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# The Employment Equality (Sexual Orientation) Regulations 2003: The Questionnaire

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This booklet is in four parts:

**Part 1: Introduction**

**Part 2: Questionnaire of the person aggrieved: The Complainant** (*regulation 33*).

**Part 3: Reply by respondent** (*regulation 33*).

**Appendix: Notes on the scope of The Employment Equality (Sexual Orientation) Regulations 2003.**

## Part 1: Introduction

### General

- The purpose of this introduction is to explain the questions procedure under Section 33 of the Employment Equality (Sexual Orientation) Regulations 2003.
- The procedure is intended to help a person (*referred to in this booklet as the complainant*) who thinks he/she has been discriminated against by another (*the respondent*) to obtain information from that person about the treatment in question in order to:
  - decide whether or not to bring legal proceedings; and
  - if proceedings are brought, to present his/her complaint in the most effective way.
- We have devised a questionnaire which the complainant can send to the respondent. There is also a matching reply form for use by the respondent – both are included in this booklet. The questionnaire and reply form are designed to assist both the complainant and respondent to identify information which is relevant to the complaint. It is not obligatory for the questionnaire and reply form to be used: the exchange of questions and replies may be conducted, for example, by letter.
- The complainant and respondent should read this booklet thoroughly before completion and retain a copy of the information supplied.
- Guidance for the complainant on the preparation of the questionnaire is set out in Part 2.
- Guidance for the respondent on the use of the reply form is set out in Part 3.
- The notes at the end of this booklet explain the main provisions of the Employment Equality (Sexual Orientation) Regulations 2003. You can obtain further information about the legislation from the DTI website [www.dti.gov.uk/er/equality/](http://www.dti.gov.uk/er/equality/), or about your rights and responsibilities from the Acas good practice guide entitled *Sexual Orientation and the Workplace*. The Acas guidance is available on their website [www.acas.org.uk](http://www.acas.org.uk)
- Employees who require help or advice about completing this booklet can get advice from Citizens Advice Bureaux, law centres or trade union. They may also seek independent legal advice from a solicitor. Employees and employers can seek practical advice from Acas via their national helpline (08457 47 47 47).
- You can obtain copies of this booklet ("*URN 04/1010*"), as well as copies of the Acas guide mentioned above free of charge. See reverse of booklet for details.

### **Purpose of the questions procedure**

The questionnaire can provide the complainant with more information so that he or she can make a better informed decision about whether to bring a complaint and if they do will be able to present it more effectively.

- If the respondent's answers satisfy the complainant there may be no need for legal proceedings;
- If the respondent's answers do not satisfy the complainant, they should help to identify what is agreed and what is in dispute between the parties. For example, the answers should reveal whether the parties disagree on the facts of the case, or, if they agree on the facts whether they disagree on how the regulations apply. In some cases, this may lead to a settlement of the grievance, making legal proceedings unnecessary.
- If the complainant institutes proceedings against the respondent, the proceedings should be simpler because the matters in dispute will have been identified in advance.

### **What happens if the respondent does not reply or replies evasively**

The respondent cannot be compelled to reply to the complainant's questions. However, if the respondent does not reply within eight weeks, or replies in an evasive or equivocal manner without a reasonable excuse, a court or tribunal may draw adverse inferences from that, should the complainant bring proceedings against him/her. The respondent's attention is drawn to these possible consequences in the note at the end of the questionnaire.

### **Period within which proceedings must be brought**

There are different time limits for bringing a complaint under the Regulations. A complaint to an employment tribunal must be presented within 3 months of the alleged act. Where a complaint is brought against an institution of Higher Education or Further Education the complaint must be brought in the county or sheriff court within 6 months of the alleged act. A court or tribunal has a discretion to accept a late complaint if it would be just and equitable to do so.

### **Employment tribunal proceedings**

In order to be admissible as evidence in any ensuing employment tribunal proceedings, the complainant's questionnaire must be served on the respondent either:

- (a) before a complaint about the treatment concerned is made to an employment tribunal; or
- (b) if a complaint has already been made to a tribunal, within 21 days beginning when the complaint was received by the tribunal.

However, where the complainant has made a complaint to a tribunal and the period of 21 days has expired, a questionnaire may still be served provided the permission of the tribunal is obtained. This may be done by sending to the Secretary of the Tribunals a written application, which must state the names of the complainant and the respondent and set out the grounds of the application. However, every effort should be made to serve the questionnaire within the period of 21 days as the permission of the tribunal to serve the questionnaire after the expiry of that period will not necessarily be obtained.

