



# Equality Act 2010

## 2010 CHAPTER 15

### PART 5

#### WORK

#### Modifications etc. (not altering text)

- C1** Pt. 5 applied (1.8.2011) by the [Equality Act 2010 \(Work on Ships and Hovercraft\) Regulations 2011](#) (S.I. 2011/1771), [regs. 3-5](#)

### CHAPTER 1

#### EMPLOYMENT, ETC.

#### *Employees*

#### **39 Employees and applicants**

- (1) An employer (A) must not discriminate against a person (B)—
- in the arrangements A makes for deciding to whom to offer employment;
  - as to the terms on which A offers B employment;
  - by not offering B employment.
- (2) An employer (A) must not discriminate against an employee of A's (B)—
- as to B's terms of employment;
  - in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - by dismissing B;
  - by subjecting B to any other detriment.

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- (3) An employer (A) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer employment;
  - (b) as to the terms on which A offers B employment;
  - (c) by not offering B employment.
- (4) An employer (A) must not victimise an employee of A's (B)—
  - (a) as to B's terms of employment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
  - (c) by dismissing B;
  - (d) by subjecting B to any other detriment.
- (5) A duty to make reasonable adjustments applies to an employer.
- (6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—
  - (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
  - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.
- (7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—
  - (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
  - (b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.
- (8) Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

#### **40 Employees and applicants: harassment**

- (1) An employer (A) must not, in relation to employment by A, harass a person (B)—
  - (a) who is an employee of A's;
  - (b) who has applied to A for employment.
- (2) The circumstances in which A is to be treated as harassing B under subsection (1) include those where—
  - (a) a third party harasses B in the course of B's employment, and
  - (b) A failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.
- (3) Subsection (2) does not apply unless A knows that B has been harassed in the course of B's employment on at least two other occasions by a third party; and it does not matter whether the third party is the same or a different person on each occasion.
- (4) A third party is a person other than—
  - (a) A, or
  - (b) an employee of A's.

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## 41 Contract workers

- (1) A principal must not discriminate against a contract worker—
  - (a) as to the terms on which the principal allows the worker to do the work;
  - (b) by not allowing the worker to do, or to continue to do, the work;
  - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
  - (d) by subjecting the worker to any other detriment.
- (2) A principal must not, in relation to contract work, harass a contract worker.
- (3) A principal must not victimise a contract worker—
  - (a) as to the terms on which the principal allows the worker to do the work;
  - (b) by not allowing the worker to do, or to continue to do, the work;
  - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
  - (d) by subjecting the worker to any other detriment.
- (4) A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).
- (5) A “principal” is a person who makes work available for an individual who is—
  - (a) employed by another person, and
  - (b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).
- (6) “Contract work” is work such as is mentioned in subsection (5).
- (7) A “contract worker” is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).

### *Police officers*

## 42 Identity of employer

- (1) For the purposes of this Part, holding the office of constable is to be treated as employment—
  - (a) by the chief officer, in respect of any act done by the chief officer in relation to a constable or appointment to the office of constable;
  - (b) by the responsible authority, in respect of any act done by the authority in relation to a constable or appointment to the office of constable.
- (2) For the purposes of this Part, holding an appointment as a police cadet is to be treated as employment—
  - (a) by the chief officer, in respect of any act done by the chief officer in relation to a police cadet or appointment as one;
  - (b) by the responsible authority, in respect of any act done by the authority in relation to a police cadet or appointment as one.
- (3) Subsection (1) does not apply to service with the Civil Nuclear Constabulary (as to which, see section 55(2) of the Energy Act 2004).
- (4) Subsection (1) does not apply to a constable at SOCA, SPSA or SCDEA.

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- (5) A constable at SOCA or SPSA is to be treated as employed by it, in respect of any act done by it in relation to the constable.
- (6) A constable at SCDEA is to be treated as employed by the Director General of SCDEA, in respect of any act done by the Director General in relation to the constable.

### **43 Interpretation**

- (1) This section applies for the purposes of section 42.
- (2) “Chief officer” means—
  - (a) in relation to an appointment under a relevant Act, the chief officer of police for the police force to which the appointment relates;
  - (b) in relation to any other appointment, the person under whose direction and control the body of constables or other persons to which the appointment relates is;
  - (c) in relation to a constable or other person under the direction and control of a chief officer of police, that chief officer of police;
  - (d) in relation to any other constable or any other person, the person under whose direction and control the constable or other person is.
- (3) “Responsible authority” means—
  - (a) in relation to an appointment under a relevant Act, the [<sup>F1</sup>local policing body or police authority] that maintains the police force to which the appointment relates;
  - (b) in relation to any other appointment, the person by whom a person would (if appointed) be paid;
  - (c) in relation to a constable or other person under the direction and control of a chief officer of police, the [<sup>F1</sup>local policing body or police authority] that maintains the police force for which that chief officer is the chief officer of police;
  - (d) in relation to any other constable or any other person, the person by whom the constable or other person is paid.
- (4) “Police cadet” means a person appointed to undergo training with a view to becoming a constable.
- (5) “SOCA” means the Serious Organised Crime Agency; and a reference to a constable at SOCA is a reference to a constable seconded to it to serve as a member of its staff.
- (6) “SPSA” means the Scottish Police Services Authority; and a reference to a constable at SPSA is a reference to a constable—
  - (a) seconded to it to serve as a member of its staff, and
  - (b) not at SCDEA.
- (7) “SCDEA” means the Scottish Crime and Drugs Enforcement Agency; and a reference to a constable at SCDEA is a reference to a constable who is a police member of it by virtue of paragraph 7(2)(a) or (b) of Schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (secondment).
- (8) For the purposes of this section, the relevant Acts are—
  - (a) the Metropolitan Police Act 1829;
  - (b) the City of London Police Act 1839;

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- (c) the Police (Scotland) Act 1967;
  - [<sup>F2</sup>(d) the Police Reform and Social Responsibility Act 2011.]
- (9) A reference in subsection (2) or (3) to a chief officer of police includes, in relation to Scotland, a reference to a chief constable.

#### Textual Amendments

- F1** Words in s. 43(3) substituted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\), s. 99, Sch. 16 para. 382\(a\)](#); S.I. 2011/3019, art. 3, {Sch. 1 para. (nnn)(iii)}
- F2** S. 43(8)(d) substituted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\), s. 99, Sch. 16 para. 382\(b\)](#); S.I. 2011/3019, art. 3, {Sch. 1 para. (nnn)(iii)} (with Sch. 2 para. 80)

### Partners

#### 44 Partnerships

- (1) A firm or proposed firm must not discriminate against a person—
- (a) in the arrangements it makes for deciding to whom to offer a position as a partner;
  - (b) as to the terms on which it offers the person a position as a partner;
  - (c) by not offering the person a position as a partner.
- (2) A firm (A) must not discriminate against a partner (B)—
- (a) as to the terms on which B is a partner;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by expelling B;
  - (d) by subjecting B to any other detriment.
- (3) A firm must not, in relation to a position as a partner, harass—
- (a) a partner;
  - (b) a person who has applied for the position.
- (4) A proposed firm must not, in relation to a position as a partner, harass a person who has applied for the position.
- (5) A firm or proposed firm must not victimise a person—
- (a) in the arrangements it makes for deciding to whom to offer a position as a partner;
  - (b) as to the terms on which it offers the person a position as a partner;
  - (c) by not offering the person a position as a partner.
- (6) A firm (A) must not victimise a partner (B)—
- (a) as to the terms on which B is a partner;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by expelling B;

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- (d) by subjecting B to any other detriment.
- (7) A duty to make reasonable adjustments applies to—
  - (a) a firm;
  - (b) a proposed firm.
- (8) In the application of this section to a limited partnership within the meaning of the Limited Partnerships Act 1907, “partner” means a general partner within the meaning of that Act.

