



# Equality Act 2006

## 2006 CHAPTER 3

### PART 2

#### DISCRIMINATION ON GROUNDS OF RELIGION OR BELIEF

##### *Key concepts*

#### **44 Religion and belief**

In this Part—

- (a) “religion” means any religion,
- (b) “belief” means any religious or philosophical belief,
- (c) a reference to religion includes a reference to lack of religion, and
- (d) a reference to belief includes a reference to lack of belief.

#### **45 Discrimination**

- (1) A person (“A”) discriminates against another (“B”) for the purposes of this Part if on grounds of the religion or belief of B or of any other person except A (whether or not it is also A’s religion or belief) A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances).
- (2) In subsection (1) a reference to a person’s religion or belief includes a reference to a religion or belief to which he is thought to belong or subscribe.
- (3) A person (“A”) discriminates against another (“B”) for the purposes of this Part if A applies to B a provision, criterion or practice—
  - (a) which he applies or would apply equally to persons not of B’s religion or belief,
  - (b) which puts persons of B’s religion or belief at a disadvantage compared to some or all others (where there is no material difference in the relevant circumstances),

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- (c) which puts B at a disadvantage compared to some or all persons who are not of his religion or belief (where there is no material difference in the relevant circumstances), and
  - (d) which A cannot reasonably justify by reference to matters other than B's religion or belief.
- (4) A person ("A") discriminates against another ("B") if A treats B less favourably than he treats or would treat another and does so by reason of the fact that, or by reason of A's knowledge or suspicion that, B—
- (a) has brought or intended to bring, or intends to bring, proceedings under this Part,
  - (b) has given or intended to give, or intends to give, evidence in proceedings under this Part,
  - (c) has provided or intended to provide, or intends to provide, information in connection with proceedings under this Part,
  - (d) has done or intended to do, or intends to do, any other thing under or in connection with this Part, or
  - (e) has alleged or intended to allege, or intends to allege, that a person contravened this Part.
- (5) Subsection (4) does not apply where A's treatment of B relates to B's making or intending to make, not in good faith, a false allegation.

*Prohibited discrimination*

**46 Goods, facilities and services**

- (1) It is unlawful for a person ("A") concerned with the provision to the public or a section of the public of goods, facilities or services to discriminate against a person ("B") who seeks to obtain or use those goods, facilities or services—
- (a) by refusing to provide B with goods, facilities or services,
  - (b) by refusing to provide B with goods, facilities or services of a quality which is the same as or similar to the quality of goods, facilities or services that A normally provides to—
    - (i) the public, or
    - (ii) a section of the public to which B belongs,
  - (c) by refusing to provide B with goods, facilities or services in a manner which is the same as or similar to that in which A normally provides goods, facilities or services to—
    - (i) the public, or
    - (ii) a section of the public to which B belongs, or
  - (d) by refusing to provide B with goods, facilities or services on terms which are the same as or similar to the terms on which A normally provides goods, facilities or services to—
    - (i) the public, or
    - (ii) a section of the public to which B belongs.
- (2) Subsection (1) applies, in particular, to—
- (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,

- (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 trade.
- (3) Where a skill is commonly exercised in different ways in relation to or for the purposes of different religions or beliefs, a person who normally exercises it in relation to or for the purpose of a religion or belief does not contravene subsection (1) by—
- (a) insisting on exercising the skill in the way in which he exercises it in relation to or for the purposes of that religion or belief, or
  - (b) if he reasonably considers it impracticable to exercise the skill in that way in relation to or for the purposes of another religion or belief, refusing to exercise it in relation to or for the purposes of that other religion or belief.
- (4) Subsection (1)—
- (a) does not apply in relation to the provision of goods, facilities or services by a person exercising a public function, and
  - (b) does not apply to discrimination in relation to the provision of goods, facilities or services if discrimination in relation to that provision—
    - (i) is unlawful by virtue of another provision of this Part or by virtue of a provision of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), or
    - (ii) would be unlawful by virtue of another provision of this Part or of those regulations but for an express exception.
- (5) For the purposes of subsection (1) it is immaterial whether or not a person charges for the provision of goods, facilities or services.

#### **47 Premises**

- (1) It is unlawful for a person to discriminate against another—
- (a) in the terms on which he offers to dispose of premises to him,
  - (b) by refusing to dispose of premises to him, or
  - (c) in connection with a list of persons requiring premises.
- (2) It is unlawful for a person managing premises to discriminate against an occupier—
- (a) in the manner in which he provides access to a benefit or facility,
  - (b) by refusing access to a benefit or facility,
  - (c) by evicting him, or
  - (d) by subjecting him to another detriment.
- (3) It is unlawful for a person to discriminate against another by refusing permission for the disposal of premises to him.
- (4) This section applies only to premises in Great Britain.

#### **48 Section 47: exceptions**

- (1) Section 47 shall not apply to anything done in relation to the disposal or management of part of premises by a person (“the landlord”) if—

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- (a) the landlord or a near relative resides, and intends to continue to reside, in another part of the premises,
  - (b) the premises include parts (other than storage areas and means of access) shared by residents of the premises, and
  - (c) the premises are not normally sufficient to accommodate—
    - (i) in the case of premises to be occupied by households, more than two households in addition to that of the landlord or his near relative, or
    - (ii) in the case of premises to be occupied by individuals, more than six individuals in addition to the landlord or his near relative.
- (2) In subsection (1) “near relative” means—
- (a) spouse or civil partner,
  - (b) parent or grandparent,
  - (c) child or grandchild (whether or not legitimate),
  - (d) the spouse or civil partner of a child or grandchild,
  - (e) brother or sister (whether of full blood or half-blood), and
  - (f) any of the relationships listed in paragraphs (b) to (e) above that arises through marriage, civil partnership or adoption.
- (3) Section 47(1) and (3) shall not apply to the disposal of premises by a person who—
- (a) owns an estate or interest in the premises,
  - (b) occupies the whole of the premises,
  - (c) does not use the services of an estate agent for the purposes of the disposal, and
  - (d) does not arrange for the publication of an advertisement for the purposes of the disposal.

#### **49 Educational establishments**

- (1) It is unlawful for the responsible body of an educational establishment listed in the Table to discriminate against a person—
- (a) in the terms on which it offers to admit him as a pupil,
  - (b) by refusing to accept an application to admit him as a pupil, or
  - (c) where he is a pupil of the establishment—
    - (i) in the way in which it affords him access to any benefit, facility or service,
    - (ii) by refusing him access to a benefit, facility or service,
    - (iii) by excluding him from the establishment, or
    - (iv) by subjecting him to any other detriment.
- (2) In the application of this section to England and Wales—
- (a) an expression also used in any of the Education Acts (within the meaning of section 578 of the Education Act 1996 (c. 56)) has the same meaning as in that Act, and
  - (b) “pupil” in relation to an establishment includes any person who receives education at the establishment.
- (3) In the application of this section to Scotland, an expression also used in the Education (Scotland) Act 1980 (c. 44) has the same meaning as in that Act.

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<i>Establishment</i>	<i>Responsible body</i>
ENGLAND AND WALES	
School maintained by a local education authority.	Local education authority or governing body.
Independent school (other than a special school).	Proprietor.
Special school (not maintained by local education authority).	Proprietor.
SCOTLAND	
Public school.	Education authority.
Grant-aided school.	Manager.
Independent school.	Proprietor.

## 50 Section 49: exceptions

- (1) Section 49(1)(a), (b) and (c)(i) and (ii) shall not apply in relation to—
- (a) a school designated under section 69(3) of the School Standards and Framework Act 1998 (c. 31) (foundation or voluntary school with religious character),
  - (b) a school listed in the register of independent schools for England or for Wales if the school's entry in the register records that the school has a religious ethos,
  - (c) a school transferred to an education authority under section 16 of the Education (Scotland) Act 1980 (transfer of certain schools to education authorities) which is conducted in the interest of a church or denominational body,
  - (d) a school provided by an education authority under section 17(2) of that Act (denominational schools),
  - (e) a grant-aided school (within the meaning of that Act) which is conducted in the interest of a church or denominational body, or
  - (f) a school registered in the register of independent schools for Scotland if the school—
    - (i) admits only pupils who belong, or whose parents belong, to one or more particular denominations, or
    - (ii) is conducted in the interest of a church or denominational body.
- (2) Section 49(1)(c)(i), (ii) or (iv) shall not apply in relation to anything done in connection with—
- (a) the content of the curriculum, or
  - (b) acts of worship or other religious observance organised by or on behalf of an educational establishment (whether or not forming part of the curriculum).
- (3) The Secretary of State may by order—
- (a) amend or repeal an exception in subsection (1) or (2);
  - (b) provide for an additional exception to section 49;
  - (c) make provision about the construction or application of section 45(3)(d) in relation to section 49.

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- (4) An order under subsection (3)—
- (a) may include transitional, incidental or consequential provision (including provision amending an enactment (including an enactment in or under an Act of the Scottish Parliament)),
  - (b) may make provision generally or only in respect of specified cases or circumstances (which may, in particular, be defined by reference to location),
  - (c) may make different provision in respect of different cases or circumstances (which may, in particular, be defined by reference to location),
  - (d) shall be made by statutory instrument,
  - (e) may not be made unless the Secretary of State has consulted the Scottish Ministers, the National Assembly for Wales and such other persons as he thinks appropriate, and
  - (f) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

## **51 Local education authorities and education authorities**

- (1) It is unlawful for a local education authority (in England and Wales) or an education authority (in Scotland) in the exercise of their functions to discriminate against a person.
- (2) In its application to local education authorities the prohibition in subsection (1) shall not apply to—
- (a) the exercise of an authority’s functions under section 14 of the Education Act 1996 (c. 56) (provision of schools),
  - (b) the exercise of an authority’s functions in relation to transport,
  - (c) the exercise of an authority’s functions under section 13 of that Act (general responsibility for education) in so far as they relate to a matter specified in paragraph (a) or (b) above, or
  - (d) the exercise of functions as the responsible body for an establishment listed in the Table in section 49.
- (3) In its application to education authorities the prohibition in subsection (1) shall not apply to—
- (a) the exercise of an authority’s functions under section 17 of the Education (Scotland) Act 1980 (c. 44) (provision etc. of schools),
  - (b) the exercise of an authority’s functions in relation to transport,
  - (c) the exercise of an authority’s functions under section 1 of that Act, section 2 of the Standards in Scotland’s Schools etc. Act 2000 (asp 6) and sections 4 and 5 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (duties in relation to provision of education) in so far as they relate to a matter specified in paragraph (a) or (b) above,
  - (d) the exercise of an authority’s functions under section 50(1) of the Education (Scotland) Act 1980 (education of pupils in exceptional circumstances) in so far as they consist of making arrangements of the kind referred to in subsection (2) of that section, or
  - (e) the exercise of functions as the responsible body for an establishment listed in the Table in section 49.

## **52 Public authorities: general**

- (1) It is unlawful for a public authority exercising a function to do any act which constitutes discrimination.
- (2) In subsection (1)—
  - (a) “public authority” includes any person who has functions of a public nature (subject to subsections (3) and (4)), and
  - (b) “function” means function of a public nature.
- (3) The prohibition in subsection (1) shall not apply to—
  - (a) the House of Commons,
  - (b) the House of Lords,
  - (c) the authorities of either House of Parliament,
  - (d) the Security Service,
  - (e) the Secret Intelligence Service,
  - (f) the Government Communications Headquarters, or
  - (g) a part of the armed forces of the Crown which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.
- (4) The prohibition in subsection (1) shall not apply to—
  - (a) the exercise of a judicial function (whether in connection with a court or a tribunal),
  - (b) anything done on behalf of or on the instructions of a person exercising a judicial function (whether in connection with a court or a tribunal),
  - (c) preparing, passing (or making), confirming, approving or considering an enactment (including legislation made by or by virtue of a Measure of the General Synod of the Church of England),
  - (d) the making of an instrument by a Minister of the Crown under an enactment,
  - (e) the making of an instrument by the Scottish Ministers or a member of the Scottish Executive under an enactment,
  - (f) a decision of any of the following kinds taken in accordance with rules under section 3(2) of the Immigration Act 1971 (c. 77) (“immigration rules”) or anything done for the purposes of or in pursuance of a decision of any of those kinds—
    - (i) a decision to refuse entry clearance or leave to enter the United Kingdom on the grounds that the exclusion of the person from the United Kingdom is conducive to the public good,
    - (ii) a decision to cancel leave to enter or remain in the United Kingdom on the grounds that the exclusion of the person from the United Kingdom is conducive to the public good,
    - (iii) a decision to refuse an application to vary leave to enter or remain in the United Kingdom on the grounds that it is undesirable to permit the person to remain in the United Kingdom,
    - (iv) a decision to vary leave to enter or remain in the United Kingdom on the grounds that it is undesirable to permit the person to remain in the United Kingdom,
  - (g) a decision in connection with an application for entry clearance or for leave to enter or remain in the United Kingdom or anything done for the purposes of or in pursuance of a decision of that kind (whether or not the decision is

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taken in pursuance of a provision of immigration rules) if the decision is taken on the grounds—