### **County or Sheriff Court proceedings**

In order to be admissible in any ensuing county or sheriff court proceedings, the complainant's questionnaire must be served on the respondent before proceedings in respect of the treatment concerned are brought, but not more than 6 months after the treatment. However, where proceedings have been brought, a questionnaire may still be served provided the permission of the court has been obtained. In the case of county court proceedings, this may be done by obtaining the appropriate form from the county court office, completing it and sending it to the court, with the appropriate fee, and the respondent. In the cases of sheriff court proceedings, this may be done by making an application to a sheriff.

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## Questionnaire of person aggrieved: The Complainant

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**Note:**

- Before filling in this questionnaire, we advise you to prepare what you want to say on a separate piece of paper.
- If you have insufficient room on the questionnaire for what you want to say, continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

Enter the name of the person to be questioned (the respondent)

To

Enter the respondent's address

of

Enter your name (you are the complainant)

1.11

Enter your address

of

Please give as much relevant information as you can about the treatment you think may have been unlawful discrimination. You should mention the circumstances leading up to that treatment and, if possible, give the date, place and approximate time it happened. You should bear in mind that at paragraph 4 of this questionnaire you will be asking the respondent whether he/she agrees with what you say here.

1.2

consider that you may have discriminated against me [subjected me to harassment] contrary to the Employment Equality (Sexual Orientation) Regulations 2003.

In paragraph 1.3 you are telling the respondent that you think the treatment you have described in 1.2 may have been unlawful discrimination [harassment] by them against you. You do not have to complete 1.3. If you do not wish or are unable to do so, you should delete the word 'because'. If you wish to complete paragraph 1.3, but feel you need more information about the Employment Equality (Sexual Orientation) Regulations 2003 before doing so, see the notes attached.

1.3

I consider that this treatment may have been unlawful because:

- If you do decide to complete paragraph 1.3, you may find it useful to indicate what kind of discrimination [harassment] you think the treatment may have been ie. Whether it was:
    - direct discrimination;
    - indirect discrimination;
    - harassment;
    - or
    - victimisation;
- and which provision of the regulations you think may make unlawful the kind of discrimination you think you may have suffered.

This is the first of your questions to the respondent. You are advised not to alter it.

2. Do you agree that the statement in 1.2 above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

This is the second of your questions to the respondent. You are advised not to alter it.

3. Do you accept that your treatment of me was unlawful discrimination [harassment] by you against me?

- The questions at paragraph 3 are especially important if you think you may have suffered direct discrimination, or indirect discrimination because they ask the respondent whether your sexual orientation had anything to do with your treatment. They do not ask specific questions relating to victimisation. Questions at paragraph 4 provide you with the opportunity to ask other questions you think may be of importance. For example, if you think you have been discriminated against by having been refused a job, you may want to know what the qualifications were of the person who did get the job and why that person got the job.

If not:

- a) why not,
- b) for what reason did I receive the treatment accorded to me, and
- c) how far did considerations of sexual orientation affect your treatment of me?

Any other questions you may wish to ask:

4.

If you think you have been victimised you may find it helpful to include the following questions:

- 'Was the reason for my treatment the fact that I had done or intended to do, or that you suspected I had done or intended to do, any of the following:
  - brought proceedings under the employment Equality (Sexual Orientation) Regulations 2003;
  - gave evidence or information in connection with proceedings under the regulations;
  - did something else under or by reference to the regulations; or
  - made an allegation that someone acted unlawfully under the regulations?'

5. My address for any reply you may wish to give to the questions I have raised is:

At 1 above  below  (please tick appropriate box)

The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant, the person signing should:

- describe himself/herself e.g. 'solicitor acting for (name of complainant)'; and
- give business address (or home address, if appropriate). Date

Signed

Address (if appropriate)

**How to serve the papers**

- We strongly advise that you retain and keep in a safe place a copy of the completed questionnaire.
- Send the person to be questioned the **whole** of this document either to their usual last known residence or place of business or if you know they are acting through a solicitor, to that address. If your questions are directed at a limited company or other corporate body or a trade union or employers' association, you should send the papers to the secretary or clerk at the registered or principal office. You should be able to find out where this is by enquiring at your public library. However, if you are unable to do so you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk. It is your responsibility to see that they receive them.
- You can deliver the papers in person or send them by post.
- If you send them by post, we advise you to use the recorded delivery service (this will provide you with proof of delivery).

**By virtue of regulation 33 of the Employment Equality (Sexual Orientation) Regulations 2003 this questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings under the Regulations. A court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within eight weeks of service of this questionnaire, or from an evasive or equivocal reply, including an inference that the person questioned has committed an unlawful act.**

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## Reply: The Respondent

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**Note:**

- Before completing this reply form, we advise you to prepare what you want to say on a separate piece of paper.
- If you have insufficient room on the reply form for what you want to say, continue on an additional piece of paper, which should be attached to the reply form and sent to the complainant.

