

EQUALITY ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Discrimination on Grounds of Religion or Belief

Section 44: Religion and belief

170. *Section 44* defines what is meant by “religion or belief” for the purposes of this Act. *Section 44(a)* defines “religion” as “any religion”, a broad definition in line with the freedom of religion guaranteed by Article 9 of the ECHR. It includes those religions widely recognised in this country such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha’is, Zoroastrians and Jains. Equally, denominations or sects within a religion can be considered as a religion or religious belief, such as Catholics or Protestants within Christianity. The main limitation on what constitutes a “religion” for the purposes of Article 9 of the ECHR is that it must have a clear structure and belief system.
171. *Section 44(b)* defines “belief” as “any religious or philosophical belief”.
172. *Section 44(c)* and *(d)* state that “lack of religion” and “lack of belief” are also covered by the phrase “religion or belief”.

Section 45: Discrimination

173. *Section 45* defines discrimination on the grounds of religion or belief for the purposes of this Part. *Subsections (1) & (2)* define **direct discrimination**. This occurs where, on grounds of religion or belief, person A treats person B less favourably than he would treat others. For the purposes of the comparison which has to be made to determine whether one person has been treated less favourably than another, the relevant circumstances in each case must not be materially different. *Subsection (1)* provides that direct discrimination can occur even if it is not person B’s religion or belief, but another person’s religion or belief, which constitutes the grounds for discrimination. For example, it would apply if a shopkeeper refuses to serve a customer, not because of the customer’s religion, but because of the religion of his friend who is in the shop with him. However, it does not apply where the less favourable treatment occurs solely on grounds of A’s religion or belief – for example where A feels motivated to take particular action because of what his religion or belief requires. Additionally, *subsection (1)* clarifies that person A will still have unlawfully discriminated, even if they subscribe to the same religion or belief as that of the victim of discrimination. *Subsection (2)* indicates that discrimination can also occur even if A is mistaken as to B’s religion: i.e. if person B is not of the religion presumed by person A. So if a shopkeeper refuses to serve a customer because he believes that he belongs to a certain religion, it is irrelevant whether or not the customer is actually of that religion, he could still use this Part to bring a case of religious discrimination against the shopkeeper.
174. *Subsection (3)* defines **indirect discrimination**. This occurs where person A applies to person B a provision, criterion or practice, which he applies equally to other people, but which puts people of person B’s religion or belief at a disadvantage compared with

some or all other people. Person B must also have personally suffered a disadvantage compared to some or all persons not of his religion or belief. It would not be unlawful however if the action causing disadvantage to person B could be reasonably justified by reference to matters other than B's religion or belief: for example, if it was performed to meet security or health and safety concerns, or if the efficiency of a business would be seriously jeopardised by failure to take the action complained about.

175. *Subsections (4) and (5) define **victimisation**. This occurs where person A treats person B less favourably than others because person B: has brought, or intends to bring, proceedings under these religious discrimination provisions; has given or provided, or intends to give or provide, evidence or information in connection with such proceedings; or has done, or intends to do, any other thing in connection with this Part (including an allegation that a person has contravened it). Victimisation will also have taken place if person A treats person B less favourably than others because he *suspects* that person B has done any of these things. It will not be victimisation however, if person A's treatment of person B relates to B's making, other than in good faith, a false allegation.*