#### **45 Limited liability partnerships**

- (1) An LLP or proposed LLP must not discriminate against a person—
  - (a) in the arrangements it makes for deciding to whom to offer a position as a member;
  - (b) as to the terms on which it offers the person a position as a member;
  - (c) by not offering the person a position as a member.
- (2) An LLP (A) must not discriminate against a member (B)—
  - (a) as to the terms on which B is a member;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by expelling B;
  - (d) by subjecting B to any other detriment.
- (3) An LLP must not, in relation to a position as a member, harass—
  - (a) a member;
  - (b) a person who has applied for the position.
- (4) A proposed LLP must not, in relation to a position as a member, harass a person who has applied for the position.
- (5) An LLP or proposed LLP must not victimise a person—
  - (a) in the arrangements it makes for deciding to whom to offer a position as a member;
  - (b) as to the terms on which it offers the person a position as a member;
  - (c) by not offering the person a position as a member.
- (6) An LLP (A) must not victimise a member (B)—
  - (a) as to the terms on which B is a member;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by expelling B;
  - (d) by subjecting B to any other detriment.
- (7) A duty to make reasonable adjustments applies to—
  - (a) an LLP;
  - (b) a proposed LLP.

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## 46 Interpretation

- (1) This section applies for the purposes of sections 44 and 45.
- (2) “Partnership” and “firm” have the same meaning as in the Partnership Act 1890.
- (3) “Proposed firm” means persons proposing to form themselves into a partnership.
- (4) “LLP” means a limited liability partnership (within the meaning of the Limited Liability Partnerships Act 2000).
- (5) “Proposed LLP” means persons proposing to incorporate an LLP with themselves as members.
- (6) A reference to expelling a partner of a firm or a member of an LLP includes a reference to the termination of the person's position as such—
  - (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
  - (b) by an act of the person (including giving notice) in circumstances such that the person is entitled, because of the conduct of other partners or members, to terminate the position without notice;
  - (c) (in the case of a partner of a firm) as a result of the dissolution of the partnership.
- (7) Subsection (6)(a) and (c) does not apply if, immediately after the termination, the position is renewed on the same terms.

### *The Bar*

## 47 Barristers

- (1) A barrister (A) must not discriminate against a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer a pupillage or tenancy;
  - (b) as to the terms on which A offers B a pupillage or tenancy;
  - (c) by not offering B a pupillage or tenancy.
- (2) A barrister (A) must not discriminate against a person (B) who is a pupil or tenant—
  - (a) as to the terms on which B is a pupil or tenant;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
  - (c) by terminating the pupillage;
  - (d) by subjecting B to pressure to leave chambers;
  - (e) by subjecting B to any other detriment.
- (3) A barrister must not, in relation to a pupillage or tenancy, harass—
  - (a) the pupil or tenant;
  - (b) a person who has applied for the pupillage or tenancy.
- (4) A barrister (A) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer a pupillage or tenancy;

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- (b) as to the terms on which A offers B a pupillage or tenancy;
  - (c) by not offering B a pupillage or tenancy.
- (5) A barrister (A) must not victimise a person (B) who is a pupil or tenant—
- (a) as to the terms on which B is a pupil or tenant;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
  - (c) by terminating the pupillage;
  - (d) by subjecting B to pressure to leave chambers;
  - (e) by subjecting B to any other detriment.
- (6) A person must not, in relation to instructing a barrister—
- (a) discriminate against a barrister by subjecting the barrister to a detriment;
  - (b) harass the barrister;
  - (c) victimise the barrister.
- (7) A duty to make reasonable adjustments applies to a barrister.
- (8) The preceding provisions of this section (apart from subsection (6)) apply in relation to a barrister's clerk as they apply in relation to a barrister; and for that purpose the reference to a barrister's clerk includes a reference to a person who carries out the functions of a barrister's clerk.
- (9) A reference to a tenant includes a reference to a barrister who is permitted to work in chambers (including as a squatter or door tenant); and a reference to a tenancy is to be construed accordingly.

## **48 Advocates**

- (1) An advocate (A) must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding who to take as A's devil or to whom to offer membership of a stable;
  - (b) as to the terms on which A offers to take B as A's devil or offers B membership of a stable;
  - (c) by not offering to take B as A's devil or not offering B membership of a stable.
- (2) An advocate (A) must not discriminate against a person (B) who is a devil or a member of a stable—
- (a) as to the terms on which B is a devil or a member of the stable;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
  - (c) by terminating A's relationship with B (where B is a devil);
  - (d) by subjecting B to pressure to leave the stable;
  - (e) by subjecting B to any other detriment.
- (3) An advocate must not, in relation to a relationship with a devil or membership of a stable, harass—
- (a) a devil or member;
  - (b) a person who has applied to be taken as the advocate's devil or to become a member of the stable.



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- (4) An advocate (A) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding who to take as A's devil or to whom to offer membership of a stable;
  - (b) as to the terms on which A offers to take B as A's devil or offers B membership of a stable;
  - (c) by not offering to take B as A's devil or not offering B membership of a stable.
- (5) An advocate (A) must not victimise a person (B) who is a devil or a member of a stable—
  - (a) as to the terms on which B is a devil or a member of the stable;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
  - (c) by terminating A's relationship with B (where B is a devil);
  - (d) by subjecting B to pressure to leave the stable;
  - (e) by subjecting B to any other detriment.
- (6) A person must not, in relation to instructing an advocate—
  - (a) discriminate against the advocate by subjecting the advocate to a detriment;
  - (b) harass the advocate;
  - (c) victimise the advocate.
- (7) A duty to make reasonable adjustments applies to an advocate.
- (8) This section (apart from subsection (6)) applies in relation to an advocate's clerk as it applies in relation to an advocate; and for that purpose the reference to an advocate's clerk includes a reference to a person who carries out the functions of an advocate's clerk.
- (9) “Advocate” means a practising member of the Faculty of Advocates.

#### *Office-holders*

### **49 Personal offices: appointments, etc.**

- (1) This section applies in relation to personal offices.
- (2) A personal office is an office or post—
  - (a) to which a person is appointed to discharge a function personally under the direction of another person, and
  - (b) in respect of which an appointed person is entitled to remuneration.
- (3) A person (A) who has the power to make an appointment to a personal office must not discriminate against a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer the appointment;
  - (b) as to the terms on which A offers B the appointment;
  - (c) by not offering B the appointment.
- (4) A person who has the power to make an appointment to a personal office must not, in relation to the office, harass a person seeking, or being considered for, the appointment.

