**R (GLP et al) v Equality and Human Rights Commission AC-2025-LON-001953**

**Intervener's summary of argument**[1]

## Construction of the Workplace Regulations

1. The WR are made under s. 15 Health and Safety at Work Act 1974 ("**HSWA**") **[Auth/4/121]**. The Act is not concerned only with health and safety (*contra* CSkel §66.1 **[Core/11/188]**), but with "*health, safety* ***and welfare***" of persons at work: s. 1 HSWA **[Auth/4/16]**. Employers are obliged to ensure *inter alia* the welfare of their employees at work (s. 2 HSWA **[Auth/4/18]**), and employees are obliged to cooperate to ensure compliance with the employer's duties including under the WR (ss. 7 HSWA (enclosed) and 53 HSWA (provided by D)).

2. The function of the WR is not only to implement Regulation 89/654/EEC (*contra* CSkel §66.3 **[Core/11/189]**). The WR were also made pursuant to provision in s. 1(2) HSWA **[Auth/4/16]**) that identified prior enactments should be repealed and replaced by "*regulations … designed to maintain or improve the standards of health, safety and welfare established by or under [the listed prior] enactments*". The listed prior enactments **[Auth/4/32]** include the Factories Act 1961 ("**FA**"): as to which see s. 7 **[Auth/2/8]**, and *inter alia* the Sanitary Accommodation Regulations 1938 **[Auth/1/6]** ("**SAR**") as subordinate legislation continued in force under the FA (Sch 6 §2 FA, enclosed).

3. The welfare of workers includes considerations of privacy and dignity, which underlie the provision for single-sex facilities. See:
   3.1. The Supreme Court's recognition of the implications of privacy/dignity considerations: ***FWS*** at [52], [211], [213], [217], [224] **[Auth/69/2594, 2632-2637]**.
   3.2. SM's evidence: Forstater, §§34-65 **[Supp/4/73-88]**;[2] Shipworth, §§6-8 **[Supp/2/19-20]**; Miller, §§5-25 **[Supp/3/50-59]**.
   3.3. The provisions of regs. 20(2)(c), (3), 21(2), 24(2), 25(4) WR **[Auth/6/68-73]**, all of which manifest a concern for privacy and dignity between the sexes in the

[1] SM notes that there are a number of disputes between the main parties as to whether the Court needs to resolve all issues raised by Cs. SM makes the submissions below to the extent that the Court considers that it needs to resolve the issues to which they relate.
[2] And Forstater §§24-33 **[Supp/4/69-72]**, explaining some of the practical issues with persons seeking to 'pass' as individuals of the opposite sex.

workplace. The WR make very clear that men and women should not be required to share sanitary facilities.

3.4. The legislative history: as above, Schedule 1 WR continues provision originally found in the SAR, which are clearly motivated by such considerations.

4. Cs now argue that 'men' and 'women' in the WR need not be construed. That is wrong: the WR do not merely require 'designation' of facilities in line with sex (*contra* CSkel §66.1 **[Core/11/188]**). They require that if communal facilities are provided, "*separate rooms containing conveniences are provided* ***for*** *men and women*" (and see ss. 1, 2 and 7 HSWA, referred to above). This does not require an employer absolutely to guarantee that no man ever enters women's facilities (or *vice versa*), but would preclude an employer from authorising men (including with the protected characteristic of gender reassignment) to enter them.

5. When the Equality Act 2010 ("**EqA**") refers to 'sex', it is referring to biological sex: ***FWS***. When the WR refer to 'men' and 'women', they likewise refer to biological sex.

6. For those without GRCs:

6.1. 'Men' and 'women' mean what they say (***FWS*** at [51] and [171]), and reflect the common law position that sex is immutable;[3]

6.2. The legislative history shows that the underlying policy is privacy and decency between the sexes, which requires the provision of separate facilities: above;

6.3. The 'safety valve' point advanced by Cs (CSkel §70 **[Core/11/192]**) (i) is not a proper construction argument; (ii) misunderstands the EqA. See SM written submissions §17 **[Core/14/259-260]** and ***FWS*** at [134], [220]-[221] **[Auth/69/2612, 2636]**.

7. For those with GRCs, the position is the same. The WR cannot be read compatibly with s. 9(1) Gender Recognition Act 2004 ("**GRA**"). S. 9(3) applies (as to which ***FWS*** at [156] **[Auth/69/2618]**). That is so for all the reasons set out in DSkel §51(2)-(7), but in particular given (i) the nature of the WR provisions as securing privacy and decency between the sexes; and (ii) the terms of Sch 22 §2 EqA **[Auth/9/286]**.

