



The Lawyers'
Christian
Fellowship

&

Christian Concern for our Nation

The Sexual Orientation Regulations 2007

FREQUENTLY ASKED QUESTIONS

*For churches, charities, organisations and individuals in
England, Wales and Scotland*

Seek justice

Love Mercy

Walk humbly with God

Index of questions

INTRODUCTORY

1. What are the Sexual Orientation Regulations?
2. Why should a Christian have a problem with the Regulations?
3. What activities are covered by the Regulations?
4. Do the Regulations just apply to England?
5. What is the timetable for the Regulations – when will they actually become law?
6. Will the Regulations criminalise Christians?
7. Will the Regulations make parts of the Bible illegal?
8. What are the main problems with the Regulations (*doesn't regulation 14 (the religious exemption) provide all the protection Christians need*)?
9. Is it a defence to argue "I am not treating this person differently (discriminating) because they are a homosexual, I am treating them differently because of my religious beliefs"?
10. Is it a defence to argue "I am not treating this person differently (discriminating) because of their sexual *orientation* but because of their sexual *practices*"?
11. Is it a defence to argue "I am treating this homosexual person in the same way I would treat *any* unmarried person"?
12. Doesn't Regulation 3(3)(d) mean that providing I can 'reasonably justify' my discrimination, I will be alright?
13. Is it true that the Christians who are concerned about these Regulations are just a small minority?
14. Do the Regulations protect homosexuals from violence and bullying?
15. Are Christians who oppose the Regulations homophobic?
16. Aren't Christians who oppose these Regulations too focussed on the issue of homosexuality?
17. Shouldn't Christians spend more time showing love and being inclusive to homosexuals rather than opposing this law?
18. Is public opinion against the Christian viewpoint on the Regulations?

IMPACT ON CHURCHES AND VICARS / MINISTERS

19. Are there exemptions from this law for churches?
20. Do the exemptions just apply to certain denominations?
21. Will vicars be required to take 'gay weddings' (Civil Partnership ceremonies)?
22. Will vicars be required to give communion to or baptise practising homosexuals?

23. Will churches be required to hire out their halls to groups promoting homosexual practices?

IMPACT ON OTHER CHRISTIAN ORGANISATIONS

24. Are all Christian organisations protected by Regulation 14?

25. Will a Christian Conference Centre lawfully be able to turn away a group wanting to promote homosexual practices at a conference?

IMPACT ON CHRISTIAN CHARITIES

26. Is there an exemption from the Regulations for Christian charities?

IMPACT ON CHRISTIAN PREMISES

27. Is there an exemption for B&Bs?

28. Why would a Christian want to turn a homosexual away from a B&B?

IMPACT ON EDUCATION

29. Are there any protections for faith schools?

30. Will the Regulations affect the content of what is taught in schools – the curriculum?

31. Will individual teachers be caught by the Regulations?

32. Are Universities and theological colleges covered by the Regulations?

MISCELLANEOUS

33. Will the SORs require a Christian bookshop to start stocking books about homosexuality?

34. What is the time limit for legal actions being brought?

35. What are the penalties for breaking the Regulations?

36. Where will cases under the Regulations be heard?

FREQUENTLY ASKED QUESTIONS

NB NONE OF THE FOLLOWING INFORMATION CONSTITUTES LEGAL ADVICE. IT IS FOR GENERAL GUIDANCE PURPOSES ONLY. ANY ORGANISATIONS OR INDIVIDUALS WHO WISH TO KNOW HOW THE SEXUAL ORIENTATION REGULATIONS WILL APPLY SPECIFICALLY TO THEIR SITUATION WILL NEED TO SEEK PROFESSIONAL LEGAL ADVICE.

INTRODUCTORY QUESTIONS

What are the Sexual Orientation Regulations (SORs)?

Using power created by the Equality Act 2006, the Government has proposed a new law making it illegal for anyone who provides goods, services, facilities, premises, education or public functions to discriminate against that person on the grounds of their sexual orientation i.e. whether they are homosexual, heterosexual or bisexual.

