



# Equality Act 2010

## 2010 CHAPTER 15

### PART 5

#### WORK

#### CHAPTER 1

##### EMPLOYMENT, ETC.

##### *Employees*

### **39 Employees and applicants**

- (1) An employer (A) must not discriminate against 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.
- (2) An employer (A) must not discriminate against 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 receiving any other benefit, facility or service;
  - (c) by dismissing B;
  - (d) by subjecting B to any other detriment.
- (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)—

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- (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.

#### **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;

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- (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.
- (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.

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### 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;
  - (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.

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### 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—
- in the arrangements it makes for deciding to whom to offer a position as a partner;
  - as to the terms on which it offers the person a position as a partner;
  - by not offering the person a position as a partner.
- (2) A firm (A) must not discriminate against a partner (B)—
- as to the terms on which B is a partner;
  - 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 expelling B;
  - by subjecting B to any other detriment.
- (3) A firm must not, in relation to a position as a partner, harass—
- a partner;
  - 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—
- in the arrangements it makes for deciding to whom to offer a position as a partner;
  - as to the terms on which it offers the person a position as a partner;
  - by not offering the person a position as a partner.
- (6) A firm (A) must not victimise a partner (B)—
- as to the terms on which B is a partner;
  - 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 expelling B;
  - by subjecting B to any other detriment.
- (7) A duty to make reasonable adjustments applies to—
- a firm;
  - a proposed firm.

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- (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.

#### 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.

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- (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;
  - (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—

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- (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.
- (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;



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- (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.
- (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;

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- (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.

## **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;

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- (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;
  - (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.

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- (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;
  - (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).

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- (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);
  - (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.

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- (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.
- (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.

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- (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;
  - (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.

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- (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).
- (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



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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,
  - (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.

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### *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;
  - (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;

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- (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—
  - (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,

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- (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.
- (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.

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