

Sex Discrimination Act 1975 (Amendment) Regulations 2007

The Government has published the above Regulations to implement the EU Gender Directive. This Directive is supposed to be brought into UK law by 21 December 2007. The Regulations cover discrimination and harassment laws on the grounds of sex in the provision of goods and services. The Government has decided to implement the Directive in a way which infringes religious liberties and free speech.

The Government is also applying the discrimination and harassment laws to transsexuals (on the grounds of 'gender reassignment'). Introducing a transsexual harassment law in the area of goods and services has serious implications for religious freedom and free speech. Likewise, the discrimination law threatens to curtail religious liberty in some circumstances. *These Regulations parallel the Sexual Orientation Regulations passed earlier in 2007.*¹

There is a religious exception in the Regulations. **But this exception is much too narrow.** (It is narrower than that proposed by the Government in the Draft Regulations earlier this year.²) The EU Directive itself would permit a far broader exemption.

The narrow religious exception

Regulation 12 contains "excluded matters", to be added to the Sex Discrimination Act 1975 as section 35ZA. It reads as follows:

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

(a) education (including vocational training);

(b) the content of media and advertisements;

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

The religious exception applies to both discrimination and harassment laws and contains two tests:

- 1) The goods or services must be of a kind that are not normally provided on a commercial basis.
- 2) The activity must be at place occupied or used for the purposes of organised religion.

Both 1) and 2) must be met for a person/organisation to obtain the exemption. For example, it appears that distribution of Holy Communion at a church is protected. It is not a commercial act and it is located on clearly religious premises.

Harassment law

The Government is introducing a broad definition of harassment. At its lowest, a person must simply show that an "offensive environment" had been created. There are alarming implications for free speech. The following examples could potentially fall outside the religious exception:

- Pastoral discussions conducted by a vicar at the home of an individual (could fail the 'place used for organised religion' test).
- Conversations at a church bookstall (if selling books is regarded as a 'commercial activity').
- Conversations at a Christian bookshop (could likewise fail the 'commercial' and 'place' test).

The wording of the harassment law is far broader than in the Directive. The Directive's definition is:

"where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person **and** of creating an intimidating, hostile, degrading, humiliating or offensive environment".

The Regulations replace 'and' with an 'or' – so a person only need show that an “offensive environment” was created. A parallel law covering *sexual orientation* was struck down by the Belfast High Court in September, for this reason among others. Moreover, the wider definition of harassment could render the Regulations ultra vires under the European Communities Act 1972, by which they have been promulgated. (The 1972 Act only permits Regulations to be issued to meet EU obligations – this harassment law goes beyond any obligation imposed by the EU Gender Directive).

Discrimination law

Religious professionals (e.g. doctors) or businessmen (e.g. printers) are open to proceedings against them under the discrimination law if they refuse a good or service (referral for a 'sex change' operation or refusing to print a transsexual rights group's magazine). A B&B which refused a double room to a male-to-female transsexual and another man would also be acting unlawfully.

The orthodox Christian belief is that the practice of transsexualism is sinful. The Church of England has linked transsexualism to the ancient heresy of Gnosticism.³

For Christians who believe that transsexualism is wrong, the heart of the issue is conscience. In very many cases no issue will arise under the Regulations. A Christian retailer is happy to sell to anyone. A Christian café owner will serve anyone. But there will be cases of conscience where the Regulations require a Christian to endorse or promote transsexualism. In these cases the Christian has to choose between abiding by their conscience and keeping the law.

Conclusion

The harassment law infringes free speech and religious liberty; the discrimination law will infringe Christian conscience in certain circumstances. We believe the inadequate religious exception is incompatible with EU Law on fundamental rights and freedoms. We also believe that the Regulations infringe Articles 9 and 10 of the European Convention on Human Rights, which guarantee freedom of speech and the right to manifest religious belief.

The Christian Institute
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¹ However the Sexual Orientation Regulations were not required by EU obligations.

² Draft Sex Discrimination Act 1975 (Amendment) Regulations 2007 issued 25 June 2007.

³ *Some Issues in Human Sexuality – A Guide to the Debate*, discussion document from the House of Bishops' Group on Issues in Human Sexuality, Church House, 2003, page 249