



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).

Legislation

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| 1 | Preparing, making, or considering— <ul style="list-style-type: none"> (a) an Act of Parliament, (b) a Bill for an Act of Parliament, (c) an Act of the Scottish Parliament, or (d) a Bill for an Act of the Scottish Parliament. |
| 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.”

(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.”