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- (5) A person (A) who has the power to make an appointment to a personal office must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer the appointment;
  - (b) as to the terms on which A offers B the appointment;
  - (c) by not offering B the appointment.
- (6) A person (A) who is a relevant person in relation to a personal office must not discriminate against a person (B) appointed to the office—
  - (a) as to the terms of B's appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by terminating B's appointment;
  - (d) by subjecting B to any other detriment.
- (7) A relevant person in relation to a personal office must not, in relation to that office, harass a person appointed to it.
- (8) A person (A) who is a relevant person in relation to a personal office must not victimise a person (B) appointed to the office—
  - (a) as to the terms of B's appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by terminating B's appointment;
  - (d) by subjecting B to any other detriment.
- (9) A duty to make reasonable adjustments applies to—
  - (a) a person who has the power to make an appointment to a personal office;
  - (b) a relevant person in relation to a personal office.
- (10) For the purposes of subsection (2)(a), a person is to be regarded as discharging functions personally under the direction of another person if that other person is entitled to direct the person as to when and where to discharge the functions.
- (11) For the purposes of subsection (2)(b), a person is not to be regarded as entitled to remuneration merely because the person is entitled to payments—
  - (a) in respect of expenses incurred by the person in discharging the functions of the office or post, or
  - (b) by way of compensation for the loss of income or benefits the person would or might have received had the person not been discharging the functions of the office or post.
- (12) Subsection (3)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—
  - (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
  - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (3)(b) by virtue of section 13, 14 or 18.

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## **50 Public offices: appointments, etc.**

- (1) This section and section 51 apply in relation to public offices.
- (2) A public office is—
  - (a) an office or post, appointment to which is made by a member of the executive;
  - (b) an office or post, appointment to which is made on the recommendation of, or subject to the approval of, a member of the executive;
  - (c) an office or post, appointment to which is made on the recommendation of, or subject to the approval of, the House of Commons, the House of Lords, the National Assembly for Wales or the Scottish Parliament.
- (3) A person (A) who has the power to make an appointment to a public office within subsection (2)(a) or (b) must not discriminate against a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer the appointment;
  - (b) as to the terms on which A offers B the appointment;
  - (c) by not offering B the appointment.
- (4) A person who has the power to make an appointment to a public office within subsection (2)(a) or (b) must not, in relation to the office, harass a person seeking, or being considered for, the appointment.
- (5) A person (A) who has the power to make an appointment to a public office within subsection (2)(a) or (b) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer the appointment;
  - (b) as to the terms on which A offers B the appointment;
  - (c) by not offering B the appointment.
- (6) A person (A) who is a relevant person in relation to a public office within subsection (2)(a) or (b) must not discriminate against a person (B) appointed to the office—
  - (a) as to B's terms of appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by terminating the appointment;
  - (d) by subjecting B to any other detriment.
- (7) A person (A) who is a relevant person in relation to a public office within subsection (2)(c) must not discriminate against a person (B) appointed to the office—
  - (a) as to B's terms of appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by subjecting B to any other detriment (other than by terminating the appointment).
- (8) A relevant person in relation to a public office must not, in relation to that office, harass a person appointed to it.
- (9) A person (A) who is a relevant person in relation to a public office within subsection (2)(a) or (b) must not victimise a person (B) appointed to the office—
  - (a) as to B's terms of appointment;

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- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by terminating the appointment;
  - (d) by subjecting B to any other detriment.
- (10) A person (A) who is a relevant person in relation to a public office within subsection (2)(c) must not victimise a person (B) appointed to the office—
- (a) as to B's terms of appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by subjecting B to any other detriment (other than by terminating the appointment).
- (11) A duty to make reasonable adjustments applies to—
- (a) a relevant person in relation to a public office;
  - (b) a person who has the power to make an appointment to a public office within subsection (2)(a) or (b).
- (12) Subsection (3)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—
- (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
  - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (3)(b) by virtue of section 13, 14 or 18.

## **51 Public offices: recommendations for appointments, etc.**

- (1) A person (A) who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) or (b), must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding who to recommend for appointment or to whose appointment to give approval;
  - (b) by not recommending B for appointment to the office;
  - (c) by making a negative recommendation of B for appointment to the office;
  - (d) by not giving approval to the appointment of B to the office.
- (2) A person who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) or (b) must not, in relation to the office, harass a person seeking or being considered for the recommendation or approval.
- (3) A person (A) who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) or (b), must not victimise a person (B)—
- (a) in the arrangements A makes for deciding who to recommend for appointment or to whose appointment to give approval;
  - (b) by not recommending B for appointment to the office;
  - (c) by making a negative recommendation of B for appointment to the office;

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- (d) by not giving approval to the appointment of B to the office.
- (4) A duty to make reasonable adjustments applies to a person who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) or (b).
- (5) A reference in this section to a person who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) is a reference only to a relevant body which has that power; and for that purpose “relevant body” means a body established—
  - (a) by or in pursuance of an enactment, or
  - (b) by a member of the executive.

## 52 Interpretation and exceptions

- (1) This section applies for the purposes of sections 49 to 51.
- (2) “Personal office” has the meaning given in section 49.
- (3) “Public office” has the meaning given in section 50.
- (4) An office or post which is both a personal office and a public office is to be treated as being a public office only.
- (5) Appointment to an office or post does not include election to it.
- (6) “Relevant person”, in relation to an office, means the person who, in relation to a matter specified in the first column of the table, is specified in the second column (but a reference to a relevant person does not in any case include the House of Commons, the House of Lords, the National Assembly for Wales or the Scottish Parliament).

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<i>Matter</i>	<i>Relevant person</i>
A term of appointment	The person who has the power to set the term.
Access to an opportunity	The person who has the power to afford access to the opportunity (or, if there is no such person, the person who has the power to make the appointment).
Terminating an appointment	The person who has the power to terminate the appointment.
Subjecting an appointee to any other detriment	The person who has the power in relation to the matter to which the conduct in question relates (or, if there is no such person, the person who has the power to make the appointment).
Harassing an appointee	The person who has the power in relation to the matter to which the conduct in question relates.

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- (7) A reference to terminating a person's appointment includes a reference to termination of the appointment—
  - (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);

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- (b) by an act of the person (including giving notice) in circumstances such that the person is entitled, because of the relevant person's conduct, to terminate the appointment without notice.
- (8) Subsection (7)(a) does not apply if, immediately after the termination, the appointment is renewed on the same terms.
- (9) Schedule 6 (excluded offices) has effect.

### *Qualifications*

## **53 Qualifications bodies**

- (1) A qualifications body (A) must not discriminate against a person (B)—
  - (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
  - (b) as to the terms on which it is prepared to confer a relevant qualification on B;
  - (c) by not conferring a relevant qualification on B.
- (2) A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification—
  - (a) by withdrawing the qualification from B;
  - (b) by varying the terms on which B holds the qualification;
  - (c) by subjecting B to any other detriment.
- (3) A qualifications body must not, in relation to conferment by it of a relevant qualification, harass—
  - (a) a person who holds the qualification, or
  - (b) a person who applies for it.
- (4) A qualifications body (A) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
  - (b) as to the terms on which it is prepared to confer a relevant qualification on B;
  - (c) by not conferring a relevant qualification on B.
- (5) A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification—
  - (a) by withdrawing the qualification from B;
  - (b) by varying the terms on which B holds the qualification;
  - (c) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to a qualifications body.
- (7) The application by a qualifications body of a competence standard to a disabled person is not disability discrimination unless it is discrimination by virtue of section 19.

