of the legislation for the housing sector. The Equality Commission has produced several other sector specific guides in the areas of Education; Health and Social Care; Hospitality; and Financial (pension/insurance).

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

Detailed information is available from the 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 has identified that lesbian and gay people face a number of issues in relation to housing and accommodation including; eviction, unrecognised co-habitation, succession rights, discrimination from neighbours and landlords and ill treatment. Being lesbian, gay or bisexual does not itself represent a housing need. However other people's reaction to the sexual orientation of individuals can play a role in precipitating a housing need and potentially a housing crisis (Stonewall 2007¹).

¹ The Equalities Review, Sexual Orientation Research Review, Stonewall 2007

The 2006 Regulations make it unlawful for service providers to provide goods, facilities and services on less favourable terms on grounds of sexual orientation. The legislation has a major impact on the housing sector and those involved in its management.

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 civil partnerships. The effect is to make the status of 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 tenancy rights.

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 which only 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 housing sector

Disposal and management of premises

It is unlawful to discriminate against individuals on grounds of sexual orientation in the disposal or management of premises (including land of any description) in certain circumstances.

Who does the legislation apply to?

The legislation covers any person (under the law a person includes a legal entity such as a company) involved in the areas of housing and

accommodation. This includes:

- NI Housing Executive,
- housing associations,
- hostels,
- private landlords,
- estate agents,
- property developers,
- managing agents, and
- owner occupiers.

Disposal of premises

It is unlawful for a person (a person includes a legal entity such as a company) with power to dispose of any premises (including selling or letting land) to discriminate against individuals on grounds of sexual orientation:

- in the terms on which they offer to dispose of (sell/let) those premises;
- by refusing an application (to buy/rent) for those premises; or
- in the treatment of those on a list requiring housing, such as deliberately overlooking them or giving priority to people of a certain sexual orientation.

Disposal covers both the sale and lease (rent) of premises (including land) and any other form of legal disposal, for example, by licence. It includes the grant of a right to occupy the premises. Where the premises are part of, or subject of, a tenancy, they include assigning the tenancy (or assignment of), or sub-letting the premises or any part of them, or parting with possession of the premises or any part of them.

Disposal does not include the hire of premises or the booking of rooms in hotels or guesthouses. These are covered by the provisions relating to services discussed later in this guide.

What is meant by 'premises' and 'tenancy' under the Regulations?

The legislation only applies to premises in Northern Ireland and includes land of any description. For example, houses, office blocks, flats, bed-sits, factory premises, industrial or commercial sites and agricultural land are covered by these provisions.

A tenancy includes a tenancy created by a lease or sub-lease, or by an agreement for a lease or sub-lease, or by a tenancy agreement, or in pursuance of any statutory provision. Tenancies do not have to be in writing to be covered.

It is also unlawful for a person whose licence or consent is required for the disposal of any premises comprised in a tenancy to discriminate against a person on grounds of sexual orientation by withholding that licence or consent.

Management of premises

It is unlawful for a person managing any premises to discriminate on grounds of sexual orientation (actual or perceived) against those occupying premises, such as tenants, other occupiers, or someone who is associated with them in:

- The use of benefits and facilities - in the way they afford them access to or by refusing (or deliberately omitting) to afford access to any benefits or facilities. Examples of benefits and facilities include laundry facilities, access to a garden, parking facilities or any other commercial activities.
- Eviction - It is unlawful to evict a person occupying premises on grounds of sexual orientation. This prohibition does not prevent the eviction of lesbian, gay, bisexual or heterosexual tenants where the law allows it, for example, where they are in rent arrears or they have breached other terms of the tenancy, or where the reason for eviction is not related to sexual orientation. It should be noted that any differential treatment in the eviction process could lead to a breach of the Regulations.

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

- property owners, management agencies,
- accommodation bureaux, housekeepers,
- estate agents, rent collection services, and
- managing agents of commercial premises.

Are there any exceptions to the Regulations?

The Regulations do not apply to every disposal of premises. There are certain exceptions relating to disposal and management of premises.

(1) Owner occupiers

Under the legislation, there is an exception for owner-occupiers if the person owns an estate or interest in the premises, and wholly occupies the premises. However, when selling these premises if the owner-occupier uses the services of an estate agent, or publishes or arranges to be published, an advertisement or notice (whether to the public or not), the exception does not apply. So, for example, where a person is giving or selling a house privately to someone they know, and not using the services of an estate agent or advertising the sale, the Regulations do not apply.