Why should a Christian have a problem with the Regulations?

Christians are commanded to love all their neighbours irrespective of sexual orientation. Generally, a Christian would happily provide goods and services to people of different sexual orientations with no discrimination – as Christians we earnestly desire the repentance and salvation of all heterosexuals and homosexuals. The truly important question is not whether someone is homosexual or heterosexual, it is whether they will turn from their sins and acknowledge Jesus Christ as their Saviour.

However, the Bible is clear that the only lawful sexual relationship for which we were created is a relationship between a man and a woman in the context of a legitimate marriage. The Bible is therefore clear that all practising homosexual relationships are wrong. Consequently, any law which forces Christians to promote or assist sinful sexual behaviour (whether homosexual or heterosexual) forces Christians to sin themselves. Worryingly this is what the SORs will do in certain situations if they become law.

Consider one example: under the SORs the requirement not to discriminate on the grounds of sexual orientation means that a Christian printing company would be acting illegally if they were prepared to print a book about the importance of marriage, but refused to print a book promoting homosexual relationships, including homosexual sex.

Although it is only in a limited number of cases that a Christian would need to exercise the freedom to discriminate on the grounds of sexual orientation and although different Christians might have different views on exactly when they would and when they would not wish to withhold services in order to keep to the Bible's teaching, the principle of being free to uphold Biblical teaching is universally important to all Christians.

What activities are covered by the Regulations?

Anyone (whether an individual or an organisation) who provides goods, services, facilities or premises, or any school or public authority, will be covered by the Regulations.

The idea of 'goods, services and facilities' is extremely broad and applies even if you provide those things for free¹. The Regulations give the following examples of the sort of things covered:

- (a) access to and use of a place which the public are permitted to enter,
- (b) accommodation in a hotel, boarding house or similar establishment,

¹ Regulation 4(4)

- (c) facilities by way of banking or insurance or for grants, loans, credit or finance,
- (d) facilities for entertainment, recreation or refreshment,
- (e) facilities for transport or travel, and
- (f) the services of a profession or trade²

This list illustrates the incredible breadth of the coverage of the SORs.

Do the Regulations just apply to England?

There are two sets of similar, but not identical SORs. The first applies to Northern Ireland and can be found at <http://www.opsi.gov.uk/sr/sr2006/20060439.htm>.

The second set of Regulations applies to England, Wales and Scotland and can be found at <http://www.opsi.gov.uk/si/si2007/draft/20075920.htm>.

Unless otherwise stated, all references made in this FAQ pack will be to the England, Wales and Scotland Regulations.

What is the timetable for the Regulations – when will they actually become law?

The Northern Ireland Regulations were brought into force on 1st January 2007 and are now fully operational.

The England, Wales and Scotland Regulations are due to come into force on the 30th April 2007. A short debate and vote took place in a House of Commons Committee on the 15th March, and there will be a final debate and vote on the Regulations in the House of Lords on Wednesday 21st March.

Please sign-up for e-mail updates at www.lawcf.org (for lawyers) or www.christianconcernforournation.co.uk (for non-lawyers) to receive the latest news.

Will the Regulations criminalise Christians?

No. The SORs are a civil not a criminal law. This means that (with a few minor exceptions) the SORs do not criminalise anyone: they do not create power for the police to arrest people.

Instead, the SORs make certain behaviour unlawful, so that an individual³ can sue someone who they allege has discriminated against them on the grounds of sexual orientation. This is a private legal action generally taken by individuals, rather than a legal action taken by the state.

Will the Regulations make parts of the Bible illegal?

No. The Regulations will not make parts of the Bible illegal. They do however have serious implications for following the teaching of the Bible (see below).

What are the main problems with the Regulations (doesn't regulation 14 (the religious exemption) provide all the protection Christians need)?

There are a number of problems with the Regulations (many of which are set out in greater detail below). For example:

1) The Regulations automatically assume that homosexual civil partnerships are fully equivalent to heterosexual marriages and therefore it is assumed that any discrimination (in the provision of goods and services) between married couples and homosexual civil partners is illegal⁴.