Section 46: Goods, facilities and services

176. Under *section 46*, discrimination on the grounds of religion or belief in the provision of goods, facilities and services (by a person whose business or concern it is to provide them to the public or a section of the public) is made unlawful. Thus it will be unlawful for such a person, on the grounds of religion or belief, to:
- refuse to provide goods, facilities or services to a person who seeks to obtain or use them;
 - provide such a person with goods, facilities or services of inferior quality to those which would normally be provided to members of the public or to a section of the public to which the recipient belongs;
 - provide goods, facilities or services in a different manner (for example more hostile or less courteous) than they would normally be provided to members of the public or to a section of the public to which the recipient belongs; or
 - provide goods, facilities or services on different terms (for example less favourable) than those on which they would normally be provided to members of the public or to a section of the public to which the recipient belongs.
177. *Subsection (2) lists examples of the types of facilities and services in relation to which discrimination under subsection (1) would be unlawful.*
178. *Subsection (3) ensures that, where a person exercises a skill in a particular way for the purposes of a particular religion (for example the preparation of food), he will not be compelled by this section to exercise it in a different manner for the purposes of another religion.*
179. *Subsection (4) ensures that this section will not apply in relation to the provision of goods, facilities and services by a person exercising a public function (these are covered in a later section) or where discrimination in the provision of goods, facilities and services is addressed by another provision of Part 2 or the Employment Equality (Religion or Belief) Regulations 2003, which prohibit discrimination on the grounds of religion or belief in the fields of employment and vocational training.*
180. *Subsection (5) clarifies that the provision of goods, facilities and services will be caught by this Part irrespective of whether or not the recipient has to pay for them.*

Section 47: Premises

181. *Section 47* covers the disposal and management of premises, making it unlawful for anyone selling or letting premises to discriminate against potential buyers or tenants because of their religion or belief and for landlords or other managers of premises to discriminate against tenants or other occupiers. This would include refusing to dispose of premises to people of a certain religion or belief; offering less generous terms to people of a certain religion or belief; or deliberately discriminating against people of a certain religion or belief on a list of those requiring housing.
182. *Subsection (2)* refers specifically to managers of premises (which would include landlords) and their treatment of tenants. It makes unlawful any discriminatory behaviour by a manager of premises on account of the religion or belief of a tenant or other occupier (for example a licensee). This would cover all aspects of a manager's duties towards a tenant or other occupier, including the facilities he would provide and the terms under which he would evict a person.
183. *Subsection (3)* relates to a situation where a person's permission is required for the disposal of someone else's interest in a property – the executor of someone's will for example – and it ensures that such permission cannot be withheld in a discriminatory way.
184. *Subsection (4)* restricts the operation of this section to premises in Great Britain. It does not extend to premises abroad, even if the actual sale or letting of the property takes place in this country.

Section 48: Section 47: exceptions

185. *Section 48* creates an exception to the provisions in section 47. *Subsection (1)* provides that it will not be unlawful for a landlord to discriminate in who he rents out a part of his premises to, if:
- he or a near relative lives in another part of the same premises (and intends to continue to do so);
 - the premises include parts that he or a near relative would share with the tenant such as a bathroom or kitchen; and
 - the premises are of a size where no more than two households, or six individuals, can live in the premises in addition to the landlord or a near relative.
186. *Subsection (2)* defines what “near relative” means for the purposes of *subsection (1)*.
187. *Subsection (3)* lists other circumstances where the provisions in section 47 will not apply, and religious discrimination in the disposal of premises will not be unlawful: namely, where a person owns an estate or interest in the premises, or occupies the whole of the premises, and does not use an estate agent to dispose of the premises and does not arrange for publication of an advertisement for the purposes of disposing of the premises.

Section 49: Educational establishments

188. *Section 49* extends the prohibition against discrimination on the ground of religion or belief to the educational establishments listed in the Table set out in the section. This Table also indicates who is the responsible body for the purposes of this Part of the Act, in relation to each educational establishment listed. The Table does not extend to educational institutions or establishments in the further or higher education sectors as these are covered by existing secondary legislation.¹

¹ SI 2003/1660 *Employment Equality (Religion or Belief) Regulations 2003*

189. The section makes it unlawful for an educational institution to discriminate against a person in respect of the terms on which it offers him/her admission as a pupil or by refusing to accept an application to admit him/her as a pupil. Where a person is already a pupil of the establishment it is unlawful to discriminate against him/her in the way the establishment affords him/her access to any benefit, facility or service or by refusing such access. It is also unlawful to exclude a pupil or subject him/her to any other detriment. A pupil of the establishment includes any person who receives education at the establishment.
190. *Subsection (2)* requires that, for England and Wales, the terminology used in any of the Education Acts would have the same meaning in this Part. *Subsection (3)* requires that, for Scotland, the terminology used in the [Education \(Scotland\) Act 1980 \(c.44\)](#) would have the same meaning in this Part.