**No breach of ECHR rights**

[3] See the summary in ***Bellinger*** **[Auth/21/570]** at [11]-[12].

Interference

8. This is not an *actio popularis*. Questions of interference require a precise focus on the situations of individual Cs. This is true in the context of ss.3-4 HRA 1998, not only s. 6 HRA 1998 (*contra* CSkel §107 **[Core/11/201]**): ***R (Z) v Hackney LBC*** at [114] **[Auth/46/1580]**; ***Imperium Trustees*** at [77]-[80] **[Auth/71/2790]**. This will require consideration of (i) whether the C has relevant ECHR rights; if so, (ii) whether there is legislation or public authority conduct that has interfered with the relevant right(s).

Justification

9. The justification of legislation is primarily dependent upon the words and policy of the enactment: ***Wilson v First County Trust*** at [61]-[67] **[Auth/22/614-616]**. ***Quila*** (provided by Cs) is not about legislation; it concerns the Immigration Rules.

10. Any interference with ECHR rights would be justified:
    10.1. None of the legislation in question requires the provision of single-sex facilities to the exclusion of other forms of sanitary facility (including unisex separate facilities). As Ms Forstater notes, the provision of unisex separate facilities is very common: Forstater §72 **[Supp/4/90]**. C2-C4 all have access to such facilities, and BOT and BNW both used them before ***FWS*** (BOT 1 §14 **[Core/19/289]**; BNW 1 §11 **[Core/20/299]**; BBS 1 §8 **[Core/21/310]**).
    10.2. Cs cite no authority for the proposition that the ECHR requires access to single-sex facilities for the opposite sex (still less, that the ECHR creates a positive obligation to put in place legislation requiring such access between private parties). The Court cannot safely conclude that the ***Ullah*** principle would require a finding of breach: ***AB*** **[Auth/49/1643]** at [54]-[60].
    10.3. Mandating such access to single-sex facilities would be likely to comprise an interference with the privacy and dignity of many other individuals, particularly women (protected by arts. 8/9 ECHR): see the evidence referred to at §3.2 above.
    10.4. This is an area likely to involve the balancing of competing ECHR rights, including the rights of women. The balance drawn by the legislation has the signal advantage of clarity (***ALR*** **[Auth/70/2693-2694]** at [131]-[133]); and is justified for that reason and to protect the rights of others; particularly (though not exclusively) women.

# Health and Safety at Work etc. Act 1974 c. 37
# s. 7 General duties of employees at work.

**Law In Force**

**Version 1 of 1**

1 April 1975 - Present

**Subjects**
Health and safety at work

**Keywords**
Employees' duties; Health and safety at work

**7. General duties of employees at work.**

It shall be the duty of every employee while at work—

(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and

(b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

1 2 3

## Notes

1 Act applied by S.I. 1990/13, reg. 11(5), S.I. 1988/778, reg. 11(1)
2 Pt. I extended by S.I. 1978/752, reg. 3, S.I. 1981/1011, reg. 9, 1983/1919, reg. 3, Gas Act 1986 (c.44), ss. 18, 48(3)(4), S.I. 1989/1671, reg. 4, applied by Gas Act 1986 (c.44), s. 67(3), Sch. 8 para. 6(2), Consumer Protection Act 1987 (c.43), s. 36, S.I. 1988/1222, regs. 3, 4, S.I. 1989/1810, reg. 3, S.I. 1990/1380, reg. 3
3 S.7 applied by S.I. 1989/840, arts. 2–10

*Part I Health, Safety and Welfare in connection with Work, and Control of Dangerous Substances and Certain Emissions into the Atmosphere > General duties > s. 7 General duties of employees at work.*

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# SCHEDULES

## SIXTH SCHEDULE

Section 183.

### TRANSITIONAL PROVISIONS

1 Any reference in any enactment or document, whether express or implied, to any enactment repealed by this Act or by any enactment so repealed or to any provision contained in any such enactment shall be construed as a reference to this Act or, as the case may be, to the corresponding provision of this Act.

2 Any order, regulation, rule, byelaw or appointment made, direction, certificate or notice given, or other thing done under any provision contained in an enactment repealed by this Act or by an enactment so repealed shall continue in force and—

(a) if it could have been made, given or done under the corresponding provision of this Act, shall have effect as if it had been so made, given or done ;

(b) if it is an order or regulation made under a power which, under the corresponding provision of this Act, is exercisable by a different class of instrument, shall have effect as if it were an instrument of that class made under that provision.