(2) Small dwellings.

The small dwelling exception only applies to houses and other residential property and is in place to preserve an individual's right to privacy in their own home. It does not apply to commercial or industrial premises. The following conditions need to be satisfied before a small dwelling is exempted.

1. A person with the power to dispose of the premises (or whose licence or consent is required for disposal) referred to as the 'relevant occupier' (which includes 'a near relative'*) must:

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

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

2. Shared accommodation must not be a storage area or a means of access.

3. The premises must be 'small premises'.

Premises are classified as 'small premises' if the following conditions are satisfied:

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

Or, alternatively, premises are 'small premises' if there is not normally residential accommodation on the premises for more than six people in addition to the 'relevant occupier' and members of their household.

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 by a letting agency

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

This is likely to amount to discrimination under the Regulations.

Tenancy agreement/eviction

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

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

Eviction

A young gay man rented a room in a house, with other tenants. He was regularly subjected to homophobic abuse by his neighbours such as whistling and shouting insults. He complained to the police, who arranged a meeting with him and the landlord to discuss the abuse. The landlord declined to attend the meeting and instead sent a text message to the gay man giving him one month's notice to vacate his room. The gay man responded to the text stating that he did not want to move as the situation with the neighbours had improved. No response was received to this text for two weeks by which time the young man had moved.

The gay man has been treated less favourably on grounds of sexual orientation by the landlord, and this is likely to amount to discrimination under the Regulations.

Standard of service

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

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

Terms of service

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

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

Discrimination after the relevant relationship has come to an end

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

The female believes that this less favourable treatment is because she is a lesbian and the previous landlord had often made comments to other tenants about her. If she is correct her previous landlord has behaved unlawfully in refusing to provide a reference.

Instructions

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

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

Licence or consent

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

Use of benefits and facilities

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

Small dwellings

The owner of a four bed-roomed detached house has converted two bedrooms into bed-sit accommodation for two people. The owner continues to live in the house with their family. The house satisfies the Regulations' definition of 'small premises'. The exception is likely to apply.

Small dwelling exception

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

This house would satisfy the Regulations' definition of small premises.

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

Other areas covered by the Regulations

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

- It is unlawful for anyone who is concerned with the **provision of goods, facilities and services** to the public, or a section of the public, to discriminate on grounds of sexual orientation by refusing or deliberately omitting to provide any service, or providing a service of a lower standard, worse manner or on less favourable terms, for example, refusing to serve individuals in a restaurant, or charging extra for the hire of halls or venues.

The term 'goods, facilities and services' is used to denote a wide range of activities carried out by organisations. 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 provision of education.** Schools, colleges and universities cannot discriminate against existing pupils/students in the way they afford them access to any benefits (facilities, services), or against prospective pupils/students as regards the 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 housing sector must also be aware of a number of other provisions in the Regulations that afford protection to individuals on grounds of sexual orientation. These include:

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

Where a previous relationship existed, such as a relationship between landlord/tenant, customer or client, and this has come to an end, it is unlawful to discriminate against an individual, 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 in an estate agents window, announcements on websites, e-mails, posters and internal newsletters.

- **Instructions/aiding unlawful acts**

It is unlawful for a person involved in the provision of goods, facilities and services, education, 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 commit act of unlawful discrimination under the Regulations, or attempt to procure the commission of such an act by that person.

Examples could include an estate agent instructing staff not to let accommodation to gay clients.

It is also unlawful for a person to pressurise, induce or attempt to induce another individual to committ 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**

A housing provider (selling, letting or managing premises) may also be an employer. An employer may be liable for any act of discrimination carried out by employees 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' 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 it 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 housing 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 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.

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

Service providers are more likely to comply with their legal duties under the Regulations, prevent employees from discriminating against customers and 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 policies with lesbian, gay and bisexual representative groups;
- communicate all relevant policies to staff;
- provide regular training and guidance on sexual orientation awareness and service policies for all staff, including those not providing a direct service to the public;
- address acts of sexual orientation discrimination by staff as part of disciplinary rules;
- have a customer complaints procedure;
- monitor the implementation and effectiveness of 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 from 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:

Telephone: 028 90 890 890 (enquiry line)

Reception: 028 90 500 600

Textphone: 028 90 500 589

Fax: 028 90 248 687

Email: information@equalityni.org

Website: www.equalityni.org

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

Sector specific short guides are available in the areas of:

Education
Health & Social Care
Hospitality
Financial

March 2009

Equality Commission

FOR NORTHERN IRELAND