Section 50: Section 49: exceptions

191. *Subsection (1)* of this section exempts maintained schools which have a religious character (often referred to as faith schools) from the prohibition on discrimination in subsection (1) of the previous section (apart from two subsections: (1)(c)(iii) which makes exclusion from a school unlawful, and (1)(c)(iv) which prohibits the subjection of a pupil to any other detriment). It also exempts to the same extent independent schools if such schools have a religious ethos, schools conducted in the interest of a church or denominational body, and, in Scotland, independent schools that admit only pupils who belong – or whose parents belong – to one or more particular denominations. The provision will therefore allow all such schools with a religious ethos to admit pupils or set admission terms for pupils based on the religious character or religious ethos of the school. It will also allow such schools to conduct themselves in a way which is compatible with their religious character or ethos.
192. *Subsection (2)* provides that the discrimination provisions in section 49 that relate to pupils' access to benefits, facilities and services will not apply to anything done in connection with the school curriculum or to acts of worship or other religious observance organised by or on behalf of an educational establishment. The reference to curriculum bears its ordinary English meaning and accordingly is to the basic curriculum as delivered in educational establishments, which includes the National Curriculum, together with elements such as Religious Education which is not part of the National Curriculum but is required by legislation to be taught in state schools. It also includes elements such as the provision of school library books, which are aimed at the delivery of a broad-based and balanced education to pupils. This particular exemption reflects the need to avoid any conflict with the existing legislative framework in respect of the content of the curriculum and religious worship. Existing education legislation allows for parents to withdraw their children from sex education and religious education, but not from other parts of the curriculum covered by *subsection (2) (a)*. While parents can remove their children from collective worship, educational institutions are under no obligation to provide opportunities for separate worship of different religions and beliefs represented among its pupils. The exception in *subsection (2)(b)* maintains that position.
193. *Subsection (3)* provides for an order-making power by which the Secretary of State for Education and Skills can amend or repeal an exception set out in this section, or can create a new exception from the prohibitions in section 49. The subsection also permits the Secretary of State to make provision about the construction or application of the defence of objective justification to a charge of indirect discrimination. *Subsection (4)* specifies the conditions required for the Secretary of State to make any such order, including the need for consultation with appropriate bodies and the approval of both Houses of Parliament.

Section 51: Local education authorities and education authorities

194. *Section 51* makes unlawful discrimination by Local Education Authorities (LEAs) in England and Wales, and Education Authorities in Scotland, except in the areas listed in *subsections (2)*, (England and Wales) and *(3)* (Scotland), namely:
- **The provision of schools** – section 14 of the Education Act 1996 (and, for Scotland, section 17 of the Education (Scotland) Act 1980) defines the LEA function of providing primary and secondary schools for children in a given catchment area. *Section 51, subsection (2)(a)((3)(a)* for Scotland) allows discrimination in this area, to prevent an LEA being bound to provide schools for pupils of different faiths, or of no faith, in the catchment area.
 - **Transport** – LEAs often provide subsidised transport for pupils of a particular (often faith) school that is located outside the local area although it is not the nearest suitable school. This may be because a parent wishes a child to attend a school of their own faith, or because the nearest school has a religious ethos which a parent thinks is inappropriate for their child. *Subsection (2)(b) ((3)(b)* for Scotland) allows discrimination in this area so that LEAs do not have to provide subsidised transport for all children attending faith or non-faith schools.
 - **General responsibilities** – section 13 of the Education Act 1996 (and equivalent provision in legislation for education in Scotland) describes the responsibilities incumbent on LEAs to contribute to the spiritual, moral, mental and physical development of the community through their provision of education to children. *Section 51, subsection (2)(c) ((3)(c)* for Scotland) allows discrimination in the exercise of these responsibilities in so far as they relate to the two previous points: provision of schools and transport.
195. *Subsection (2)(d)((3)(e)* for Scotland) refers to the Table featured in section 49. It means that section 51(1) does not apply to discrimination by LEAs and EAs in the exercising of their specific functions as responsible bodies for the educational establishments listed in the Table, as section 50 covers them in that respect.