3 (1) Until such day as the Minister may by order appoint Part II of this Act shall have effect subject to the following provisions of this paragraph (which secure the continued operation of provisions replaced by so much of the Factories Act, 1959, as had not been brought into force at the commencement of this Act).

(2) In section thirty-three of this Act the following shall be substituted for subsections (2) and (3):—

"(2) Every steam boiler and all its fittings and attachments shall be thoroughly examined by a competent person at least once in every period of fourteen months, and also after any extensive repairs; and no steam boiler which has previously been used shall be taken into use in any factory for the first time in that factory until it has been examined and reported on in accordance with this subsection and subsections (3) and (4) of this section.

(3) Any examination in accordance with the requirements of the last foregoing subsection shall consist, in the first place, of an examination of the boiler when it is cold and the interior and exterior have been prepared in the prescribed manner, and secondly, except in the case of an economiser or superheater, of an examination when it is under normal steam pressure, and the two parts of the examination may be carried out by different persons ; the examination under steam pressure shall be made on the first occasion when steam is raised after the examination of the boiler when cold, or as soon as possible thereafter, and the person making the examination shall see that the safety valve is so adjusted as to prevent the boiler being worked at a pressure greater than the maximum permissible working pressure.

(3A) The Minister may by order grant from the requirements of subsection (2) of this section, so far as it relates to periodic examinations and examinations

after extensive repairs, such exemptions, to such extent and subject to such conditions, as may be specified in the order, and any such exemption may extend to any class or description of factory or boiler or any particular factory or boiler."

(3) For the purposes of the provisions of section thirty-three of this Act relating to reports of examinations, the examination of a boiler when it is cold and its examination when it is under steam pressure shall be treated as separate examinations.

(4) In Part II of this Act the expression " maximum permissible working pressure" means, in the case of a new steam boiler, that specified in the certificate referred to in subsection (5) of section thirty-three of this Act.

4 (1) Subject to sub-paragraph (2) of this paragraph, a factory which has been furnished with a certificate in pursuance of subsection (1) of section fourteen of the Factory and Workshop Act, 1901, and a factory in respect of which a notice issued in pursuance of subsection (2) of that section has been complied with, or in respect of which an award has been made under subsection (3) of that section and has been complied with, shall be entitled to receive a certificate under section forty of this Act and, pending the receipt of the certificate, no offence shall be deemed to be committed by reason of the use of the factory while no certificate under this section is in force with respect to it.

(2) Sub-paragraph (1) of this paragraph shall only apply to any factory if and so long as the means of escape provided therein are properly maintained, and shall not apply to any factory if, since the certificate was furnished or the notice or award was complied with in pursuance of the said section fourteen, any action has been taken of which notice would, if this Act had been in force and a Certificate under section forty had been granted, have been required by section forty-one of this Act to be given to the fire authority.

5 In the case of any factory constructed or converted for use as a factory before the coming into operation of section thirty-four of the Factories Act, 1937, (that is to say the first day of July, nineteen hundred and thirty-eight) which is not a factory to which paragraph 4 of this Schedule applies, no offence shall be deemed to be committed under section forty of this Act by reason of the use of the factory during any period that may elapse before the grant or refusal of a certificate under that section by the fire authority, and if the fire authority refuse to grant a certificate in respect of the factory unless alterations are made, no such offence shall be deemed to be committed while the alterations are being carried out in accordance with the requirements of the authority.

6 Where, before the coming into operation of the First Schedule to the Factories Act, 1959, (that is to say the first day of December, nineteen hundred and sixty) a certificate was issued under section thirty-four of the Factories Act, 1937, with respect to such a factory as is mentioned in paragraph 1 of the Second Schedule to this Act, but—

(a) neither the certificate nor a copy thereof was issued to the owner of the building in which the factory is comprised ; or

(b) neither the certificate nor a copy thereof or of the relevant part thereof was issued to the occupier of the factory ;

the council by whom the certificate was issued shall, at his request, send him a copy thereof or, as the case may be, of the relevant part thereof ; and the owner may, in the case of any such certificate, comply with the requirement as to its registration by

attaching a copy thereof to the register mentioned in sub-paragraph (c) of paragraph 8 of the Second Schedule to this Act.

7 Any order made under Regulation 59 of the Defence (General) Regulations, 1939, which is in force at the commencement of this Act shall continue in force, but may be revoked by order of the Minister; and any provision made by an order continued in force by this paragraph which could have been made by special regulations under section one hundred and seventeen of this Act shall be deemed, until the order is revoked, to be contained in such regulations.

8 The mention of particular matters in this Schedule shall be without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals).