



# Equality Act 2006

## 2006 CHAPTER 3

### PART 4

#### PUBLIC FUNCTIONS

##### *Sex discrimination*

### 83 Prohibition of discrimination

- (1) In the Sex Discrimination Act 1975 (c. 65) the following shall be inserted at the beginning of Part III (discrimination in non-employment fields)—

#### **“21A Public authorities**

- (1) It is unlawful for a public authority exercising a function to do any act which constitutes—
- (a) discrimination, or
  - (b) harassment within the meaning of section 4A(1) and (2), (5) and (6).
- (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 Security Service,
  - (d) the Secret Intelligence Service,
  - (e) the Government Communications Headquarters, or

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- (f) 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 the functions and actions listed in the Table of Exceptions in subsection (9) (but nothing in that Table permits anything which is prohibited by virtue of any Community law relating to discrimination).
- (5) The Secretary of State may by order amend the Table of Exceptions.
- (6) In an action under section 66 in respect of a contravention of this section—
  - (a) the court shall not grant an injunction or interdict unless satisfied that it will not prejudice criminal proceedings or a criminal investigation, and
  - (b) the court shall grant any application to stay or sist 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.
- (7) Section 74(2)(b) shall not apply in relation to a respondent’s reply, or a failure to reply, to a question in connection with an alleged contravention of this section—
  - (a) if the respondent reasonably asserts that to have replied differently or at all might have prejudiced criminal proceedings or a criminal investigation,
  - (b) if the 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.
- (8) 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.
- (9) The following is the Table of Exceptions referred to in subsection (4).

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*Legislation*

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| 1 | Preparing, making, or considering— <ul style="list-style-type: none"> <li>(a) an Act of Parliament,</li> <li>(b) a Bill for an Act of Parliament,</li> <li>(c) an Act of the Scottish Parliament, or</li> <li>(d) a Bill for an Act of the Scottish Parliament.</li> </ul> |
| 2 | Preparing, making, confirming, approving, or considering legislation made or to be made—   |

- (a) by a Minister of the Crown,
  - (b) by Order in Council,
  - (c) by the Scottish Ministers or any member of the Scottish Executive,
  - (d) by the National Assembly for Wales, or
  - (e) by or by virtue of a Measure of the General Synod of the Church of England.
- 3 Action 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, or
  - (c) legislation of a kind described in Item 2.
- The courts, &c.*
- 4 A judicial function (whether in connection with a court or a tribunal).
- 5 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).
- 6 A decision not to institute or continue criminal proceedings.
- 7 Anything done for the purpose of reaching, or in pursuance of, a decision not to institute or continue criminal proceedings.
- Separate services, &c.*
- 8 The provision of a service for one sex only where only persons of that sex require the service.
- 9 The provision of separate services for each sex where a joint service would or might be less effective.
- 10 The provision of a service for one sex only where—
- (a) the service is also provided jointly for both sexes, and
  - (b) if the service were provided only jointly it would or might be insufficiently effective.
- 11 The provision of a service for one sex only where—

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- (a) if the service were provided for both sexes jointly it would or might be less effective, and
- (b) the extent to which the service is required by the other sex makes it not reasonably practicable to provide separate services for that sex.
- 12 The provision of separate services for each sex in different ways or to different extents where—
- (a) if the service were provided for both sexes jointly it would or might be less effective, and
- (b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service for that sex in the same way or to the same extent as for the other sex.
- 13 Action taken for the purpose of assisting one sex to overcome—
- (a) a disadvantage (as compared with the other sex), or
- (b) the effects of discrimination.
- Miscellaneous*
- 14 The exercise of a function of the Charity Commissioners for England and Wales or the holder of the Office of the Scottish Charity Regulator in relation to an instrument in relation to which section 43 applies.
- 15 Action which is unlawful by virtue of another provision of this Act.
- 16 Action which would be unlawful by virtue of another provision of this Act but for an express exception.”
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- (2) In section 17(5) of the Sex Discrimination Act 1975 (c. 65) (police) for “by virtue of subsection (1)” substitute “by virtue of subsection (1) or (1A)”.
- (3) In section 81 of that Act (orders)—
- (a) in subsection (2) after “sections” insert “21A,” and
- (b) after subsection (2) insert—
- “(2A) An order under section 21A(5) may not be made unless—
- (a) the Secretary of State has consulted the Commission, and
- (b) a draft has been laid before and approved by resolution of each House of Parliament.”