Section 52: Public authorities: general

196. *Subsection (1)* prohibits discrimination on grounds of religion or belief in the exercise of the functions of all public authorities.
197. *Subsection (2)* defines “public authority” as including any person who has functions of a public nature and “function” as any function of a public nature.
198. Exceptions to these provisions are set out in *subsections (3)* and *(4)*. *Subsection (3)* follows the pattern of similar legislation and excepts a list of bodies, such as the Houses of Parliament, the Security Services and GCHQ.
199. *Subsections (4)(a) to (e)* exclude the exercise of judicial functions and legislative processes (including those of the General Synod of the Church of England). *Subsection (4)(f)* excepts a decision to prevent someone entering the country, or to deport someone from the country, where this decision is made on the grounds that it is conducive to the public good, or that it is undesirable to permit the person to remain in the United Kingdom. *Subsection (4)(g)* extends the exception on immigration matters to cover people entering the country to provide services in connection with a religion or belief, such as a minister or clergyman. This exception is required because the immigration services necessarily discriminate against certain religious groups for the purposes of recognising people as entering the country to provide religious services.
200. *Subsection (4)(j)* excepts a decision related to criminal proceedings, where a decision has been taken not to prosecute.

*These notes refer to the Equality Act 2006 (c.3)
which received Royal Assent on 16 February 2006*

201. *Subsections (4)(k) (i), (iii), (v) and (vi)* except from the prohibition on discrimination (insofar as it is not excepted elsewhere), the exercise of any public functions in a number of areas that relate to faith and non-faith educational institutions. Those areas are:
- **The Curriculum** – the prohibitions in this section will not apply to action in relation to the school curriculum. See the note for section 50(2)(a).
 - **Collective worship** – the prohibitions in this section will not apply to acts of worship or other religious observance organised by or on behalf of an educational institution. See the note for section 50(2)(b).
 - **Transport** – an LEA or other responsible body can provide subsidised transport to a faith or non-faith school for those pupils who live a distance away and whose parents wish them to attend such a school for reasons related to belief or non-belief. They will not be obliged by this legislation to provide a similar service for pupils who choose for other reasons to attend a school which is not close to their home.
 - **Establishment, alteration or closure** – a public authority will not have to answer discrimination charges as a result of its decision to establish, alter or close any particular school.
202. *Subsections (4)(k)(ii) and (iv)* except further exercises of public functions from the prohibition on discrimination in this section, but only in respect of those schools which have a religious ethos. Those functions are:
- **Admissions** – faith schools can operate a selective admissions policy, prioritising those children of a specific religion or belief.
 - **Governing bodies** – religion or belief can be legitimate criteria in the selection of governors for schools with a religious ethos, and places on the governing body may be restricted to or reserved for people of that religion or belief.
203. *Subsection (4)(l)* excepts from the effect of this section the exercising of the power under section 2 of the Local Government Act 2000 which provides for local authorities to promote the economic, social and environmental well-being of their area.
204. *Subsection 4(m)* excepts from this section actions which are provided for by the provisions in the *Employment Equality (Religion or Belief) Regulations 2003* or by another provision of this Part. Where actions would be unlawful by virtue of section 46 but for an express exemption, those actions are not excepted from section 50 by subsection (4)(m). This ensures that goods, facilities and services provided by public authorities will be covered by section 50 if they are exempted under section 46 but not covered by any of the exemptions in relation to section 51.
205. When the court is hearing a case brought in respect of section 52, it cannot grant an injunction unless it is satisfied that to do so will not prejudice any criminal proceedings or a criminal investigation. Similarly, a court must stay or desist proceedings brought in respect of section 52 when there is a risk that criminal proceedings or a criminal investigation could be prejudiced by the case continuing.
206. *Subsection (6)* refers to section 70(4). It relates to the answers that a person, accused of an unlawful act under this Part, may give to a questionnaire prescribed by the Secretary of State, and the inferences that can be drawn from a failure to answer, or from an evasive or equivocal answer. Under *subsection (6)*, inferences cannot be drawn from an absent or evasive answer if:
- the person questioned reasonably asserts that there was a risk of prejudicing criminal proceedings or a criminal investigation, or of revealing the reason for not instituting or not continuing criminal proceedings; or
 - the reply is of a kind, or is given or withheld in circumstances specified, in an order by the Secretary of State.

