

# Briefing on The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006

The Sexual Orientation Regulations create two new laws which will cover the provision of goods, facilities and services. The regulations outlaw:

- 1) discrimination on the grounds of sexual orientation
- 2) harassment on the grounds of sexual orientation

The press is reporting that a first breach of the law could incur fines of between £500 and £5,000. Subsequent serious breaches could attract damages of up to £25,000 (see *Belfast Telegraph*, 30 November 2006).

## Harassment

Of particular concern is the new loosely worded harassment law, Regulation 3(3):

- (3) A person (“A”) subjects another person (“B”) to harassment in any circumstances relevant for the purposes of any provision referred to in these Regulations where, on the ground of sexual orientation, A engages in unwanted conduct which has the purpose or effect of —
- (a) violating B’s dignity; or
  - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Therefore, at its lowest, ‘harassment’ can constitute an ‘offensive environment’ for a homosexual. Furthermore, under Regulation 52 the burden of proof is reversed so that the person accused of harassment will have to prove their innocence.

This new civil law is being created even though there is already a very firm criminal law which protects everyone – the Protection from Harassment (Northern Ireland) Order 1997. As Christians we strongly oppose the harassment of anyone. But the loose wording of this new law leaves huge scope for bogus complaints which will limit freedom of speech and our religious freedom.

Regulation 16 provides some partial exemptions from the discrimination law for religious organisations and ministers. For example, they will be permitted to restrict church membership to those who uphold their doctrinal beliefs on homosexuality. However, a church could still be sued for harassment over the way it turned down a homosexual for membership. The exemptions are totally inadequate.

The regulations therefore threaten to override the consciences and free speech of Christians and others who object to homosexual practice. This contravenes Articles 9 and 10 of the European Convention on Human Rights.

## The implications

The scope of the regulations is vast, covering businesses and voluntary organisations. The phrase ‘goods, facilities and services’ is very broad, covering many different activities. The discrimination and harassment laws look set to affect four key areas – schools, the public sector, businesses and religious organisations.

**1. All schools** in Northern Ireland will be affected, including denominational and independent schools. The school curriculum and assemblies are not exempted from Regulation 9. Using the harassment law, Regulation 9(2)(b):

- An aggrieved pupil can sue a teacher who says in a lesson, or an assembly, that sex is only for marriage.

- A homosexual student could argue that a university has created an 'offensive environment' by permitting the 'homophobic' CU to advertise its meetings on campus.

Schools could also be forced to teach about homosexual practice within sex education. Using the discrimination provisions in Regulation 9, a pro-homosexual parent could launch a legal action against a school over its English lessons. It could be argued that texts such as *Romeo & Juliet* with a heterosexual love theme are used but not novels about homosexual relationships. Such a court case could force schools to use pro-homosexual books. This has already happened in North America. The Sexual Orientation Regulations are much more far-reaching than parallel laws covering *religion* (where similar legal actions would be impossible).

**2. Public authorities** will be banned from discrimination and harassment under Regulation 12 together with Regulation 5. Using the harassment law:

- A homosexual could argue that the Bible is a 'homophobic book' and that a hospital creates an 'offensive environment' by having Bibles by the beds.
- The prison authorities could ban an evangelical prison ministry, which believes that sex is only for marriage, after receiving threats of legal action from a homosexual prisoner who alleges he has been 'harassed' by the ministry.

**3. Businesses and individual Christians** will be covered by the discrimination and harassment laws in the provision of goods, facilities or services (Regulation 5) and the disposal and management of property (Regulation 6). The following scenarios are possible:

*Under the harassment law*

- The Christian owner of a block of flats puts up a poster inside the entrance advertising the services of his church, whose minister is a well-known opponent of homosexuality. A homosexual who rents a flat passes the notice board every day and alleges harassment.
- A hotel firm is sued by a homosexual for providing Bibles in every room on the grounds that this creates an 'offensive environment'.

Regulation 18 extends the new laws to acts which take place at a later time. This means that an assistant at a Christian bookshop who sells a book to a homosexual and then discusses the Gospel with him when he meets him later, might be accused of harassment.

*Under the discrimination law*

- A Christian magazine which refuses to take advertising from a 'gay Christian' group loses a legal action brought by the group and is forced to close down because of legal costs.
- Two men sue a wedding photographer who refuses to photograph their civil partnership ceremony.

**4. Religious organisations** are in theory partially exempted from the regulations for certain purposes (Regulation 16), so that, for example, a church can refuse to rent out its hall to homosexual activists. However, the Church could still be sued for harassment. Regulation 16(8) prevents the exception applying where an organisation has entered into a contract with the state to provide a particular service. This means that religious bodies providing a service on behalf of the state must comply with the new laws.

- A Christian old people's home receiving state funding and which refused to provide a double room to two men in a civil partnership would be held to be unlawfully discriminating. The costs of losing a legal case could force the home to close.