## **54 Interpretation**

- (1) This section applies for the purposes of section 53.
- (2) A qualifications body is an authority or body which can confer a relevant qualification.

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- (3) A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.
- (4) An authority or body is not a qualifications body in so far as—
  - (a) it can confer a qualification to which section 96 applies,
  - (b) it is the responsible body of a school to which section 85 applies,
  - (c) it is the governing body of an institution to which section 91 applies,
  - (d) it exercises functions under the Education Acts, or
  - (e) it exercises functions under the Education (Scotland) Act 1980.
- (5) A reference to conferring a relevant qualification includes a reference to renewing or extending the conferment of a relevant qualification.
- (6) A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.

### *Employment services*

## **55 Employment service-providers**

- (1) A person (an “employment service-provider”) concerned with the provision of an employment service must not discriminate against a person—
  - (a) in the arrangements the service-provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
  - (b) as to the terms on which the service-provider offers to provide the service to the person;
  - (c) by not offering to provide the service to the person.
- (2) An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—
  - (a) as to the terms on which A provides the service to B;
  - (b) by not providing the service to B;
  - (c) by terminating the provision of the service to B;
  - (d) by subjecting B to any other detriment.
- (3) An employment service-provider must not, in relation to the provision of an employment service, harass—
  - (a) a person who asks the service-provider to provide the service;
  - (b) a person for whom the service-provider provides the service.
- (4) An employment service-provider (A) must not victimise a person (B)—
  - (a) in the arrangements A makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
  - (b) as to the terms on which A offers to provide the service to B;
  - (c) by not offering to provide the service to B.
- (5) An employment service-provider (A) must not, in relation to the provision of an employment service, victimise a person (B)—
  - (a) as to the terms on which A provides the service to B;

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- (b) by not providing the service to B;
  - (c) by terminating the provision of the service to B;
  - (d) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to an employment service-provider, except in relation to the provision of a vocational service.
- (7) The duty imposed by section 29(7)(a) applies to a person concerned with the provision of a vocational service; but a failure to comply with that duty in relation to the provision of a vocational service is a contravention of this Part for the purposes of Part 9 (enforcement).

## 56 Interpretation

- (1) This section applies for the purposes of section 55.
- (2) The provision of an employment service includes—
- (a) the provision of vocational training;
  - (b) the provision of vocational guidance;
  - (c) making arrangements for the provision of vocational training or vocational guidance;
  - (d) the provision of a service for finding employment for persons;
  - (e) the provision of a service for supplying employers with persons to do work;
  - (f) the provision of a service in pursuance of arrangements made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State relating to employment);
  - (g) the provision of a service in pursuance of arrangements made or a direction given under section 10 of that Act (careers services);
  - (h) the exercise of a function in pursuance of arrangements made under section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 (functions of Scottish Enterprise, etc. relating to employment);
  - (i) an assessment related to the conferment of a relevant qualification within the meaning of section 53 above (except in so far as the assessment is by the qualifications body which confers the qualification).
- (3) This section does not apply in relation to training or guidance in so far as it is training or guidance in relation to which another provision of this Part applies.
- (4) This section does not apply in relation to training or guidance for pupils of a school to which section 85 applies in so far as it is training or guidance to which the responsible body of the school has power to afford access (whether as the responsible body of that school or as the responsible body of any other school at which the training or guidance is provided).
- (5) This section does not apply in relation to training or guidance for students of an institution to which section 91 applies in so far as it is training or guidance to which the governing body of the institution has power to afford access.
- (6) “Vocational training” means—
- (a) training for employment, or
  - (b) work experience (including work experience the duration of which is not agreed until after it begins).



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- (7) A reference to the provision of a vocational service is a reference to the provision of an employment service within subsection (2)(a) to (d) (or an employment service within subsection (2)(f) or (g) in so far as it is also an employment service within subsection (2)(a) to (d)); and for that purpose—
- (a) the references to an employment service within subsection (2)(a) do not include a reference to vocational training within the meaning given by subsection (6)(b), and
  - (b) the references to an employment service within subsection (2)(d) also include a reference to a service for assisting persons to retain employment.
- (8) A reference to training includes a reference to facilities for training.

### *Trade organisations*

## **57 Trade organisations**

- (1) A trade organisation (A) must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer membership of the organisation;
  - (b) as to the terms on which it is prepared to admit B as a member;
  - (c) by not accepting B's application for membership.
- (2) A trade organisation (A) must not discriminate against a member (B)—
- (a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;
  - (b) by depriving B of membership;
  - (c) by varying the terms on which B is a member;
  - (d) by subjecting B to any other detriment.
- (3) A trade organisation must not, in relation to membership of it, harass—
- (a) a member, or
  - (b) an applicant for membership.
- (4) A trade organisation (A) must not victimise a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer membership of the organisation;
  - (b) as to the terms on which it is prepared to admit B as a member;
  - (c) by not accepting B's application for membership.
- (5) A trade organisation (A) must not victimise a member (B)—
- (a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;
  - (b) by depriving B of membership;
  - (c) by varying the terms on which B is a member;
  - (d) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to a trade organisation.
- (7) A trade organisation is—
- (a) an organisation of workers,

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- (b) an organisation of employers, or
- (c) any other organisation whose members carry on a particular trade or profession for the purposes of which the organisation exists.

#### *Local authority members*

### **58 Official business of members**

- (1) A local authority must not discriminate against a member of the authority in relation to the member's carrying out of official business—
  - (a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;
  - (b) by subjecting the member to any other detriment.
- (2) A local authority must not, in relation to a member's carrying out of official business, harass the member.
- (3) A local authority must not victimise a member of the authority in relation to the member's carrying out of official business—
  - (a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;
  - (b) by subjecting the member to any other detriment.
- (4) A member of a local authority is not subjected to a detriment for the purposes of subsection (1)(b) or (3)(b) only because the member is—
  - (a) not appointed or elected to an office of the authority,
  - (b) not appointed or elected to, or to an office of, a committee or sub-committee of the authority, or
  - (c) not appointed or nominated in exercise of an appointment power of the authority.
- (5) In subsection (4)(c), an appointment power of a local authority is a power of the authority, or of a group of bodies including the authority, to make—
  - (a) appointments to a body;
  - (b) nominations for appointment to a body.
- (6) A duty to make reasonable adjustments applies to a local authority.

### **59 Interpretation**

- (1) This section applies for the purposes of section 58.
- (2) “Local authority” means—
  - (a) a county council in England;
  - (b) a district council in England;
  - (c) the Greater London Authority;
  - (d) a London borough council;
  - (e) the Common Council of the City of London;
  - (f) the Council of the Isles of Scilly;
  - (g) a parish council in England;
  - (h) a county council in Wales;

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- (i) a community council in Wales;
  - (j) a county borough council in Wales;
  - (k) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
  - (l) a community council in Scotland.
- (3) A Minister of the Crown may by order amend subsection (2) so as to add, vary or omit a reference to a body which exercises functions that have been conferred on a local authority within paragraph (a) to (l).
- (4) A reference to the carrying-out of official business by a person who is a member of a local authority is a reference to the doing of anything by the person—
- (a) as a member of the authority,
  - (b) as a member of a body to which the person is appointed by, or appointed following nomination by, the authority or a group of bodies including the authority, or
  - (c) as a member of any other public body.
- (5) “Member”, in relation to the Greater London Authority, means—
- (a) the Mayor of London;
  - (b) a member of the London Assembly.