- (i) that a person holds an office or position in connection with a religion or belief or provides services in connection with a religion or belief,
  - (ii) that a religion or belief is not to be treated in the same way as certain other religions or beliefs, or
  - (iii) that the exclusion from the United Kingdom of a person to whom paragraph (i) applies is conducive to the public good,
- (h) a decision taken, or guidance given, by the Secretary of State in connection with a decision of a kind specified in paragraph (f) or (g),
- (i) a decision taken in accordance with guidance given by the Secretary of State in connection with a decision of a kind specified in paragraph (f) or (g),
- (j) a decision not to institute or continue criminal proceedings (and anything done for the purpose of reaching, or in pursuance of, such a decision),
- (k) action in relation to—
- (i) the curriculum of an educational institution,
  - (ii) admission to an educational institution which has a religious ethos,
  - (iii) acts of worship or other religious observance organised by or on behalf of an educational institution (whether or not forming part of the curriculum),
  - (iv) the governing body of an educational institution which has a religious ethos,
  - (v) transport to or from an educational institution, or
  - (vi) the establishment, alteration or closure of educational institutions,
- (l) the exercise of the power under section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being), or
- (m) action which—
- (i) is unlawful by virtue of another provision of this Part or by virtue of a provision of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), or
  - (ii) would be unlawful by virtue of another provision of this Part other than section 46, or by virtue of a provision of those regulations, but for an express exception.
- (5) In an action under section 66 in respect of a contravention of this section—
- (a) the court shall not grant an injunction unless satisfied that it will not prejudice criminal proceedings or a criminal investigation, and
  - (b) the court shall grant any application to stay the section 66 proceedings on the grounds of prejudice to criminal proceedings or to a criminal investigation, unless satisfied that the proceedings or investigation will not be prejudiced.
- (6) Section 70(4) shall not apply in relation to a reply, or a failure to reply, to a question in connection with an alleged contravention of this section—
- (a) if the respondent or potential respondent reasonably asserts that to have replied differently or at all might have prejudiced criminal proceedings or a criminal investigation,
  - (b) if the respondent or potential respondent reasonably asserts that to have replied differently or at all would have revealed the reason for not instituting or not continuing criminal proceedings,



- (c) where the reply is of a kind specified for the purposes of this paragraph by order of the Secretary of State,
  - (d) where the reply is given in circumstances specified for the purposes of this paragraph by order of the Secretary of State, or
  - (e) where the failure occurs in circumstances specified for the purposes of this paragraph by order of the Secretary of State.
- (7) In this section—
- “criminal investigation” means—
    - (a) an investigation into the commission of an alleged offence, and
    - (b) a decision whether to institute criminal proceedings, and
  - “enactment” includes an enactment in or under an Act of the Scottish Parliament.
- (8) An order under subsection (6)(c) to (e)—
- (a) may include transitional or incidental provision,
  - (b) may make provision generally or only for specified cases or circumstances,
  - (c) may make different provision for different cases or circumstances,
  - (d) shall be made by statutory instrument, and
  - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In the application of this section to proceedings in Scotland—
- (a) a reference to the court shall be taken as a reference to the sheriff,
  - (b) a reference to an injunction shall be taken as a reference to an interdict,
  - (c) a reference to staying proceedings shall be taken as a reference to sisting proceedings, and
  - (d) a reference to the respondent or potential respondent shall be taken as a reference to the defender or potential defender.

#### *Other unlawful acts*

### **53 Discriminatory practices**

- (1) It is unlawful for a person to operate a practice which would be likely to result in unlawful discrimination if applied to persons of any religion or belief.
- (2) It is unlawful for a person to adopt or maintain a practice or arrangement in accordance with which in certain circumstances a practice would be operated in contravention of subsection (1).
- (3) In this section “unlawful discrimination” means discrimination which is unlawful by virtue of any of sections 46 to 52.
- (4) Proceedings in respect of a contravention of this section may be brought only—
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with sections 20 to 24.

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## **54 Discriminatory advertisements**

- (1) It is unlawful to publish an advertisement, or to cause an advertisement to be published, if it indicates (expressly or impliedly) an intention by any person to discriminate unlawfully.
- (2) In subsection (1) the reference to unlawful discrimination is a reference to discrimination which is unlawful by virtue of any of sections 46 to 52.
- (3) Proceedings in respect of a contravention of subsection (1) may be brought only—
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25.
- (4) A person who publishes an advertisement shall not be liable in proceedings under that section in respect of the publication of the advertisement if he proves that—
  - (a) he published in reliance on a statement, made by a person causing the advertisement to be published, that subsection (1) would not apply, and
  - (b) that it was reasonable to rely on that statement.
- (5) A person commits an offence if he knowingly or recklessly makes a false statement of the kind mentioned in subsection (4)(a).
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **55 Instructing or causing discrimination**

- (1) It is unlawful for a person to instruct another to unlawfully discriminate.
- (2) It is unlawful for a person to cause or attempt to cause another to unlawfully discriminate.
- (3) It is unlawful for a person to induce or attempt to induce another to unlawfully discriminate.
- (4) For the purposes of subsection (3) inducement may be direct or indirect.
- (5) In this section a reference to unlawful discrimination is a reference to discrimination which is unlawful by virtue of any of sections 46 to 52.
- (6) Proceedings in respect of a contravention of this section may be brought only—
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25.