² Regulation 4(2)

³ Or in some cases the Commission for Equality and Human Rights

⁴ Regulation 3(4)

2) There is a crucial gap in the protection of vicars and ministers⁵ so that it will be illegal for them to teach their congregation that they should follow the Bible's teaching on sexual morality even where this conflicts with the SORs⁶. For example, it would be illegal for a vicar to cite the example of the Christian printing company and then say 'it is better to follow the Bible's teaching and risk being sued than to be complicit in sin by printing leaflets promoting gay pride'.

3) There is no protection for individuals to guarantee their freedom of conscience – the only exemption for religious belief (Regulation 14) applies to organisations rather than individuals. Therefore an individual Christian GP, for example, would have no freedom of conscience to refuse to give a reference recommending homosexual parents as suitable for adopting because the GP did not believe it would be right / in the best interests of a child to be raised without a father and a mother. This does not make sense in light of a doctor's freedom to refuse to recommend / perform an abortion on the grounds of conscience under the Abortion Act.

4) There is no specific protection for faith schools which are bound by the law in the same way as all schools (see further, below). Also, there is a substantial danger that it will be illegal under the SORs for faith schools to continue to teach that extra-marital sexual relationships are wrong.

5) There is no protection for commercial Christian organisations, however strong their Christian ethos (e.g. a Christian printing company will be acting illegally if they refuse to print fliers promoting gay sex).

6) There is no protection for many voluntary organisations which, although run by Christians who are motivated by their faith, are not strictly 'religious' in the language of the legislation (e.g. a Christian homeless shelter would not be able to hold the policy that 'we will not provide services to someone if this were to promote homosexual practices').

7) There is a substantial danger that where a church or other religious organisation receive funding from the local authority to provide goods or services (e.g. if a church receives state funding to run an overnight homeless shelter), it will lose all the protection under Regulation 14 and would not even be able to refuse membership of the church to openly practising homosexuals⁷.

8) There is a danger that it will be unlawful for vicars to be able to continue to preach that same-sex relationships are sinful because preaching itself is not protected by the religion exemption and may contravene Regulation 9.

It is true that Regulation 14 does offer a substantial degree of protection to churches and other religious organisations that are not 'solely or mainly commercial' and which do not provide goods, services etc on behalf of a public authority under a contract. So, for example, under the Regulations, in the vast majority of cases, a church will be free to refuse to let out a church hall to a group wishing to promote homosexual practices (see further information about churches, below). However, as the list (above) shows, there are still many problems with the Regulations.

Is it a defence to argue "I am not treating this person differently (discriminating) because they are a homosexual, I am treating them differently because of my religious beliefs"?

No. The question is simply 'would you have treated a heterosexual person (in the same circumstances) in the same way as you treated the homosexual person'. If the answer is 'no' then it does not matter what your motivation or reason was.

Is it a defence to argue "I am not treating this person differently (discriminating) because of their sexual orientation but because of their sexual practices"?

No. The Government have never accepted this distinction in law and neither (to date) have the courts⁸.

⁵ This appears to be an inadvertent gap

⁶ Regulation 11

⁷ This again appears to be an inadvertent legal consequence of the way the SORs are drafted

⁸ See *Amicus MSF Section and Others v Secretary of State*, [2004] EWHC 860

Is it a defence to argue “I am treating this homosexual person in the same way I would treat any unmarried person”?

On the whole, the answer is ‘no’. The Regulations state expressly that treating homosexual couples who have a registered civil partnership, differently from married couples, will always be assumed to be unlawful⁹.

However, a Christian B&B owner who refuses to let a double room to an unmarried heterosexual couple and also refuses to let a double room to a homosexual couple who do not have a civil partnership, will not be discriminating unlawfully. The difficulty is that if the B&B owner allows married heterosexual couples to book a double room, then he will be acting illegally if he refuses to allow a homosexual couple with a civil partnership to do the same.