### *Recruitment*

## **60 Enquiries about disability and health**

- (1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)—
- (a) before offering work to B, or
  - (b) where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.
- (2) A contravention of subsection (1) (or a contravention of section 111 or 112 that relates to a contravention of subsection (1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 120(8), is enforceable only by the Commission under that Part).
- (3) A does not contravene a relevant disability provision merely by asking about B's health; but A's conduct in reliance on information given in response may be a contravention of a relevant disability provision.
- (4) Subsection (5) applies if B brings proceedings before an employment tribunal on a complaint that A's conduct in reliance on information given in response to a question about B's health is a contravention of a relevant disability provision.
- (5) In the application of section 136 to the proceedings, the particulars of the complaint are to be treated for the purposes of subsection (2) of that section as facts from which the tribunal could decide that A contravened the provision.
- (6) This section does not apply to a question that A asks in so far as asking the question is necessary for the purpose of—

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- (a) establishing whether B will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments is or will be imposed on A in relation to B in connection with a requirement to undergo an assessment,
  - (b) establishing whether B will be able to carry out a function that is intrinsic to the work concerned,
  - (c) monitoring diversity in the range of persons applying to A for work,
  - (d) taking action to which section 158 would apply if references in that section to persons who share (or do not share) a protected characteristic were references to disabled persons (or persons who are not disabled) and the reference to the characteristic were a reference to disability, or
  - (e) if A applies in relation to the work a requirement to have a particular disability, establishing whether B has that disability.
- (7) In subsection (6)(b), where A reasonably believes that a duty to make reasonable adjustments would be imposed on A in relation to B in connection with the work, the reference to a function that is intrinsic to the work is to be read as a reference to a function that would be intrinsic to the work once A complied with the duty.
- (8) Subsection (6)(e) applies only if A shows that, having regard to the nature or context of the work—
- (a) the requirement is an occupational requirement, and
  - (b) the application of the requirement is a proportionate means of achieving a legitimate aim.
- (9) “Work” means employment, contract work, a position as a partner, a position as a member of an LLP, a pupillage or tenancy, being taken as a devil, membership of a stable, an appointment to a personal or public office, or the provision of an employment service; and the references in subsection (1) to offering a person work are, in relation to contract work, to be read as references to allowing a person to do the work.
- (10) A reference to offering work is a reference to making a conditional or unconditional offer of work (and, in relation to contract work, is a reference to allowing a person to do the work subject to fulfilment of one or more conditions).
- (11) The following, so far as relating to discrimination within section 13 because of disability, are relevant disability provisions—
- (a) section 39(1)(a) or (c);
  - (b) section 41(1)(b);
  - (c) section 44(1)(a) or (c);
  - (d) section 45(1)(a) or (c);
  - (e) section 47(1)(a) or (c);
  - (f) section 48(1)(a) or (c);
  - (g) section 49(3)(a) or (c);
  - (h) section 50(3)(a) or (c);
  - (i) section 51(1);
  - (j) section 55(1)(a) or (c).
- (12) An assessment is an interview or other process designed to give an indication of a person's suitability for the work concerned.

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- (13) For the purposes of this section, whether or not a person has a disability is to be regarded as an aspect of that person's health.
- (14) This section does not apply to anything done for the purpose of vetting applicants for work for reasons of national security.

## CHAPTER 2

### OCCUPATIONAL PENSION SCHEMES

#### 61 Non-discrimination rule

- (1) An occupational pension scheme must be taken to include a non-discrimination rule.
- (2) A non-discrimination rule is a provision by virtue of which a responsible person (A)—
  - (a) must not discriminate against another person (B) in carrying out any of A's functions in relation to the scheme;
  - (b) must not, in relation to the scheme, harass B;
  - (c) must not, in relation to the scheme, victimise B.
- (3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.
- (4) The following are responsible persons—
  - (a) the trustees or managers of the scheme;
  - (b) an employer whose employees are, or may be, members of the scheme;
  - (c) a person exercising an appointing function in relation to an office the holder of which is, or may be, a member of the scheme.
- (5) A non-discrimination rule does not apply in relation to a person who is a pension credit member of a scheme.
- (6) An appointing function is any of the following—
  - (a) the function of appointing a person;
  - (b) the function of terminating a person's appointment;
  - (c) the function of recommending a person for appointment;
  - (d) the function of approving an appointment.
- (7) A breach of a non-discrimination rule is a contravention of this Part for the purposes of Part 9 (enforcement).
- (8) It is not a breach of a non-discrimination rule for the employer or the trustees or managers of a scheme to maintain or use in relation to the scheme rules, practices, actions or decisions relating to age which are of a description specified by order by a Minister of the Crown.
- (9) An order authorising the use of rules, practices, actions or decisions which are not in use before the order comes into force must not be made unless the Minister consults such persons as the Minister thinks appropriate.
- (10) A non-discrimination rule does not have effect in relation to an occupational pension scheme in so far as an equality rule has effect in relation to it (or would have effect in relation to it but for Part 2 of Schedule 7).

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(11) A duty to make reasonable adjustments applies to a responsible person.

#### Commencement Information

- II** S. 61 wholly in force; s. 61 not in force at Royal Assent see s. 216; s. 61(8)(9) in force for certain purposes at 6.7.2010 by [S.I. 2010/1736](#), [art. 2](#), [Sch.](#); s. 61 in force at 1.10.2010 in so far as not already in force by [S.I. 2010/2317](#), [art. 2\(1\)\(5\)\(b\)](#) (with [art. 15](#))

## 62 Non-discrimination alterations

- (1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make non-discrimination alterations to the scheme.
- (2) This section also applies if the trustees or managers of an occupational pension scheme have power to make non-discrimination alterations to the scheme but the procedure for doing so—
  - (a) is liable to be unduly complex or protracted, or
  - (b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.
- (3) The trustees or managers may by resolution make non-discrimination alterations to the scheme.
- (4) Non-discrimination alterations may have effect in relation to a period before the date on which they are made.
- (5) Non-discrimination alterations to an occupational pension scheme are such alterations to the scheme as may be required for the provisions of the scheme to have the effect that they have in consequence of section 61(3).

## 63 Communications

- (1) In their application to communications the following provisions apply in relation to a disabled person who is a pension credit member of an occupational pension scheme as they apply in relation to a disabled person who is a deferred member or pensioner member of the scheme—
  - (a) section 61;
  - (b) section 120;
  - (c) section 126;
  - (d) paragraph 19 of Schedule 8 (and such other provisions of that Schedule as apply for the purposes of that paragraph).
- (2) Communications include—
  - (a) the provision of information;
  - (b) the operation of a dispute resolution procedure.

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## CHAPTER 3

### EQUALITY OF TERMS

#### *Sex equality*

#### **64 Relevant types of work**

- (1) Sections 66 to 70 apply where—
  - (a) a person (A) is employed on work that is equal to the work that a comparator of the opposite sex (B) does;
  - (b) a person (A) holding a personal or public office does work that is equal to the work that a comparator of the opposite sex (B) does.
- (2) The references in subsection (1) to the work that B does are not restricted to work done contemporaneously with the work done by A.