Enter the name of the person you are replying to (the complainant)

To

Enter the complainant's address

of

Enter your name (you are the respondent)

1. I

Enter your address

of

Complete as appropriate

hereby acknowledge receipt of the questionnaire signed by you and dated

which was served on me on (date)

Please tick relevant box: If you **disagree** with the complainant's statement of events, you should explain in what respects you disagree, or your version of what happened, or both.

2. I

agree

that the statement in 1.2 of the questionnaire is an accurate description of what happened.

I disagree

with the statement in 1.2 of the questionnaire in that:

Please tick relevant box: you are answering question 3a. I accept  that my treatment of you was unlawful discrimination [harassment] by me against you.

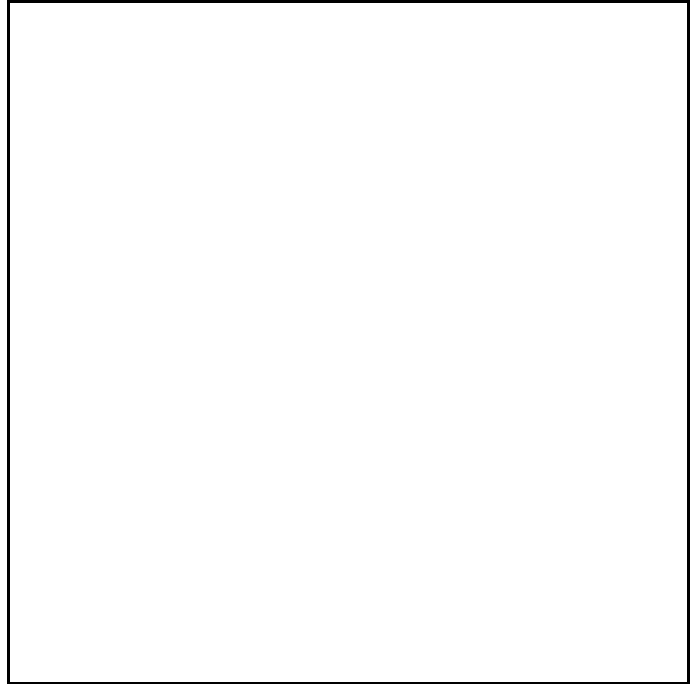
at paragraph 3 of the complainant's questionnaire here. If, in answer to paragraph 2 of the questionnaire you have agreed that the statement is an accurate description of what happened but dispute that it is an unlawful discrimination, you should state your reasons. If you have **disagreed** with the facts in the complainant's statement of events, you should answer the question on the basis of your version of the facts. We advise you to look at the attached notes and also the relevant parts of the Employment Equality (Sexual Orientation) Regulations 2003. You will need to know:

- how the regulations define discrimination and in what situations the regulations make discrimination unlawful – see paragraph 1 of the attached notes; and
- what exceptions the regulations provide – see paragraph 3 of the attached notes.

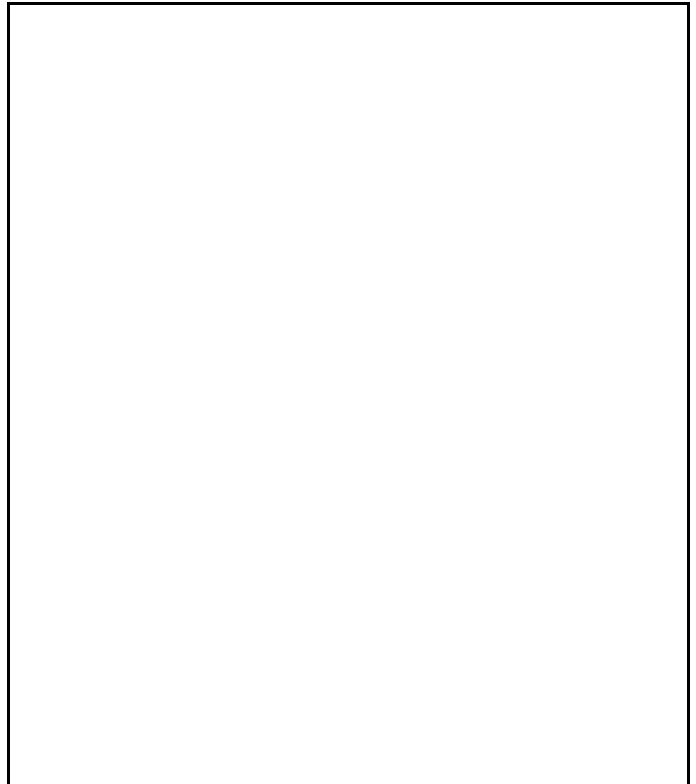
If you think that an exception (eg. the exception for employment where a person's sexual orientation is a genuine occupational qualification) applies to the treatment described in paragraph 1. 2 of the complainant's questionnaire, you should mention this in paragraph 3a, with an explanation about why you think the exception applies.