Doesn’t Regulation 3(3)(d) mean that providing I can ‘reasonably justify’ my discrimination, I will be alright?

No. Firstly, there are two different types of discrimination covered by the SORs: direct discrimination and indirect discrimination¹⁰.

In relation to the Christian printer scenario (for example) it is a case of direct discrimination because the printer would print a book promoting marriage (a heterosexual relationship) but would not print a book promoting homosexual relationships: this is a straightforward case of treating the homosexual person less favourably on the ground of sexual orientation. In such direct discrimination situations, any justifications for discriminating are, in legal terms, irrelevant.

It is only in cases of indirect discrimination that there is a legal opportunity to justify what you have done. Indirect discrimination would be, for example, where you apply a requirement that everyone (homosexual or heterosexual) who uses your premises, must sign a statement of faith. The rule is applied to everyone equally, but may indirectly discriminate against homosexuals who are not willing to sign up to the Bible’s teaching on sexual morality. In such a case, if you can ‘reasonably justify’ why a statement of faith must be signed, then it will not be unlawful discrimination.

What constitutes a ‘reasonable justification’ is entirely up to the courts, but where a commercial service is being provided, religious considerations are unlikely to be considered a reasonable justification for indirect discrimination.

Is it true that the Christians who are concerned about these Regulations are just a small minority?

No. The official responses to the Government’s consultation on the Regulations by the Church of England, the Catholic Bishops’ Conference, the Evangelical Alliance, CARE, Anglican Mainstream, Affinity, Christian Institute and many others expressed broadly similar concerns about the impact of the Regulations. Since then, the Archbishops of Canterbury and York, as well as the Bishop of Durham and the head of the Roman Catholic Church in England, have spoken out publicly in supporting those concerns. In Northern Ireland, on the 20th December, a detailed joint statement was issued by the Presbyterians, Roman Catholics, Church of Ireland and Methodists, criticising the content of the Regulations and calling for amendments to be made.

Do the Regulations protect homosexuals from violence and bullying?

No. There are already numerous other criminal laws which protect against violence, bullying and other related behaviour, but these Regulations deal with the provision of goods, services and facilities.

⁹ Regulation 3(4)

¹⁰ Regulation 3(1) and Regulation 3(3) respectively

Are Christians who oppose the Regulations homophobic?

Homophobia is an irrational prejudice towards someone because of their homosexuality. Christians' view of all people is based squarely on the word of God - the Bible, and there is nothing irrational in that belief. The Bible teaches that we should love our neighbours as ourselves (that command was not limited to heterosexuals) and that in love we should speak the truth. Part of that truth is that the only rightful sexual relationship God intended was between a man and a woman in a monogamous marriage. This is not a homophobic view.

Aren't Christians who oppose these Regulations too focussed on the issue of homosexuality?

The following quotation from Martin Luther explains with clarity why Christians must engage with the current legislation being put forward which raises issues surrounding homosexuality: *'If I profess with the loudest voice and clearest exposition every portion of the Word of God except precisely that little point which the world and the devil are at that moment attacking, I am not confessing Christ, however boldly I may be professing Him. Where the battle rages there the loyalty of the soldier is proved; and to be steady on all the battle front besides, is mere flight and disgrace if he flinches at that point.'* (Luther's Works. Weimar Edition. Briefwechsel [Correspondence], vol. 3, pp. 81f.).

Shouldn't Christians spend more time showing love and being inclusive to homosexuals rather than opposing this law?

It is the role of all Christians to be salt and light to the world and to show love and compassion to everyone in society. We are speaking for the benefit of society because it is not good for anyone if conscience is increasingly blocked out of public life. Societies where conscience isn't valued are eventually societies where people largely cannot trust each other. The effects are then felt by the gradual disintegration of society. But more importantly, as Christians we are also compelled by God's love to speak Gospel Truth into a society crying out for help. As fallen humans, we are all sinners under God's judgment, but offered forgiveness and reconciliation with God through the blood of Jesus. Our message of the Gospel to turn from sin and trust in the Saviour makes no sense if Christians are not also opposed to legislation requiring us to condone sinful behaviour. When the Government is about to introduce laws demanding that some Christians be complicit in sinful behaviour then as Christians the most loving thing to do is to speak out.