Section 53: Discriminatory practices

207. *Section 53* makes it unlawful to operate a practice which results in unlawful discrimination, or which is likely to result in unlawful discrimination if applied to persons of any religion or belief. *Subsection (2)* also makes it unlawful to adopt or maintain a practice or arrangement which has the potential to result in a practice which is unlawful under this section.
208. *Subsection (3)* makes clear that the unlawful discrimination referred to in this section is that which is unlawful under the preceding provisions of this Part.
209. *Subsection (4)* provides that the CEHR is to be the only body entitled to bring proceedings in respect of discriminatory practices, and must do so by means of its powers in sections 20 to 24 of the Act (investigations, unlawful act notices and action plans, agreements and applications to court to enforce these).

Section 54: Discriminatory advertisements

210. *Section 54* makes it unlawful to publish or cause to be published an advertisement which indicates an intention to discriminate unlawfully. For example an advertisement for a car for sale in which it was expressed that persons of a certain religion would not be welcome to respond. The unlawful discrimination referred to in this section is that which is unlawful under the preceding provisions of sections 46 to 52.
211. *Subsection (3)* makes it clear that only the CEHR is to be entitled to bring proceedings in respect of unlawful advertisements and must do so in accordance with its powers set out in section 25. *Subsection (4)* provides a defence for the publisher of an unlawful advertisement, where it was reasonable for him to rely on a statement by the person causing the advertisement to be published, that the prohibition in *subsection (1)* would not apply.

Section 55: Instructing or causing discrimination

212. *Section 55* makes it unlawful to instruct, cause or induce, or attempt to cause or induce, another person to discriminate unlawfully.
213. *Subsection (5)* makes clear that the discrimination referred to in this section is that under earlier sections in this Part.
214. *Subsection (6)* provides that only the CEHR is entitled to bring proceedings in respect of a contravention of this section and must do so in accordance with its powers set out in section 25.

Section 56: Statutory requirements

215. *Section 56* provides a general exception from this Part for anything done for the purpose of complying with legislation made by Parliament, Ministers or other bodies in Great Britain empowered to make legislation.

Section 57: Organisations relating to religion or belief

216. *Section 57* creates an exception from this Part for organisations whose purpose is to practice, advance or teach a religion or belief, to enable people of a certain religion or belief to benefit from or engage in religious activities, or to improve relations, or maintain good relations, between people of different religions or beliefs. This does not include an organisation whose sole or main purpose is commercial.
217. *Subsection (3)* provides that it is not unlawful under this Part for an organisation, or anyone acting on behalf of or under the auspices of an organisation;
- to restrict membership of the organisation;

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- to restrict participation in activities undertaken by the organisation or on its behalf or under its auspices;
 - to restrict the provision of goods, facilities and services in the course of its activities or on its behalf or under its auspices; or
 - to restrict the use or disposal of premises.
218. *Subsection (4)* provides that it is not unlawful under this section for a minister of religion (as defined in *subsection (6)*), acting in connection with an organisation to which this section relates:
- to restrict participation in activities carried on in the performance of his functions in relation to that organisation; or
 - to restrict the provision of goods, facilities or services in the course of such activities,
219. *Subsection (5)* limits the restrictions described in *subsections (3)* and *(4)* to those imposed (a) by reason of or on the grounds of the organisation's purposes, or (b) in order to avoid causing offence on grounds of that organisation's religion or belief, to persons of that religion or belief.

Section 58: Charities relating to religion or belief

220. *Section 58* provides an exception from this Part, where benefits are conferred on persons of a particular religion or belief in pursuance of a charitable instrument, and where restricting the benefit in this way is imposed by reason of or on the grounds of the provisions of the charitable instrument.
221. *Subsection (2)* creates an exception from the provisions of Part 2 for the Charity Commissioners (and, in Scotland, the Office of the Scottish Charity Regulator), which exempts these regulators from the provisions of Part 2 when they are exercising a function in relation to a charity in a manner which appears to them expedient in the interests of the charity.