### *General exceptions*

## **56 Statutory requirements**

Nothing in this Part shall make it unlawful to do anything which is necessary, or in so far as it is necessary, for the purpose of complying with—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) legislation made or to be made—
  - (i) by a Minister of the Crown,

- (ii) by Order in Council,
  - (iii) by the Scottish Ministers or a member of the Scottish Executive,
  - (iv) by the National Assembly for Wales, or
  - (v) by or by virtue of a Measure of the General Synod of the Church of England, or
- (d) a condition or requirement imposed by a Minister of the Crown by virtue of anything listed in paragraphs (a) to (c).

## **57 Organisations relating to religion or belief**

- (1) This section applies to an organisation the purpose of which is—
- (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,
  - (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or
  - (e) to improve relations, or maintain good relations, between persons of different religions or beliefs.
- (2) But this section does not apply to an organisation whose sole or main purpose is commercial.
- (3) Nothing in this Part shall make it unlawful for an organisation to which this section applies or anyone acting on behalf of or under the auspices of an organisation to which this section applies—
- (a) to restrict membership of the organisation,
  - (b) to restrict participation in activities undertaken by the organisation or on its behalf or under its auspices,
  - (c) to restrict the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices, or
  - (d) to restrict the use or disposal of premises owned or controlled by the organisation.
- (4) Nothing in this Part shall make it unlawful for a minister—
- (a) to restrict participation in activities carried on in the performance of his functions in connection with or in respect of an organisation to which this section relates, or
  - (b) to restrict the provision of goods, facilities or services in the course of activities carried on in the performance of his functions in connection with or in respect of an organisation to which this section relates.
- (5) But subsections (3) and (4) permit a restriction only if imposed—
- (a) by reason of or on the grounds of the purpose of the organisation, or
  - (b) in order to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.
- (6) In subsection (4) the reference to a minister is a reference to a minister of religion, or other person, who—
- (a) performs functions in connection with a religion or belief to which an organisation, to which this section applies, relates, and

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- (b) holds an office or appointment in, or is accredited, approved or recognised for purposes of, an organisation to which this section applies.

## **58 Charities relating to religion or belief**

- (1) Nothing in this Part shall make it unlawful for a person to provide benefits only to persons of a particular religion or belief, if—
  - (a) he acts in pursuance of a charitable instrument, and
  - (b) the restriction of benefits to persons of that religion or belief is imposed by reason of or on the grounds of the provisions of the charitable instrument.
- (2) Nothing in this Part shall make it unlawful for the Charity Commissioners for England and Wales or the holder of the Office of the Scottish Charity Regulator to exercise a function in relation to a charity in a manner which appears to the Commissioners or to the holder to be expedient in the interests of the charity, having regard to the provisions of the charitable instrument.
- (3) In this section “charitable instrument”—
  - (a) means an instrument establishing or governing a charity, and
  - (b) includes a charitable instrument made before the commencement of this section.

## **59 Faith schools, &c.**

- (1) Nothing in this Part shall make it unlawful for an educational institution established or conducted for the purpose of providing education relating to, or within the framework of, a specified religion or belief—
  - (a) to restrict the provision of goods, facilities or services, or
  - (b) to restrict the use or disposal of premises.
- (2) But subsection (1) permits a restriction only if imposed—
  - (a) by reason of or on the grounds of the purpose of the institution, or
  - (b) in order to avoid causing offence, on grounds of the religion or belief to which the institution relates, to persons connected with the institution.
- (3) In this Part a reference to the provision of facilities or services shall not, in so far as it applies to an educational institution, include a reference to educational facilities or educational services provided to students of the institution.

## **60 Membership requirement**

- (1) Nothing in this Part shall make it unlawful for a charity to require members, or persons wishing to become members, to make a statement which asserts or implies membership or acceptance of a religion or belief.
- (2) Subsection (1) shall apply to the imposition of a requirement by a charity only if—
  - (a) the charity, or an organisation of which the charity is part, first imposed a requirement of the kind specified in subsection (1) before 18th May 2005, and
  - (b) the charity or organisation has not ceased since that date to impose a requirement of that kind.

## **61 Education, training and welfare**

Nothing in this Part shall make it unlawful to do anything by way of—

- (a) meeting special needs for education, training or welfare of persons of a religion or belief, or
- (b) providing ancillary benefits in connection with meeting the needs mentioned in paragraph (a).

## **62 Care within family**

Nothing in this Part shall make it unlawful for a person to take into his home, and treat in the same manner as a member of his family, a person who requires a special degree of care and attention (whether by reason of being a child or an elderly person or otherwise).

## **63 National security**

Nothing in this Part shall make unlawful anything which is done for, and justified by, the purpose of safeguarding national security.