Is public opinion against the Christian viewpoint on the Regulations?

In an independent Opinion Poll of 1000 people (21st Nov 2006)¹¹, 72% of the general public supported the main concern about the Regulations: their impact on freedom of conscience.

IMPACT ON CHURCHES AND VICARS

Are there exemptions from this law for churches?

Yes. Regulation 14 provides certain exemptions from the law for religious organisations and these exemptions will apply to churches.

The exemptions allow churches (and other religious organisations, see below) to discriminate on the grounds of sexual orientation

- (a) by restricting membership of the organisation
- (b) by restricting participation in the activities undertaken by the organisation
- (c) by restricting the provision of goods, facilities and services in the course of activities undertaken by the organisation, or
- (d) by restricting the use or disposal of premises owned or controlled by the organisation.

It is important to note that the restrictions listed above (a) to (d) are only permissible where

¹¹ See <http://www.lawcf.org/index.asp?page=SOR+Opinion+Poll+results>

- 1) it is necessary to apply the restriction 'in order to comply with the doctrine of the organisation' or
- 2) the restriction needs to be imposed 'so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers'.¹²

There are also several key areas in which even churches will not (or may not) benefit from these Regulation 14 protections. For example:

- A) Where churches provide goods, services, facilities or exercise public functions on behalf of a public authority (e.g. local authority) under a contract (e.g. a contract where the local authority funds the church to provide services on its behalf)¹³ there is a substantial danger that they will not have protection in relation to any of their activities (this appears to be a mistake in the drafting of the law).

For example, if a church receives funding from the local council to run a soup kitchen, overnight homeless shelter, family centre etc, Regulation 14(8) implies that it will lose all the protections under Regulation 14 and would not even be able to refuse membership of the church to openly practising homosexuals. Although this is the legal implication of the Regulations, it is hard to believe that this is what the Government intended, and it would be hoped that a court would interpret the Regulations in a way that avoids them having this effect.

- B) Where a vicar teaches their congregation that they should follow the Bible's teaching on sexual morality even where this conflicts with the SORs they will have no protection from Regulation 14 (preaching is not covered by (a) to (d) above). For example, it would be illegal for a vicar to cite the example of the Christian printing company and then say 'it is better to follow the Bible's teaching and risk being sued than to be complicit in sin by printing leaflets promoting gay pride'. This appears to be an unintended consequence of the law.
- C) Where a vicar is preaching that homosexual practices are sinful, there is a slight possibility it could constitute a 'practice' which would be 'likely to result' in unlawful discrimination on the grounds of sexual orientation. Again, it seems that the SORs were not intended to have this result.

Do the exemptions just apply to certain denominations?

No. The exemptions apply to all denominations and cover vicars / ministers / pastors or any other person in a church who:

- (a) performs functions (within that religious organisation) in connection with a religion or belief, and
- (b) holds an office or appointment in, or is accredited, approved or recognised for the purposes of that religious organisation.¹⁴

Will vicars be required to take 'gay weddings' (Civil Partnership ceremonies)?

No. Regulation 14¹⁵ (see above) means that vicars will not be required to take gay weddings or bless homosexual partnerships (note the point, above, that this does not apply if churches are providing services on behalf of a public authority, under a contract).

Will vicars be required to give communion to or baptise practising homosexuals?

No. (Note the point, above, that this answer does not apply if churches are providing services on behalf of a public authority, under a contract)

¹² Regulation 14(5)

¹³ Regulation 14(8)

¹⁴ Regulation 14(6)

¹⁵ Plus the Civil Partnerships Act 2004

Will churches be required to hire out their halls to groups promoting homosexual practices?

No. In most cases churches will be able to refuse to hire out their halls in such a situation (note the point, above, that this does not apply if churches are providing services on behalf of a public authority, under a contract).