Section 59: Faith schools, etc

222. *Section 59* provides that it will not be unlawful under this Part for schools with a religious ethos to restrict the provision of goods, facilities or services or to restrict the use or disposal of their premises, to ensure that the purpose for which the premises would be used does not conflict with the tenets of the school's faith (or faiths).
223. *Subsection (3)* provides that references in this Part to the provision of facilities or services (for example in section 46) do not apply to the provision of educational facilities and services to students attending an educational institution.

Section 60: Membership requirement

224. *Section 60* creates an exception from this Part, for charities that ask members, or prospective members, to assert their acceptance of a religion or belief as a requirement of membership of the charity.
225. *Subsection (2)* provides that this exception is only valid for charities which first imposed this requirement before 18 May 2005 and have continued to do so ever since.

Section 61: Education, training and welfare

226. *Section 61* provides an exception from Part 2 for anything done to meet the special needs of people of particular religions or beliefs in relation to their education, training or welfare, or the provision of ancillary benefits in connection with meeting such needs.

Section 62: Care within family

227. *Section 62* provides an exception from Part 2 where a person takes into his home, and treats as a member of his family, a person requiring a special degree of care and attention. An example would be the fostering of a child. The welfare of the child would take precedence over any question of religious discrimination.

Section 63: National security

228. Anything done for the purpose of safeguarding national security will be exempt from the prohibitions introduced by this Part, providing that the national security requirement justifies the action in question.

Section 64: Amendment of exceptions

229. *Section 64* provides an order-making power by which the Secretary of State can add a new exception to the prohibitions against public authorities (*section 52(1)*) or change an existing exception in Part 2. *Subsection (2)* requires that the Secretary of State consult with the CEHR before making such an order, which is subject to the affirmative resolution procedure.

Section 65: Restriction of proceedings

230. *Section 65* provides that proceedings in respect of an act which will be unlawful under this Part, can only be brought in accordance with the provisions in this Act. This restriction will not however, prevent an application for judicial review; proceedings under any of the Immigration Acts, or the Special Immigration Appeals Commission Act 1997; or, in Scotland, the Court of Session exercising its jurisdiction with regard to an order or determination.

Section 66: Claim of unlawful action

231. *Section 66* relates to the mechanism for bringing a claim against someone in respect of an act made unlawful by this Part.
232. The claim is to be brought in a county court (in Scotland, a sheriff court) by way of proceedings in tort (or in Scotland for reparation) for breach of statutory duty.
233. In England and Wales, where a claim is brought against a local education authority or the responsible body of an educational establishment (as listed in the Table in section 49) by virtue of section 49 or 51 the claimant must give written notice to the Secretary of State.
234. In Scotland where a claim is brought against an education authority or the responsible body of an educational establishment (as listed in the Table in section 49) by virtue of section 49 or 51 the claimant must give written notice to the Scottish Ministers.
235. If the claimant provides the court with evidence from which the court could conclude, in the absence of a reasonable alternative explanation, that an unlawful act has been committed, the court is to assume that the act was unlawful unless the respondent can prove otherwise.

Section 67: Immigration

236. *Section 67* provides that proceedings may not be brought under *section 66* in a county or sheriff court in respect of an act of a public authority, if the lawfulness of the act could be raised in immigration proceedings – that is, proceedings under any of the Immigration Acts or the [Special Immigration Appeals Commission Act 1997 \(c.68\)](#).

237. If, during immigration proceedings, a court or tribunal finds that an unlawful act has been committed by a public authority under section 52, then a county or sheriff court hearing proceedings, as per section 68, must accept that finding.