#### **65 Equal work**

- (1) For the purposes of this Chapter, A's work is equal to that of B if it is—
  - (a) like B's work,
  - (b) rated as equivalent to B's work, or
  - (c) of equal value to B's work.
- (2) A's work is like B's work if—
  - (a) A's work and B's work are the same or broadly similar, and
  - (b) such differences as there are between their work are not of practical importance in relation to the terms of their work.
- (3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to—
  - (a) the frequency with which differences between their work occur in practice, and
  - (b) the nature and extent of the differences.
- (4) A's work is rated as equivalent to B's work if a job evaluation study—
  - (a) gives an equal value to A's job and B's job in terms of the demands made on a worker, or
  - (b) would give an equal value to A's job and B's job in those terms were the evaluation not made on a sex-specific system.
- (5) A system is sex-specific if, for the purposes of one or more of the demands made on a worker, it sets values for men different from those it sets for women.
- (6) A's work is of equal value to B's work if it is—
  - (a) neither like B's work nor rated as equivalent to B's work, but
  - (b) nevertheless equal to B's work in terms of the demands made on A by reference to factors such as effort, skill and decision-making.

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## 66 Sex equality clause

- (1) If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one.
- (2) A sex equality clause is a provision that has the following effect—
  - (a) if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable;
  - (b) if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.
- (3) Subsection (2)(a) applies to a term of A's relating to membership of or rights under an occupational pension scheme only in so far as a sex equality rule would have effect in relation to the term.
- (4) In the case of work within section 65(1)(b), a reference in subsection (2) above to a term includes a reference to such terms (if any) as have not been determined by the rating of the work (as well as those that have).

## 67 Sex equality rule

- (1) If an occupational pension scheme does not include a sex equality rule, it is to be treated as including one.
- (2) A sex equality rule is a provision that has the following effect—
  - (a) if a relevant term is less favourable to A than it is to B, the term is modified so as not to be less favourable;
  - (b) if a term confers a relevant discretion capable of being exercised in a way that would be less favourable to A than to B, the term is modified so as to prevent the exercise of the discretion in that way.
- (3) A term is relevant if it is—
  - (a) a term on which persons become members of the scheme, or
  - (b) a term on which members of the scheme are treated.
- (4) A discretion is relevant if its exercise in relation to the scheme is capable of affecting—
  - (a) the way in which persons become members of the scheme, or
  - (b) the way in which members of the scheme are treated.
- (5) The reference in subsection (3)(b) to a term on which members of a scheme are treated includes a reference to the term as it has effect for the benefit of dependants of members.
- (6) The reference in subsection (4)(b) to the way in which members of a scheme are treated includes a reference to the way in which they are treated as the scheme has effect for the benefit of dependants of members.
- (7) If the effect of a relevant matter on persons of the same sex differs according to their family, marital or civil partnership status, a comparison for the purposes of this section of the effect of that matter on persons of the opposite sex must be with persons who have the same status.
- (8) A relevant matter is—
  - (a) a relevant term;
  - (b) a term conferring a relevant discretion;



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- (c) the exercise of a relevant discretion in relation to an occupational pension scheme.
- (9) This section, so far as relating to the terms on which persons become members of an occupational pension scheme, does not have effect in relation to pensionable service before 8 April 1976.
- (10) This section, so far as relating to the terms on which members of an occupational pension scheme are treated, does not have effect in relation to pensionable service before 17 May 1990.

## **68 Sex equality rule: consequential alteration of schemes**

- (1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make sex equality alterations to the scheme.
- (2) This section also applies if the trustees or managers of an occupational pension scheme have power to make sex equality alterations to the scheme but the procedure for doing so—
  - (a) is liable to be unduly complex or protracted, or
  - (b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.
- (3) The trustees or managers may by resolution make sex equality alterations to the scheme.
- (4) Sex equality alterations may have effect in relation to a period before the date on which they are made.
- (5) Sex equality alterations to an occupational pension scheme are such alterations to the scheme as may be required to secure conformity with a sex equality rule.

## **69 Defence of material factor**

- (1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—
  - (a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and
  - (b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.
- (2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.
- (3) For the purposes of subsection (1), the long-term objective of reducing inequality between men's and women's terms of work is always to be regarded as a legitimate aim.
- (4) A sex equality rule has no effect in relation to a difference between A and B in the effect of a relevant matter if the trustees or managers of the scheme in question show that the difference is because of a material factor which is not the difference of sex.
- (5) “Relevant matter” has the meaning given in section 67.

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- (6) For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.

## **70 Exclusion of sex discrimination provisions**

- (1) The relevant sex discrimination provision has no effect in relation to a term of A's that—
- (a) is modified by, or included by virtue of, a sex equality clause or rule, or
  - (b) would be so modified or included but for section 69 or Part 2 of Schedule 7.
- (2) Neither of the following is sex discrimination for the purposes of the relevant sex discrimination provision—
- (a) the inclusion in A's terms of a term that is less favourable as referred to in section 66(2)(a);
  - (b) the failure to include in A's terms a corresponding term as referred to in section 66(2)(b).
- (3) The relevant sex discrimination provision is, in relation to work of a description given in the first column of the table, the provision referred to in the second column so far as relating to sex.

<i>Description of work</i>	<i>Provision</i>
Employment	Section 39(2)
Appointment to a personal office	Section 49(6)
Appointment to a public office	Section 50(6)

## **71 Sex discrimination in relation to contractual pay**

- (1) This section applies in relation to a term of a person's work—
- (a) that relates to pay, but
  - (b) in relation to which a sex equality clause or rule has no effect.
- (2) The relevant sex discrimination provision (as defined by section 70) has no effect in relation to the term except in so far as treatment of the person amounts to a contravention of the provision by virtue of section 13 or 14.

### *Pregnancy and maternity equality*

## **72 Relevant types of work**

Sections 73 to 76 apply where a woman—

- (a) is employed, or
- (b) holds a personal or public office.

## **73 Maternity equality clause**

- (1) If the terms of the woman's work do not (by whatever means) include a maternity equality clause, they are to be treated as including one.

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- (2) A maternity equality clause is a provision that, in relation to the terms of the woman's work, has the effect referred to in section 74(1), (6) and (8).
- (3) In the case of a term relating to membership of or rights under an occupational pension scheme, a maternity equality clause has only such effect as a maternity equality rule would have.