However, a church which runs, for example, a family centre in *separate* premises, may not have freedom to refuse to hire out the centre to groups promoting homosexual practices if the premises are not closely enough linked to the church itself, such that the family centre could be described as a separate organisation, and where that separate organisation does not count as a religious organisation in the Regulation 14 definition (for example if the premises' main purpose is to provide services to the general public, rather than just to benefit Christians).

Note also that a church which is selling its whole legal interest in premises (e.g. if it is selling the whole church) will not be able to discriminate on the grounds of sexual orientation in relation to who purchases the church.¹⁶

IMPACT ON OTHER CHRISTIAN ORGANISATIONS

Are all Christian organisations protected by Regulation 14?

No. Only Christian organisations which have as their main purpose one or more of the following:

- (a) to practice a religion or belief
- (b) to advance a religion or belief
- (c) to teach the practice or principles of a religion or belief or
- (d) to enable any persons of a religion or belief to receive any benefit, or to engage in any activity within the framework of that religion or belief¹⁷

will be able to benefit from the religious exemption. There is a large question-mark over the exact scope of these 4 'purposes', particularly purpose (d).

Even where a Christian organisation falls within one of the four purposes, if it provides goods, services, facilities or exercises public functions on behalf of a public authority (e.g. local authority) under a contract (e.g. a funding contract where the local authority funds the Christian organisation to provide services on its behalf) they will not be exempted from the Regulations.

This is why many Christian adoption agencies will be forced to close: because they receive funding from the local authority and they will therefore not be able to discriminate on the grounds of sexual orientation: they will not be allowed to take the view that it is right for children to be adopted into families which have a mother and a father.

Equally, a Christian organisation 'whose sole or main purpose is commercial'¹⁸ will not have any protection, however religious they are. This is why a Christian printing firm will be acting illegally if they refuse to print posters promoting homosexual practices.

Note that a Christian organisation can take part in commercial activities and still be protected by the Regulation 14 exemption, as long as commerce is not its sole or main purpose.

Will a Christian Conference Centre lawfully be able to turn away a group wanting to promote homosexual practices at a conference?

If the conference centre can be said to have 1) the 'purpose' as an organisation of enabling Christians to receive the benefit of being able to meet together and further activities 'within the framework' of Christianity, then providing 2) they are not 'solely or mainly commercial' as an organisation, they will qualify for the Regulation 14

¹⁶ Regulation 14(7)

¹⁷ Regulation 14(1)

¹⁸ Regulation 14(2)(a)

exemption (see above) and be able to discriminate on the grounds of sexual orientation in deciding who they hire their facilities to.

Whether 1) and 2) are made out will depend on a variety of factors. If the conference centre just provides facilities for Christians, rather than being open to the general public to book, it will be more likely to fall within 1). However, just allowing some non-Christians to book its facilities will not automatically take it outside the Regulation 14 exemption. Additionally, if the conference is charitable, that will help deal with any questions of whether it is commercial under 2). However, again, just because it is non-charitable and does make a profit, does not automatically remove its protection, providing the main purpose of the conference centre is to benefit Christians.

IMPACT ON CHRISTIAN CHARITIES

Is there an exemption from the Regulations for Christian charities?

No. Regulation 18 provides an exemption so that any charity which is established specifically in order to serve either homosexuals or heterosexuals, will be allowed to continue to do so. This offers almost no protection to the vast majority of Christian charities: most Christian charities would very much *want* to provide their services to everyone, irrespective of sexual orientation. Regulation 18 may offer protection to Christian charities which exist to promote marriage, but there would still be an argument that the purpose of the charity was not to 'benefit' heterosexuals as a group, but rather to 'promote marriage' to everyone.

The Government have made it clear that the thrust of Regulation 18 is to benefit homosexual charities. The only examples of charities they intend to cover are "charities that promote LGB rights or provide counselling services for LGB victims of domestic abuse".¹⁹

Note that some, but not all Christian charities will fall within Regulation 14 (see above) and be protected by that clause.