Section 68: Remedies

238. *Section 68* sets out the remedies available to a county court (the sheriff in Scotland) hearing proceedings as described under section 66:
- The court can, in addition to any remedy in tort, grant any remedy that the High Court (Court of Session in Scotland) can grant in proceedings for judicial review.
 - The court cannot award damages to a claimant (a pursuer in Scotland) in a case of indirect discrimination (see section 45(3)), if the respondent (the defender in Scotland) proves that there was no intention to treat the claimant unfavourably on grounds of religion or belief.
 - The court can award damages, by way of compensation, for injury to feelings.
 - When the court is hearing a case brought in respect of section 52, it cannot grant an injunction unless it is satisfied that to do so will not prejudice any criminal proceedings or a criminal investigation. Similarly, a court must stay or desist proceedings brought in respect of section 52 when there is a risk that criminal proceedings or a criminal investigation could be prejudiced by the case continuing.

Section 69: Timing

239. Proceedings under section 66, must be brought either within six months of the alleged unlawful act, or if later, with the permission of the court.
240. *Subsection (2)* specifies that for immigration cases – that is, proceedings brought under any of the Immigration Acts or the [Special Immigration Appeals Commission Act 1997 \(c.68\)](#) – the six month period starts from the first possible date that proceedings could begin under *section 66*.

Section 70: Information

241. *Section 70* indicates the way that information can be obtained by someone (a “claimant or potential claimant” in England and Wales and a “pursuer or potential pursuer” in Scotland), from the person who he thinks has acted unlawfully against him under this Part (a “respondent or potential respondent” in England and Wales and a “defender or potential defender” in Scotland), so as to assist in his decision about whether or not to take proceedings.
242. *Subsection (2)* refers to the question forms prescribed by the Secretary of State which a claimant (or pursuer) can use to question a respondent (or defender), and by which the respondent (or defender) can reply.
243. Under *subsection (3)*, both the claimant’s (or pursuer’s) questions and the respondent’s (or defender’s) answers, will only be admissible as evidence in a case brought, if the questions were put within six months of the alleged unlawful act taking place and in a manner prescribed by an order of the Secretary of State (subject to negative resolution). The Secretary of State can amend that time period by an order, which is subject to the negative resolution procedure.
244. Under *subsection (4)*, a court may draw an inference from a respondent’s failure to reply within eight weeks, at all or unequivocally, to questions put to him by a potential claimant. See section 52(6) for exceptions to this in relation to questions which could affect criminal investigations or prosecutions.

Section 71: National security

245. *Section 71* provides for rules of court to make provision permitting a court to take various forms of action which are considered expedient in the interests of national security. This is equivalent to section 67A of the Race Relations Act 1976 (as inserted by the *Race Relations (Amendment) Act 2000 (c. 34)*). The power in this section will make it possible to make rules enabling the court, when considering proceedings brought under this Part of the Act:
- to exclude the claimant, the claimant's representatives or any assessors from part or all of the proceedings;
 - to permit a claimant or representative who has been excluded to make a statement prior to any part of the proceedings from which they are excluded; and
 - to ensure that part or all of the reasons for a decision are kept secret.
246. Where the claimant or representatives are excluded from part or all of proceedings under such rules, this section provides for the Attorney General or Advocate General for Scotland to appoint a special advocate to represent the interests of the claimant.

Section 72: Validity and revision of contracts

247. *Section 72* provides that the term of a contract will be void where its inclusion would make the contract unlawful under this Part, where it is included in furtherance of an act that is unlawful under this Part, or where it provides for the doing of an act which would be unlawful under this Part.
248. *Subsection (2)* protects a person who is party to a contract and who would have been the victim of discrimination as a result of a term of that contract. It provides that the term will not be void in such a situation, as this would further disadvantage the person. However the offending term would not be enforceable against that person.
249. Under *Subsection (3)*, a term purporting to exclude or limit a provision of Part 2 of the Act will be unenforceable by a party in whose favour it would operate.
250. *Subsections (5) and (6)* allow the courts to resolve disputes by removing or modifying a term to which *subsection (1)* applies.

Section 73: Aiding unlawful acts

251. *Section 73* makes it unlawful knowingly to help someone (whether or not as his employee or agent) to do an act that is unlawful under this Part. *Subsection (2)* makes it an offence (punishable by a fine not exceeding level 5 on the standard scale) when requesting assistance from another person, to falsely state that a proposed act is lawful under Part 2.