## **64 Amendment of exceptions**

- (1) The Secretary of State may by order amend this Part so as to—
  - (a) create an exception to the prohibition under section 52(1), or
  - (b) vary an exception to a prohibition under this Part.
- (2) Before making an order under subsection (1) the Secretary of State shall consult the Commission for Equality and Human Rights.
- (3) An order under subsection (1)—
  - (a) may include transitional, incidental or consequential provision (including provision amending an enactment (including an enactment in or under an Act of the Scottish Parliament)),
  - (b) may make provision generally or only for specified cases or circumstances,
  - (c) may make different provision for different cases or circumstances,
  - (d) shall be made by statutory instrument, and
  - (e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### *Enforcement*

## **65 Restriction of proceedings**

- (1) Except as provided by this Act, no proceedings, whether criminal or civil, may be brought against a person on the grounds that an act is unlawful by virtue of this Part.
- (2) But subsection (1) does not prevent—
  - (a) an application for judicial review,
  - (b) proceedings under the Immigration Acts,
  - (c) proceedings under the Special Immigration Appeals Commission Act 1997 (c. 68), or

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- (d) in Scotland, the exercise of the jurisdiction of the Court of Session to entertain an application for reduction or suspension of an order or determination or otherwise to consider the validity of an order or determination, or to require reasons for an order or determination to be stated.

## **66 Claim of unlawful action**

- (1) A claim that a person has done anything that is unlawful by virtue of this Part may be brought in a county court (in England and Wales) or in the sheriff court (in Scotland) by way of proceedings in tort (or reparation) for breach of statutory duty.
- (2) Proceedings in England and Wales alleging that any of the following bodies has acted unlawfully by virtue of section 49 or 51 may not be brought unless the claimant has given written notice to the Secretary of State; and those bodies are—
  - (a) a local education authority, and
  - (b) the responsible body of an educational establishment listed in the Table in section 49.
- (3) Proceedings in Scotland alleging that any of the following bodies has acted unlawfully by virtue of section 49 or 51 may not be brought unless the pursuer has given written notice to the Scottish Ministers; and those bodies are—
  - (a) an education authority, and
  - (b) the responsible body of an educational establishment listed in the Table in section 49.
- (4) In subsection (1) the reference to a claim that a person has done an unlawful act includes a reference to a claim that a person is to be treated by virtue of this Part as having done an unlawful act.
- (5) In proceedings under this section, if the claimant (or pursuer) proves facts from which the court could conclude, in the absence of a reasonable alternative explanation, that an act which is unlawful by virtue of this Part has been committed, the court shall assume that the act was unlawful unless the respondent (or defender) proves that it was not.

## **67 Immigration**

- (1) Proceedings may not be brought under section 66 alleging that a person has acted unlawfully by virtue of section 52 if the question of the lawfulness of the act could be raised (and has not been raised) in immigration proceedings (disregarding the possibility of proceedings brought out of time with permission).
- (2) If in immigration proceedings a court or tribunal has found that an act was unlawful by virtue of section 52, a court hearing proceedings under section 66 shall accept that finding.
- (3) In this section “immigration proceedings” means proceedings under or by virtue of—
  - (a) the Immigration Acts, or
  - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).

## **68 Remedies**

- (1) This section applies to proceedings under section 66.

- (2) A court may, in addition to any remedy available to it in proceedings for tort, grant any remedy that the High Court could grant in proceedings for judicial review.
- (3) A court may not award damages in proceedings in respect of an act that is unlawful by virtue of section 45(3) if the respondent proves that there was no intention to treat the claimant unfavourably on grounds of religion or belief.
- (4) A court may award damages by way of compensation for injury to feelings (whether or not other damages are also awarded).
- (5) In the application of this section to proceedings in Scotland—
  - (a) a reference to the High Court shall be taken as a reference to the Court of Session,
  - (b) a reference to tort shall be taken as a reference to reparation,
  - (c) a reference to the respondent shall be taken as a reference to the defender, and
  - (d) a reference to the claimant shall be taken as a reference to the pursuer.
- (6) This section is subject to section 52(5).

## **69 Timing**

- (1) Proceedings under section 66 may be brought only—
  - (a) within the period of six months beginning with the date of the act (or last act) to which the proceedings relate, or
  - (b) with the permission of the court in which the proceedings are brought.
- (2) In relation to immigration proceedings within the meaning of section 67, the period specified in subsection (1)(a) above shall begin with the first date on which proceedings under section 66 may be brought.