I dispute  that my treatment of you was unlawful discrimination [harassment] by me against you. My reasons for so disputing are:

3b. The reason why you received the treatment accorded to you and the answers to the other questions in paragraph 3 of the questionnaire are:



4. Replies to questions in paragraph 4 of the questionnaire:



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Delete the whole of this sentence if you have answered all the questions in the complainant's questionnaire. If you are unable or unwilling to answer the questions please tick the appropriate box and give your reasons for not answering them.

5. I have deleted (in whole or in part) the paragraphs numbered  above

since I am unable

since I am unwilling

⇒ to reply to the relevant questions in the complainant's questionnaire for the reasons given in the box below.

The reply form must be signed and dated. If it is to be signed on behalf of (rather than by) the respondent the person signing should:

- describe himself/herself eg. 'solicitor acting for (name of respondent)' or 'personnel manager of (name of firm)'; and
- give business address (or home address if appropriate).

Signed

Address (if appropriate)

Date

**How to serve the reply form on the complainant**

- If you wish to reply to the questionnaire we strongly advise that you do so without delay.
- You should retain, and keep in a safe place, the questionnaire sent to you and a copy of your reply.
- You can serve the reply either by delivering it in person to the complainant or by sending it by post.
- If you send it by post, we advise you to use the recorded delivery service (this will provide you with evidence of delivery).
- You should send the reply form to the address indicated in paragraph 5 of the complainant's questionnaire.

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# Notes on the scope of the Employment Equality (Sexual Orientation) Regulations 2003

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## Definitions of discrimination

1. The different kinds of discrimination covered by the regulations are summarised below:

**Direct discrimination (Regulation 3)** occurs where, on grounds of sexual orientation A treats B less favourably than he treats or would treat other persons. For example, if an employer refuses to give a person a job simply because he is gay, that is direct discrimination.

**Indirect discrimination (Regulation 3)** arises where an organisation introduces selection criteria, policies, benefits, employment rules or any other practices which, although they are applied to all employees, have the effect of disadvantaging people of a particular sexual orientation unless the practice can be justified. Indirect discrimination is unlawful whether it is intentional or not. To justify it, an employer must show that there is a legitimate aim (eg a real business need) and that the practice is proportionate to that aim (ie necessary, and there is no alternative means available).

**Victimisation (Regulation 4)** arises where a person is treated detrimentally because they have made a complaint or intend to make a complaint about discrimination or harassment or have given evidence or intend to give evidence relating to a complaint about discrimination or harassment.

**Harassment (Regulation 5)** arises where a person suffers behaviour that is offensive, frightening or in any way distressing. It may be intentional bullying which is obvious or violent, but it can also be unintentional, subtle and insidious. It may involve nicknames, teasing, name calling or other behaviour which is not with malicious intent but nevertheless is upsetting. It may be about the individual's sexual orientation or it may be about the sexual orientation of those with whom the individual associates. It may not be targeted at an individual but consist of a general culture which, for instance, appears to tolerate the telling of homophobic jokes.

## How to find out more about the provisions of the regulations

2. The DTI has prepared explanatory notes which explain the provisions of the regulations. The notes give general explanations only and should not be regarded as a complete or authoritative statement of the law. You can access the explanatory notes by visiting the DTI's website at [www.dti.gov.uk/er/equality/](http://www.dti.gov.uk/er/equality/). Acas has also published a good practice guide entitled *Sexual Orientation and the Workplace*. The Acas guide can be found on its website at [www.acas.org/uk](http://www.acas.org/uk).

## Exceptions

3. Regulation 7 of the sexual orientation Regulations allows an employer, when recruiting for a post, to treat job applicants differently on grounds of sexual orientation if being of a particular sexual orientation is a genuine occupational requirement ("GOR") for that post. An employer may also rely on this exception when promoting, transferring or training people for a post, and when dismissing someone from a post, where a GOR applies in respect of that post. A GOR may only apply in relation to discrimination under regulation 3, so it cannot be used to justify victimisation or harassment. In regulation 7(3) of the sexual orientation Regulations there is an exception for requirements related to sexual orientation which are applied to employment for purposes of an organised religion.

**Produced by:**

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