Section 74: Employers' and principals' liability

252. *Section 74* has the effect that an employer is liable for the acts of his employees, whether or not he knew or approved of those acts. Similarly, a principal will be liable for the acts of his agent.
253. An employer will not be liable if he can prove that he took all reasonable steps to ensure that the employee could not perform the discriminatory act.
254. This section will not apply to the offence of making a false statement in relation to a discriminatory advertisement under *section 54*.

Section 75: Police, &c.

255. *Section 75* applies to members of police forces under the [Police Act 1996 \(c.16\)](#) or the [Police \(Scotland\) Act 1967 \(c.77\)](#), and special constables and police cadets appointed in accordance with either of those Acts.
256. Under *subsection (2)*, such a person is treated as an employee of his chief officer of police for the purposes of this Part, and anything done by him in the course of his duties is to be treated as done in the course of that employment.
257. Under *subsection (3)*, compensation, costs or expenses awarded against or incurred by a chief officer of police, in proceedings brought against him under this Part, will be paid out of the police fund. The police fund will also provide for any sums required by a chief officer of police for the settlement of a claim made against him under this Part.
258. *Subsection (5)* provides that a reference to the Equality Act will be included in the list of discrimination legislation at section 57 of the [Serious Organised Crime and Police Act 2005 \(c. 15\)](#). This list specifies the anti-discrimination legislation which applies to the Serious Organised Crime Agency.

Section 76: Indirect provision of benefit, &c.

259. *Section 76* means that someone who has the power to facilitate access to a service, facility or benefit of any kind is subject to the prohibition in this Part as much as the actual provider of these things. An example would be a social worker who facilitates access to various counselling or welfare services. This provision would make it unlawful for such a person to refuse to facilitate this access to a particular family because of their religion or belief.

Section 77: Employment Equality Regulations

260. *Section 77* is intended to ensure consistency, with regard to the definition of "religion or belief", between this Part and the [Employment Equality \(Religion or Belief\) Regulations 2003 \(S.I. 2003/1660\)](#). It remains in accordance with the wording in Council Directive [2000/78/EC](#) of 27th November 2000 establishing a general framework for equal treatment in employment, as implemented by those regulations.

Section 78: Crown application

261. *Section 78* provides that the provisions of Part 2 are to apply to acts done on behalf of the Crown as they apply to acts done by a private person. In addition, section 52 binds the Crown whatever the nature of the acts. *Subsection (3)* indicates that acts are to be treated as done on behalf of the Crown, if done by – or on behalf of:
- a government minister or department (or, in Scotland, Scottish Ministers);
 - a statutory body acting on behalf of the Crown;
 - a statutory office holder acting on behalf of the Crown; or
 - a statutory office holder in the Scottish Administration (within the meaning of section 126(7) of the [Scotland Act 1998 \(c.46\)](#)).
262. *Subsections (4)* and *(5)* provide that proceedings under the provisions of this Part cannot be brought against the Queen acting in her personal or private capacity.

Section 79: Interpretation

263. *Subsection (1)* defines “charity” for the purpose of this Part. It has the meaning given by the Charities Act 2005 and, for Scotland, it means a recognised body within the meaning given by section 1(7) of the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c.40\)](#).

*These notes refer to the Equality Act 2006 (c.3)
which received Royal Assent on 16 February 2006*

264. *Subsection (2)* indicates that in this Part, references to either action or refusal include a reference to deliberate omission.

Section 80: Territorial application

265. The provisions of this Part apply to anything done:
- in Great Britain; or
 - on a British ship (a ship registered in Great Britain or owned or used for Crown purposes), hovercraft (a hovercraft registered in Great Britain), or aircraft (and in relation to the provision of facilities to travel on these).
266. Under *subsection (3)*, section 52, which includes the function of granting someone entry into the UK, applies to anything done inside or outside the UK.
267. Under *subsection (5)*, the provisions of this Part will not apply to anything done in or over a country other than the UK, or in or over the territorial waters of a country other than the UK, if it is done to comply with the law of that country.