## **70 Information**

- (1) In this section—
  - (a) a reference to a claimant is a reference to a person who has brought proceedings under this Part,
  - (b) a reference to a potential claimant is a reference to a person who—
    - (i) thinks he may have been the subject of an act that is unlawful by virtue of this Part, and
    - (ii) wishes to consider whether to bring proceedings under this Part, and
  - (c) a person questioned by a potential claimant for the purpose of considering whether to bring proceedings is referred to as a potential respondent.
- (2) The Secretary of State shall by order prescribe—
  - (a) forms by which a claimant or potential claimant may question the respondent or a potential respondent about the reasons for an action or about any matter that is or may be relevant, and
  - (b) forms by which a respondent or potential respondent may reply (if he wishes).
- (3) A claimant's or potential claimant's questions, and a respondent or potential respondent's replies, (in each case whether or not put by a prescribed form) shall be admissible as evidence in proceedings in respect of the act to which the questions relate if (and only if) the questions are put—

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- (a) within the period of six months beginning with the date of the act (or last act) to which they relate, and
  - (b) in such manner as the Secretary of State may prescribe by order.
- (4) A court may draw an inference from—
- (a) a failure to reply to a claimant’s or potential claimant’s questions (whether or not put by a prescribed form) within the period of eight weeks beginning with the date of receipt, or
  - (b) an evasive or equivocal reply to a claimant’s or potential claimant’s questions (whether or not put by a prescribed form).
- (5) The Secretary of State may by order amend subsection (3)(a) so as to substitute a new period for that specified.
- (6) In the application of this section to Scotland—
- (a) a reference to a claimant or potential claimant shall be taken as a reference to a pursuer or potential pursuer, and
  - (b) a reference to a respondent or potential respondent shall be taken as a reference to a defender or potential defender.
- (7) An order under this section—
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) This section is subject to section 52(6).

## **71 National security**

- (1) Rules of court may make provision for enabling a county court or sheriff court in which a claim is brought under section 66, where the court considers it expedient in the interests of national security—
- (a) to exclude from all or part of the proceedings—
    - (i) the claimant;
    - (ii) the claimant’s representatives;
    - (iii) any assessors;
  - (b) to permit a claimant or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or the part of the proceedings, from which he is excluded;
  - (c) to take steps to keep secret all or part of the reasons for the court’s decision in the proceedings.
- (2) The Attorney General or, in Scotland, the Advocate General for Scotland, may appoint a person to represent the interests of a claimant in, or in any part of, proceedings from which the claimant or his representatives are excluded by virtue of subsection (1).
- (3) A person may be appointed under subsection (2) only—
- (a) in relation to proceedings in England and Wales, if he has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), or
  - (b) in relation to proceedings in Scotland, if he is—
    - (i) an advocate, or



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(ii) qualified to practice as a solicitor in Scotland.

(4) A person appointed under subsection (2) shall not be responsible to the person whose interests he is appointed to represent.

## **72 Validity and revision of contracts**

(1) A term of a contract is void where—

- (a) its inclusion renders the making of the contract unlawful by virtue of this Part,
- (b) it is included in furtherance of an act which is unlawful by virtue of this Part, or
- (c) it provides for the doing of an act which would be unlawful by virtue of this Part.

(2) Subsection (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against a party to the contract; but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit a provision of this Part is unenforceable by a person in whose favour the term would operate apart from this subsection.

(4) Subsection (3) does not apply to a contract settling a claim under section 66.

(5) On the application of a person interested in a contract to which subsection (1) applies, a county court or sheriff court may make an order for removing or modifying a term made unenforceable by that subsection; but an order shall not be made unless all persons affected—

- (a) have been given notice of the application (except where notice is dispensed with in accordance with rules of court), and
- (b) have been afforded an opportunity to make representations to the court.

(6) An order under subsection (5) may include provision in respect of a period before the making of the order.

### *General*

## **73 Aiding unlawful acts**

(1) It is unlawful knowingly to help another person (whether or not as his employee or agent) to do anything which is unlawful under this Part.

(2) A person commits an offence if he knowingly or recklessly makes a false statement, in connection with assistance sought from another, that a proposed act is not unlawful under this Part.

(3) A person guilty of an offence under subsection (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **74 Employers' and principals' liability**

(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Part as done by the employer as well as by the person.

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- (2) Anything done by a person as agent for another shall be treated for the purposes of this Part as done by the principal as well as by the agent.
- (3) It is immaterial for the purposes of this section whether an employer or principal knows about or approves of an act.
- (4) In proceedings under this Part against a person in respect of an act alleged to have been done by his employee it shall be a defence for the employer to provide that he took such steps as were reasonably practicable to prevent the employee—
  - (a) from doing the act, or
  - (b) from doing acts of that kind in the course of his employment.
- (5) Subsections (1) and (2) shall not apply to the commission of an offence under section 54.