IMPACT ON CHRISTIAN PREMISES

Is there an exemption for B&Bs?

No. There is no exemption under the Regulations for B&Bs²⁰. Equally, where you offer informal lodgings²¹ in your own home to members of the public (for example, students), it will be illegal to refuse to allow a practising homosexual to use those lodgings, if you are refusing on the grounds of their sexual orientation²².

However, it is possible to discriminate on the grounds of sexual orientation in relation to letting out²³ part of your own house (or a property you own where a close relative resides) providing that the house in question is not big enough to accommodate more than 2 'households' in addition to your own household, or more than 6 individuals, in addition to your own household.²⁴ This is a slight simplification of a complicated clause: there are some other criteria which must be fulfilled to qualify for this exemption.

Equally, where someone owns and occupies the whole of some premises and does not advertise or use an estate agent, they are able to discriminate on the grounds of sexual orientation in how they sell or let the premises²⁵.

¹⁹ Paragraph 3.39 of the Government SOR consultation

²⁰ B&Bs fall under Regulation 4, see Regulation 4(2)(b)

²¹ I.e. where you do not ask the lodger to sign a tenancy agreement

²² See Regulation 4 and the implication of Regulation 6(1)

²³ 'Letting out' being a contractual tenancy agreement, unlike the more casual 'lodgings' agreement previously referred to

²⁴ Regulation 5 and 6 esp Regulation 6(2) and 6(4)

²⁵ Regulation 6(4)

Why would a Christian want to turn a homosexual away from a B&B?

It is clear that Christians will have differing views on when it is necessary to discriminate against a homosexual person on the ground of their sexual orientation. The B&B example which was cited widely in the press was not a case of a Christian B&B wanting to turn away a single homosexual person, but a case of a Christian B&B willingly providing separate sleeping accommodation for a homosexual couple, but wishing to have the freedom to refuse them a double room, because of a desire to have no part in facilitating and condoning sinful homosexual practices.

IMPACT ON EDUCATION

Are there any protections for faith schools?

No. The SORs do not give any specific protections for faith schools (whether Anglican, Catholic, Muslim or other). They are treated in exactly the same way as all other schools.

Will the Regulations affect the content of what is taught in schools – the curriculum?

The position of the curriculum is, in legal terms, extremely unclear. However, the specialist Parliamentary lawyers who advised the Joint Committee on Statutory Instruments were adamant that the curriculum was covered by the SORs. The Joint Committee on Human Rights stated that they were unclear but that they believed the Regulations should apply to the curriculum. The Government minister in the House of Lords stated that the curriculum was not covered.

The SORs make it illegal for the Local Education Authority or the Governors of a school to subject a pupil to “any other detriment” by discriminating on the grounds of sexual orientation.

The precise meaning of that phrase is unclear. The phrase has been defined by judges as meaning very broadly “putting at a disadvantage”²⁶ and there doesn’t need to have been any physical or economic consequences to the discrimination for it to count as a ‘detriment’. This indicates that the homosexual parents of a school child could argue that the child was ‘put at a disadvantage’ if the school (even if it was a Christian school) was failing to educate pupils that homosexual relationships were just as acceptable as married relationships.

Secondly, in other pieces of legislation where the Government intended that the curriculum should not be covered, they said so explicitly²⁷. In the SORs, there is nothing which says ‘these Regulations shall not affect the curriculum’.

There have already been reports in national newspapers that some authorities are interpreting the Regulations as requiring schools to begin to promote homosexuality to primary school children in a more active manner: “Fourteen primary schools are already taking part in a £600,000 Government-funded study aimed at familiarising children with gay and lesbian relationships. [...] Dr Elizabeth Atkinson, reader in social and educational inquiry at Sunderland University, said: “The purpose of the project is to support schools in meeting their requirements under the Equality Act, which will require all public institutions to meet the needs of gay and lesbian users.”²⁸

Will individual teachers be caught by the Regulations?