(4) In section 85 of that Act (Crown application) after subsection (3) insert—

“(3A) Section 21A binds the Crown.”

#### **84 General duty to promote equality, &c.**

(1) In the Sex Discrimination Act 1975 the following shall be inserted at the beginning of Part VIII (supplemental)—

##### **“76A Public authorities: general statutory duty**

(1) A public authority shall in carrying out its functions have due regard to the need—

- (a) to eliminate unlawful discrimination and harassment, and
- (b) to promote equality of opportunity between men and women.

(2) In subsection (1)—

- (a) “public authority” includes any person who has functions of a public nature (subject to subsections (3) and (4)),
- (b) “functions” means functions of a public nature, and
- (c) the reference to unlawful discrimination shall be treated as including a reference to contravention of terms of contracts having effect in accordance with an equality clause within the meaning of section 1 of the Equal Pay Act 1970 (c. 41).

(3) The duty in subsection (1) shall not apply to—

- (a) the House of Commons,
- (b) the House of Lords,
- (c) the Scottish Parliament,
- (d) the General Synod of the Church of England,
- (e) the Security Service,
- (f) the Secret Intelligence Service,
- (g) the Government Communications Headquarters,
- (h) 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, or
- (i) a person specified for the purpose of this paragraph by order of the Secretary of State (and a person may be specified generally or only in respect of specified functions).

(4) The duty in subsection (1) shall not apply to the exercise of—

- (a) a function in connection with proceedings in the House of Commons or the House of Lords,
- (b) a function in connection with proceedings in the Scottish Parliament (other than a function of the Scottish Parliamentary Corporate Body),
- (c) a judicial function (whether in connection with a court or a tribunal),
- (d) a function exercised on behalf of or on the instructions of a person exercising a judicial function (whether in connection with a court or a tribunal), or

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- (e) a function specified for the purpose of this paragraph by order of the Secretary of State.
- (5) Subsection (1)(b) is without prejudice to the effect of any exception to or limitation of the law about sex discrimination.
- (6) A failure in respect of performance of the duty under subsection (1) does not confer a cause of action at private law.”
- (2) In section 81 of the Sex Discrimination Act 1975 (c. 65) (orders) after subsection (2A) (inserted by section 83 above) insert—
  - “(2B) An order under section 76A(3)(i) or (4)(e) may not be made unless the Secretary of State has consulted the Commission.”
- (3) In section 85 of that Act (Crown application) after subsection (3A) (inserted by section 83 above) insert—
  - “(3B) Section 76A binds the Crown.”

## 85 Specific duties

- (1) In the Sex Discrimination Act 1975 (c. 65) the following shall be inserted after section 76A (inserted by section 84 above)—

### “76B Specific duties

- (1) The Secretary of State may by order impose on a person to whom the duty in section 76A(1) applies, or in so far as that duty applies to a person, a duty which the Secretary of State thinks will ensure better performance of the duty under section 76A(1).
- (2) Before making an order under subsection (1) the Secretary of State shall consult the Commission.
- (3) The Secretary of State—
  - (a) must consult the National Assembly for Wales before making an order under subsection (1) in respect of a person exercising functions in relation to Wales, and
  - (b) may not, without the consent of the National Assembly for Wales, make an order under subsection (1) in respect of a person all of whose functions are public functions in relation to Wales.
- (4) A failure in respect of performance of a duty imposed under subsection (1) does not confer a cause of action at private law.

### 76C Specific duties: Scotland

- (1) Section 76B(1) shall not apply in relation to a person who is a relevant Scottish authority or a cross-border authority.
- (2) The Secretary of State may by order impose on a cross-border authority to whom the duty under section 76A(1) applies, or in so far as that duty applies to the cross-border authority, a duty which the Secretary of State thinks will

ensure better performance of the duty under section 76A(1), to the extent that the cross-border authority's functions are not Scottish functions.