#### **74 Maternity equality clause: pay**

- (1) A term of the woman's work that provides for maternity-related pay to be calculated by reference to her pay at a particular time is, if each of the following three conditions is satisfied, modified as mentioned in subsection (5).
- (2) The first condition is that, after the time referred to in subsection (1) but before the end of the protected period—
  - (a) her pay increases, or
  - (b) it would have increased had she not been on maternity leave.
- (3) The second condition is that the maternity-related pay is not—
  - (a) what her pay would have been had she not been on maternity leave, or
  - (b) the difference between the amount of statutory maternity pay to which she is entitled and what her pay would have been had she not been on maternity leave.
- (4) The third condition is that the terms of her work do not provide for the maternity-related pay to be subject to—
  - (a) an increase as mentioned in subsection (2)(a), or
  - (b) an increase that would have occurred as mentioned in subsection (2)(b).
- (5) The modification referred to in subsection (1) is a modification to provide for the maternity-related pay to be subject to—
  - (a) any increase as mentioned in subsection (2)(a), or
  - (b) any increase that would have occurred as mentioned in subsection (2)(b).
- (6) A term of her work that—
  - (a) provides for pay within subsection (7), but
  - (b) does not provide for her to be given the pay in circumstances in which she would have been given it had she not been on maternity leave,is modified so as to provide for her to be given it in circumstances in which it would normally be given.
- (7) Pay is within this subsection if it is—
  - (a) pay (including pay by way of bonus) in respect of times before the woman is on maternity leave,
  - (b) pay by way of bonus in respect of times when she is on compulsory maternity leave, or
  - (c) pay by way of bonus in respect of times after the end of the protected period.
- (8) A term of the woman's work that—
  - (a) provides for pay after the end of the protected period, but
  - (b) does not provide for it to be subject to an increase to which it would have been subject had she not been on maternity leave,

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is modified so as to provide for it to be subject to the increase.

- (9) Maternity-related pay is pay (other than statutory maternity pay) to which a woman is entitled—
- (a) as a result of being pregnant, or
  - (b) in respect of times when she is on maternity leave.
- (10) A reference to the protected period is to be construed in accordance with section 18.

## 75 Maternity equality rule

- (1) If an occupational pension scheme does not include a maternity equality rule, it is to be treated as including one.
- (2) A maternity equality rule is a provision that has the effect set out in subsections (3) and (4).
- (3) If a relevant term does not treat time when the woman is on maternity leave as it treats time when she is not, the term is modified so as to treat time when she is on maternity leave as time when she is not.
- (4) If a term confers a relevant discretion capable of being exercised so that time when she is on maternity leave is treated differently from time when she is not, the term is modified so as not to allow the discretion to be exercised in that way.
- (5) A term is relevant if it is—
  - (a) a term relating to membership of the scheme,
  - (b) a term relating to the accrual of rights under the scheme, or
  - (c) a term providing for the determination of the amount of a benefit payable under the scheme.
- (6) A discretion is relevant if its exercise is capable of affecting—
  - (a) membership of the scheme,
  - (b) the accrual of rights under the scheme, or
  - (c) the determination of the amount of a benefit payable under the scheme.
- (7) This section does not require the woman's contributions to the scheme in respect of time when she is on maternity leave to be determined otherwise than by reference to the amount she is paid in respect of that time.
- (8) This section, so far as relating to time when she is on ordinary maternity leave but is not being paid by her employer, applies only in a case where the expected week of childbirth began on or after 6 April 2003.
- (9) This section, so far as relating to time when she is on additional maternity leave but is not being paid by her employer—
  - (a) does not apply to the accrual of rights under the scheme in any case;
  - (b) applies for other purposes only in a case where the expected week of childbirth began on or after 5 October 2008.
- (10) In this section—
  - (a) a reference to being on maternity leave includes a reference to having been on maternity leave, and

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- (b) a reference to being paid by the employer includes a reference to receiving statutory maternity pay from the employer.

## 76 Exclusion of pregnancy and maternity discrimination provisions

- (1) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work that is modified by a maternity equality clause or rule.

[<sup>F3</sup>(1A) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work—

- (a) that relates to pay, but  
(b) in relation to which a maternity equality clause or rule has no effect.]
- (2) The inclusion in the woman's terms of a term that requires modification by virtue of section 73(2) or (3) is not pregnancy and maternity discrimination for the purposes of the relevant pregnancy and maternity discrimination provision.
- (3) The relevant pregnancy and maternity discrimination provision is, in relation to a description of work given in the first column of the table, the provision referred to in the second column so far as relating to pregnancy and maternity.

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<i>Description of work</i>	<i>Provision</i>
Employment	Section 39(2)
Appointment to a personal office	Section 49(6)
Appointment to a public office	Section 50(6)

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### Textual Amendments

- F3** S. 76(1A) inserted (30.10.2010) by [The Equality Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2622\)](#), [art. 2](#)

### *Disclosure of information*

## 77 Discussions about pay

- (1) A term of a person's work that purports to prevent or restrict the person (P) from disclosing or seeking to disclose information about the terms of P's work is unenforceable against P in so far as P makes or seeks to make a relevant pay disclosure.
- (2) A term of a person's work that purports to prevent or restrict the person (P) from seeking disclosure of information from a colleague about the terms of the colleague's work is unenforceable against P in so far as P seeks a relevant pay disclosure from the colleague; and “colleague” includes a former colleague in relation to the work in question.
- (3) A disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out whether or to what extent there is, in relation to the work in question, a connection between pay and having (or not having) a particular protected characteristic.

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- (4) The following are to be treated as protected acts for the purposes of the relevant victimisation provision—
- (a) seeking a disclosure that would be a relevant pay disclosure;
  - (b) making or seeking to make a relevant pay disclosure;
  - (c) receiving information disclosed in a relevant pay disclosure.
- (5) The relevant victimisation provision is, in relation to a description of work specified in the first column of the table, section 27 so far as it applies for the purposes of a provision mentioned in the second column.

<i>Description of work</i>	<i>Provision by virtue of which section 27 has effect</i>
Employment	Section 39(3) or (4)
Appointment to a personal office	Section 49(5) or (8)
Appointment to a public office	Section 50(5) or (9)

VALID FROM 22/08/2016

## 78 Gender pay gap information

- (1) Regulations may require employers to publish information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees.
- (2) This section does not apply to—
- (a) an employer who has fewer than 250 employees;
  - (b) a person specified in Schedule 19;
  - (c) a government department or part of the armed forces not specified in that Schedule.
- (3) The regulations may prescribe—
- (a) descriptions of employer;
  - (b) descriptions of employee;
  - (c) how to calculate the number of employees that an employer has;
  - (d) descriptions of information;
  - (e) the time at which information is to be published;
  - (f) the form and manner in which it is to be published.
- (4) Regulations under subsection (3)(e) may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months.
- (5) The regulations may make provision for a failure to comply with the regulations—
- (a) to be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale;
  - (b) to be enforced, otherwise than as an offence, by such means as are prescribed.

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- (6) The reference to a failure to comply with the regulations includes a reference to a failure by a person acting on behalf of an employer.

### Supplementary

## 79 Comparators

- (1) This section applies for the purposes of this Chapter.
- (2) If A is employed, B is a comparator if subsection (3) or (4) applies.
- (3) This subsection applies if—
  - (a) B is employed by A's employer or by an associate of A's employer, and
  - (b) A and B work at the same establishment.
- (4) This subsection applies if—
  - (a) B is employed by A's employer or an associate of A's employer,
  - (b) B works at an establishment other than the one at which A works, and
  - (c) common terms apply at the establishments (either generally or as between A and B).
- (5) If A holds a personal or public office, B is a comparator if—
  - (a) B holds a personal or public office, and
  - (b) the person responsible for paying A is also responsible for paying B.
- (6) If A is a relevant member of the House of Commons staff, B is a comparator if—
  - (a) B is employed by the person who is A's employer under subsection (6) of section 195 of the Employment Rights Act 1996, or
  - (b) if subsection (7) of that section applies in A's case, B is employed by the person who is A's employer under that subsection.
- (7) If A is a relevant member of the House of Lords staff, B is a comparator if B is also a relevant member of the House of Lords staff.
- (8) Section 42 does not apply to this Chapter; accordingly, for the purposes of this Chapter only, holding the office of constable is to be treated as holding a personal office.
- (9) For the purposes of this section, employers are associated if—
  - (a) one is a company of which the other (directly or indirectly) has control, or
  - (b) both are companies of which a third person (directly or indirectly) has control.