Again, there is substantial confusion within the Government about this issue. Meg Munn, the minister in charge of the SORs, said within the same paragraph of a speech to the House of Commons, firstly that “the Regulations apply to the delivery of education” and secondly that “the Regulations will not force schools to change how they deliver an education to their pupils”. It is difficult to see what purpose they would have in applying to the delivery of education if they will in no circumstances result in changing that delivery.

²⁶ *Jeremiah v MoD* [1979] 3 All ER 833

²⁷ E.g. the Fair Employment and Treatment Order (1998) and Part 2 of the Equality Act 2006 (section 50)

²⁸ http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=441542&in_page_id=1770

The Government minister in the House of Lords said that the Regulations would apply to how people teach in schools.

The provisions which apply to education²⁹ place legal duties on the Local Education Authority (LEA) and school governors. However, any act done by a teacher or headteacher can be attributed to the LEA or governors³⁰. This means that although no duty is placed directly on teachers, it is clear that in order to avoid being liable for unlawful discrimination themselves, the LEA and governors will have to make sure that teachers are not discriminating on the grounds of sexual orientation. This raises the issues (mentioned above) of whether it will be unlawful to teach that homosexual practices are wrong or whether marriage can be promoted without there also being a requirement to promote civil partnerships.

The Parliamentary Joint Committee on Human Rights, in their report on the SORs (28th February 2007) stated:

"We welcome the Government's acceptance that [the Regulations] should apply to all schools [...] without any exemption for particular types of school such as faith schools" and "In our view the Regulations should clearly apply to the curriculum, so that homosexual pupils are not subjected to teaching, as part of their religious education or other curriculum, that their sexual orientation is sinful or morally wrong" (paragraphs 65 and 67).

It is clear that they would include in that approach any teaching to a homosexual pupil that sexual *practices* are sinful or morally wrong.

Are Universities and theological colleges covered by the Regulations?

Unlike similar legislation (the Employment Equality (Sexual Orientation) Regulations 2003³¹), universities are not expressly covered by the SORs. However, many universities fall within the legal definition of 'public authority' and therefore are covered by the SOR³² provisions relating to public authorities.

Most theological colleges will fall within the Regulation 14 exemption (see above) as organisations whose purpose is to 'teach the practice or principles of a religion or belief'.

MISCELLANEOUS

Will the SORs require a Christian bookshop to start stocking books about homosexuality?

Generally, the Regulations will not force Christian individuals or organisations to provide a service or goods which they are not already providing: for example, a Christian bookshop will not have to start providing books about homosexuality. The way the Regulations work is that they would simply require the bookshop to sell Christian books to homosexuals on the same terms as they sell them to heterosexuals.

What is the time limit for legal actions being brought?

Those who wish to make a claim have 6 months from the date of the alleged act of discrimination in which to bring a legal action³³.

What are the penalties for breaking the Regulations?

The usual remedy will be damages (i.e. the person who discriminated will have to pay financial compensation to the 'victim').³⁴

²⁹ Regulation 7

³⁰ Regulation 30

³¹ Regulation 20

³² Regulation 8

³³ Regulation 23

³⁴ Regulation 22

It is important to note that the 'victim' can take a claim even if they have not made any specific loss (i.e. they have not lost out financially because of the discrimination). They can seek financial compensation purely for the injury to their feelings which the discrimination caused. The standard 'rate' of compensation for injury to feelings claims in existing discrimination law is £500 - £5000 for a one-off offence rising to £5000 - £15,000 if the offensive action has occurred repeatedly³⁵.

Additionally, the court may make a prohibitory order which requires the person found to have breached the SORs to stop doing something (for example, to stop doing the unlawful act which breached the Regulations). The court can also make a mandatory order requiring the person in question to do something which they were not doing before. The court can also make a quashing order, which erases a decision made by the person who acted unlawfully.

Finally, if the person found liable under the SORs fails to comply with the penalty in question they can ultimately be imprisoned.

Where will cases under the Regulations be heard?

Cases will be heard in the County Court.

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³⁵ [Vento v. Chief Constable of West Yorkshire Police \(no.2\) \[2003\], ICR 318](#)