- (3) The Scottish Ministers may by order impose on a relevant Scottish authority to whom the duty under section 76A(1) applies, or in so far as that duty applies to the relevant Scottish authority, a duty which the Scottish Ministers think will ensure better performance of the duty under section 76A(1).
- (4) The Scottish Ministers may by order impose on a cross-border authority to whom the duty under section 76A(1) applies, or in so far as that duty applies to the cross-border authority, a duty which the Scottish Ministers think will ensure better performance of the duty under section 76A(1), to the extent that the cross-border authority's functions are Scottish functions.
- (5) Before making an order under any of subsections (2) to (4) the person making the order shall consult the Commission.
- (6) Before making an order under subsection (2) the Secretary of State shall consult the Scottish Ministers.
- (7) Before making an order under subsection (4) the Scottish Ministers shall consult the Secretary of State.
- (8) A failure in respect of performance of a duty imposed under this section does not confer a cause of action at private law.
- (9) In this section—
  - “relevant Scottish authority” means—
    - (a) a member of the Scottish Executive or a junior Scottish Minister,
    - (b) the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland,
    - (c) an office of a description specified in an Order in Council under section 126(8)(b) of the Scotland Act 1998 (c. 46) (other non-ministerial offices in the Scottish Administration), or
    - (d) a public body, public office or holder of a public office—
      - (i) which is not a cross-border authority or the Scottish Parliamentary Corporate Body,
      - (ii) whose functions are exercisable only in or as regards Scotland, and
      - (iii) some at least of whose functions do not relate to reserved matters (within the meaning of the Scotland Act 1998),

“cross-border authority” means a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998, and

“Scottish functions” means functions which are exercisable in or as regards Scotland and which do not relate to reserved matters (within the meaning of the Scotland Act 1998).

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### **76D Specific duties: enforcement**

- (1) This section applies where the Commission thinks that a person has failed to comply with a duty imposed under section 76B or 76C.
  - (2) The Commission may give the person a notice requiring him—
    - (a) to comply with the duty, and
    - (b) to give the Commission, within the period of 28 days beginning with the date on which he receives the notice, written information of steps taken for the purpose of complying with the duty.
  - (3) A notice under this section may require a person to give the Commission information required by the Commission for the purposes of assessing compliance with the duty; in which case the notice shall specify—
    - (a) the period within which the information is to be given (which shall begin with the date on which the notice is received and shall not exceed three months), and
    - (b) the manner and form in which the information is to be given.
  - (4) A person who receives a notice under this section shall comply with it.
  - (5) But a notice under this section shall not oblige a person to give information that he could not be compelled to give in proceedings before the High Court or the Court of Session.
  - (6) If the Commission thinks that a person, to whom a notice under this section has been given, has failed to comply with a requirement of the notice, the Commission may apply to a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring the person to comply.”
- (2) In section 81 of the Sex Discrimination Act 1975 (c. 65) (orders) after subsection (2B) (inserted by section 84 above) insert—
- “(2C) An order under section 76C(3) or (4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

## **86 Codes of practice**

In the Sex Discrimination Act 1975 the following shall be inserted after section 76D (inserted by section 85 above)—

### **“76E Codes of practice**

- (1) The Commission may issue a code of practice about the performance of—
  - (a) the duty under section 76A(1), or
  - (b) a duty imposed under section 76B or 76C.
- (2) Section 56A(2) to (11) shall apply to a code under this section as to a code under that section (for which purpose the reference in section 56A(10) to specified proceedings before an employment tribunal shall be treated as a reference to criminal or civil proceedings before any court or tribunal).



- (3) The Secretary of State shall consult the Scottish Ministers and the National Assembly for Wales before—
- (a) approving a draft under section 56A(4)(a) as applied by subsection (2) above, or
  - (b) making an order under section 56A(7) as applied by subsection (2) above.”

## **87 National security**

In the Sex Discrimination Act 1975 the following shall be inserted after section 66A (burden of proof in county and sheriff courts)—

### **“66B 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(1), 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
    - (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.”

### *Disability discrimination*

## **88 General duty: exceptions**

In section 49C(4) of the Disability Discrimination Act 1995 (c. 50) (public authorities: general duty: exceptions) for “section 49A(1)(a), (b), (c) or (d)” substitute “one or more specified paragraphs of section 49A(1)”.

## 89 National security

In the Disability Discrimination Act 1995 the following shall be inserted after section 59 (statutory authority, national security, &c.)—

### “59A National security

- (1) Rules of court may make provision for enabling a county court or sheriff court in which a claim is brought in respect of alleged discrimination contrary to this Act (including anything treated by virtue of this Act as amounting to discrimination contrary to this Act), 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
    - (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.”

### *Race discrimination*

## 90 National security

In section 67A of the Race Relations Act 1976 (c. 74) (national security)—

- (a) in subsection (2), for “the claimant and his representatives” substitute “the claimant or his representatives”, and
- (b) in subsection (3)(b), for sub-paragraph (ii) substitute—
 

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