## 80 Interpretation and exceptions

- (1) This section applies for the purposes of this Chapter.
- (2) The terms of a person's work are—
  - (a) if the person is employed, the terms of the person's employment that are in the person's contract of employment, contract of apprenticeship or contract to do work personally;
  - (b) if the person holds a personal or public office, the terms of the person's appointment to the office.

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- (3) If work is not done at an establishment, it is to be treated as done at the establishment with which it has the closest connection.
- (4) A person (P) is the responsible person in relation to another person if—
  - (a) P is the other's employer;
  - (b) P is responsible for paying remuneration in respect of a personal or public office that the other holds.
- (5) A job evaluation study is a study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors such as effort, skill and decision-making, the jobs to be done—
  - (a) by some or all of the workers in an undertaking or group of undertakings, or
  - (b) in the case of the armed forces, by some or all of the members of the armed forces.
- (6) In the case of Crown employment, the reference in subsection (5)(a) to an undertaking is to be construed in accordance with section 191(4) of the Employment Rights Act 1996.
- (7) “Civil partnership status” has the meaning given in section 124(1) of the Pensions Act 1995.
- (8) Schedule 7 (exceptions) has effect.

#### Commencement Information

- I2** S. 80 wholly in force; s. 80 not in force at Royal Assent see s. 216; s. 80(8) in force for certain purposes at 4.8.2010 by [S.I. 2010/1966](#), [art. 2](#); s. 80 in force at 1.10.2010 in so far as not already in force by [S.I. 2010/2317](#), [art. 2\(1\)\(5\)\(e\)](#) (with [art. 15](#))

## CHAPTER 4

### SUPPLEMENTARY

#### 81 Ships and hovercraft

- (1) This Part applies in relation to—
  - (a) work on ships,
  - (b) work on hovercraft, and
  - (c) seafarers,
 only in such circumstances as are prescribed.
- (2) For the purposes of this section, it does not matter whether employment arises or work is carried out within or outside the United Kingdom.
- (3) “Ship” has the same meaning as in the Merchant Shipping Act 1995.
- (4) “Hovercraft” has the same meaning as in the Hovercraft Act 1968.
- (5) “Seafarer” means a person employed or engaged in any capacity on board a ship or hovercraft.



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- (6) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.

#### Commencement Information

- I3** S. 81 wholly in force; s. 81 not in force at Royal Assent see s. 216; s. 81 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, art. 2, Sch.; s. 81 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, art. 2(1)(5)(e) (with art. 15)

## 82 Offshore work

- (1) Her Majesty may by Order in Council provide that in the case of persons in offshore work—
- (a) specified provisions of this Part apply (with or without modification);
  - (b) Northern Ireland legislation making provision for purposes corresponding to any of the purposes of this Part applies (with or without modification).
- (2) The Order may—
- (a) provide for these provisions, as applied by the Order, to apply to individuals (whether or not British citizens) and bodies corporate (whether or not incorporated under the law of a part of the United Kingdom), whether or not such application affects activities outside the United Kingdom;
  - (b) make provision for conferring jurisdiction on a specified court or class of court or on employment tribunals in respect of offences, causes of action or other matters arising in connection with offshore work;
  - (c) exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under the provisions mentioned in subsection (1) in connection with offshore work;
  - (d) provide that such proceedings must not be brought without such consent as may be required by the Order.
- (3) “Offshore work” is work for the purposes of—
- (a) activities in the territorial sea adjacent to the United Kingdom,
  - (b) activities such as are mentioned in subsection (2) of section 11 of the Petroleum Act 1998 in waters within subsection (8)(b) or (c) of that section, or
  - (c) activities mentioned in paragraphs (a) and (b) of section 87(1) of the Energy Act 2004 in waters to which that section applies.
- (4) Work includes employment, contract work, a position as a partner or as a member of an LLP, or an appointment to a personal or public office.
- (5) Northern Ireland legislation includes an enactment contained in, or in an instrument under, an Act that forms part of the law of Northern Ireland.
- (6) In the application to Northern Ireland of subsection (2)(b), the reference to employment tribunals is to be read as a reference to industrial tribunals.
- (7) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.

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### Commencement Information

- I4** S. 82 wholly in force; s. 82 not in force at Royal Assent see s. 216; s. 82 in force for certain purposes at 6.7.2010 by [S.I. 2010/1736, art. 2, Sch.](#); s. 82 in force at 1.10.2010 in so far as not already in force by [S.I. 2010/2317, art. 2\(1\)\(5\)\(e\)](#) (with [art. 15](#))

## 83 Interpretation and exceptions

- (1) This section applies for the purposes of this Part.
- (2) “Employment” means—
  - (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;
  - (b) Crown employment;
  - (c) employment as a relevant member of the House of Commons staff;
  - (d) employment as a relevant member of the House of Lords staff.
- (3) This Part applies to service in the armed forces as it applies to employment by a private person; and for that purpose—
  - (a) references to terms of employment, or to a contract of employment, are to be read as including references to terms of service;
  - (b) references to associated employers are to be ignored.
- (4) A reference to an employer or an employee, or to employing or being employed, is (subject to section 212(11)) to be read with subsections (2) and (3); and a reference to an employer also includes a reference to a person who has no employees but is seeking to employ one or more other persons.
- (5) “Relevant member of the House of Commons staff” has the meaning given in section 195 of the Employment Rights Act 1996; and such a member of staff is an employee of—
  - (a) the person who is the employer of that member under subsection (6) of that section, or
  - (b) if subsection (7) of that section applies in the case of that member, the person who is the employer of that member under that subsection.
- (6) “Relevant member of the House of Lords staff” has the meaning given in section 194 of that Act (which provides that such a member of staff is an employee of the Corporate Officer of the House of Lords).
- (7) In the case of a person in Crown employment, or in employment as a relevant member of the House of Commons staff, a reference to the person's dismissal is a reference to the termination of the person's employment.
- (8) A reference to a personal or public office, or to an appointment to a personal or public office, is to be construed in accordance with section 52.
- (9) “Crown employment” has the meaning given in section 191 of the Employment Rights Act 1996.
- (10) Schedule 8 (reasonable adjustments) has effect.
- (11) Schedule 9 (exceptions) has effect.

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**Status:** Point in time view as at 16/01/2012. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Equality Act 2010, Part 5 is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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#### **Commencement Information**

- I5** S. 83 wholly in force; s. 83 not in force at Royal Assent see s. 216; s. 83(11) in force for certain purposes at 4.8.2010 by [S.I. 2010/1966](#), [art. 2](#); s. 83 in force at 1.10.2010 in so far as not already in force by [S.I. 2010/2317](#), [art. 2\(1\)\(5\)\(e\)](#) (with [art. 15](#))

**Status:**

Point in time view as at 16/01/2012. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Equality Act 2010, Part 5 is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.