## **75 Police, &c.**

- (1) This section applies to—
  - (a) a constable who is a member of a police force maintained under the Police Act 1996 (c. 16) or the Police (Scotland) Act 1967 (c. 77),
  - (b) a special constable appointed for a police area in accordance with either of those Acts, and
  - (c) a person appointed as a police cadet in accordance with either of those Acts.
- (2) A person to whom this section applies shall be treated for the purposes of this Part as the employee of his chief officer of police; and anything done by the person in the performance or purported performance of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund—
  - (a) compensation, costs or expenses awarded against a chief officer of police in proceedings brought against him under this Part;
  - (b) costs or expenses incurred by a chief officer of police in proceedings brought against him under this Part so far as not recovered in the proceedings;
  - (c) sums required by a chief officer of police for the settlement of a claim made against him under this Part if the settlement is approved by the police authority.
- (4) A police authority may pay out of the police fund—
  - (a) damages or costs awarded in proceedings under this Part against a person under the direction and control of the chief officer of police;
  - (b) costs incurred and not recovered by such a person in such proceedings;
  - (c) sums required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (5) In section 56(4) of the Serious Organised Crime and Police Act 2005 (c. 15) (application of discrimination legislation to seconded staff) after paragraph (f) insert—
  - “; and
  - (g) section 74 of the Equality Act 2006.”

## **76 Indirect provision of benefit, &c.**

A reference in this Part to providing a service, facility or benefit of any kind includes a reference to facilitating access to the service, facility or benefit.

## **77 Employment Equality Regulations**

- (1) For regulation 2(1) of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660) (definition of “religion or belief”) substitute—

“(1) In these Regulations—

- (a) “religion” means any religion,
- (b) “belief” means any religious or philosophical belief,
- (c) a reference to religion includes a reference to lack of religion, and
- (d) a reference to belief includes a reference to lack of belief.”

- (2) For regulation 3(1)(a) of the Regulations substitute—

“(a) on the grounds of the religion or belief of B or of any other person except A (whether or not it is also A’s religion or belief) A treats B less favourably than he treats or would treat other persons;”.

- (3) Omit regulation 3(2) of the Regulations.

## **78 Crown application**

- (1) Section 52 binds the Crown.

- (2) The remainder of this Part applies to an act done on behalf of the Crown as it applies to an act done by a private person.

- (3) For the purposes of subsection (2) an act is done on behalf of the Crown if (and only if) done—

- (a) by or on behalf of a Minister of the Crown,
- (b) by or on behalf of the Scottish Ministers,
- (c) by a government department,
- (d) by a body established by an enactment (including an enactment in or under an Act of the Scottish Parliament) acting on behalf of the Crown,
- (e) by or on behalf of the holder of an office established by an enactment (including an enactment in or under an Act of the Scottish Parliament) acting on behalf of the Crown, or
- (f) by or on behalf of an office-holder in the Scottish Administration (within the meaning of section 126(7) of the Scotland Act 1998 (c. 46)).

- (4) The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Part as they apply to proceedings in England and Wales which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown; but section 20 of that Act (removal of proceedings from county court to High Court) shall not apply to proceedings under this Part.

- (5) The provisions of Part V of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Part as they apply to proceedings in Scotland which by virtue of the said Part are treated as civil proceedings by or against the

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Crown; but the proviso to section 44 of that Act (removal of proceedings from the sheriff court to the Court of Session) shall not apply to proceedings under this Part.

## **79 Interpretation**

- (1) In this Part “charity”—
  - (a) in relation to England and Wales, has the meaning given by the Charities Act 2006, and
  - (b) in relation to Scotland, means a body entered in the Scottish Charity Register.
- (2) In this Part—
  - (a) a reference to action includes a reference to deliberate omission, and
  - (b) a reference to refusal includes a reference to deliberate omission.

## **80 Territorial application**

- (1) This Part applies in relation to anything done in Great Britain.
- (2) This Part also applies to the provision of—
  - (a) facilities for travel on a British ship, a British hovercraft or a British aircraft, and
  - (b) benefits, facilities or services provided on a British ship, a British hovercraft or a British aircraft.
- (3) Section 52, in so far as it relates to granting entry clearance (within the meaning of the Immigration Acts), applies to anything done whether inside or outside the United Kingdom.
- (4) In this section—

“British aircraft” means an aircraft registered in Great Britain,  
“British hovercraft” means a hovercraft registered in Great Britain, and  
“British ship” means a ship which is—

  - (a) registered in Great Britain, or
  - (b) owned by or used for purposes of the Crown.
- (5) This section shall not make it unlawful to do anything in or over a country other than the United Kingdom, or in or over the territorial waters of a country other than the United Kingdom, for the purpose of complying with a law of the country.