



# Sex Discrimination Act 1975 (repealed)

## 1975 CHAPTER 65

### PART II

#### DISCRIMINATION IN THE EMPLOYMENT FIELD

##### *Discrimination by employers<sup>F1</sup>*

#### Textual Amendments

**F1** Ss. 7A, 7B inserted (1.5.1999) by S.I. 1999/1102, reg. 4(1)

#### **6 Discrimination against applicants and employees.**

- (1) It is unlawful for a person, in relation to employment by him at an establishment in Great Britain, to discriminate against a woman—
  - (a) in the arrangements he makes for the purpose of determining who should be offered that employment, or
  - (b) in the terms on which he offers her that employment, or
  - (c) by refusing or deliberately omitting to offer her that employment.
- (2) It is unlawful for a person, in the case of a woman employed by him at an establishment in Great Britain, to discriminate against her—
  - (a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or
  - (b) by dismissing her, or subjecting her to any other detriment.
- (3) .....

<sup>F3</sup>(4) Subsections (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under sections 62 to 64

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of the Pensions Act 1995 (equal treatment), an equal treatment rule would not operate in relation to that term.

(4A) In subsection (4), “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993 and “equal treatment rule” has the meaning given by section 62 of the Pensions Act 1995]

- (a) in such of the terms on which he offers her employment as make provision in relation to the way in which he will afford her access to opportunities for promotion, transfer or training or as provide for her dismissal or demotion; or
- (b) in the way he affords her access to opportunities for promotion, transfer or training or by refusing or deliberately omitting to afford her access to any such opportunities; or
- (c) by dismissing her or subjecting her to any detriment which results in her dismissal or consists in or involves her demotion.

(5) Subject to section 8(3), subsection (1)(b) does not apply to any provision for the payment of money which, if the woman in question were given the employment, would be included (directly . . . <sup>F4</sup>or otherwise) in the contract under which she was employed.

(6) Subsection (2) does not apply to benefits consisting of the payment of money when the provision of those benefits is regulated by the woman’s contract of employment.

(7) Subsection (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the woman in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees, or
- (b) the provision of the benefits, facilities or services to the woman in question is regulated by her contract of employment, or
- (c) the benefits, facilities or services relate to training.

[<sup>F5</sup>(8) In its application to any discrimination falling within section 2A, this section shall have effect with the omission of subsections (4) to (6).]

#### Textual Amendments

- F2** S. 6(3) repealed by Sex Discrimination Act 1986 (c. 59, SIF 106:1), ss. 1(1), 9, **Sch. Pt. II**
- F3** S. 6(4)(4A) substituted for s. 6(4) (1.1.1996) by 1995 c. 26, s. **66(3)**; S.I. 1995/3104, **art. 2(2)(b)**
- F4** Words repealed by Sex Discrimination Act 1986 (c. 59, SIF 106:1), s. 9, **Sch. Pt. II**
- F5** S. 6(8) inserted (1.5.1999) by S.I. 1999/1102, **reg. 3(1)**

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

- C1** S. 6 modified by S.I. 1989/901, art. 3, **Sch.**
- C2** S. 6 modified (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, **art. 1(2)**)
- C3** S. 6 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**
- C4** S. 6 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

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VALID FROM 01/10/2005

#### **[<sup>F6</sup>6A Exception relating to terms and conditions during maternity leave**

- (1) Subject to subsections (2) and (5), section 6(1)(b) and (2) does not make it unlawful to deprive a woman who is on ordinary maternity leave of any benefit from the terms and conditions of her employment relating to remuneration.
- (2) Subsection (1) does not apply to benefit by way of maternity-related remuneration.
- (3) Subject to subsections (4) and (5), section 6(1)(b) and (2) does not make it unlawful to deprive a woman who is on additional maternity leave of any benefit from the terms and conditions of her employment.
- (4) Subsection (3) does not apply to—
  - (a) benefit by way of maternity-related remuneration,
  - (b) the benefit of her employer's implied obligation to her of trust and confidence, or
  - (c) any benefit of terms and conditions in respect of—
    - (i) notice of the termination by her employer of her contract of employment,
    - (ii) compensation in the event of redundancy,
    - (iii) disciplinary or grievance procedures, or
    - (iv) membership of a pension scheme.
- (5) Neither of subsections (1) and (3) applies to—
  - (a) benefit by way of remuneration in respect of times when the woman is neither on ordinary maternity leave nor on additional maternity leave, including increase-related remuneration in respect of such times; or
  - (b) benefit by way of maternity-related remuneration that is increase-related.
- (6) For the purposes of subsection (5), remuneration is increase-related so far as it falls to be calculated by reference to increases in remuneration that the woman would have received had she not been on ordinary or additional maternity leave.
- (7) In this section—

“maternity-related remuneration”, in relation to a woman, means remuneration to which she is entitled as a result of being pregnant or being on ordinary or additional maternity leave;

“on additional maternity leave” means absent from work in exercise of the right conferred by section 73(1) of the Employment Rights Act 1996;

“on ordinary maternity leave” means absent from work in exercise of the right conferred by section 71(1) of that Act (ordinary maternity leave) or in consequence of the prohibition in section 72(1) of that Act (compulsory maternity leave);

“remuneration” means benefits—

  - (a) that consist of the payment of money to an employee by way of wages or salary, and
  - (b) that are not benefits whose provision is regulated by the employee's contract of employment.]

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### Textual Amendments

**F6** S. 6A inserted (1.10.2005) by [The Employment Equality \(Sex Discrimination\) Regulations 2005 \(S.I. 2005/2467\)](#), **reg. 8**

## 7 Exception where sex is a genuine occupational qualification.

- (1) In relation to sex discrimination—
- (a) section 6(1)(a) or (c) does not apply to any employment where being a man is a genuine occupational qualification for the job, and
  - (b) section 6(2)(a) does not apply to opportunities for promotion or transfer to, or training for, such employment.
- (2) Being a man is a genuine occupational qualification for a job only where—
- (a) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman; or
  - (b) the job needs to be held by a man to preserve decency or privacy because—
    - (i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman, or
    - (ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities; or
  - [<sup>F7</sup>(ba) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held by a man because objection might reasonably be taken to allowing to a woman—
    - (i) the degree of physical or social contact with a person living in the home, or
    - (ii) the knowledge of intimate details of such a person's life,
 which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job; or]
  - (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—
    - (i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men, and
    - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for women; or
  - (d) the nature of the establishment, or of the part of it within which the work is done, requires the job to be held by a man because—
    - (i) it is, or is part of, a hospital, prison or other establishment for persons requiring special care, supervision or attention, and

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- (ii) those persons are all men (disregarding any woman whose presence is exceptional), and
  - (iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a woman;  
or
  - (e) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man, or
  - (f) .....<sup>F8</sup>
  - (g) the job needs to be held by a man because it is likely to involve the performance of duties outside the United Kingdom in a country whose laws or customs are such that the duties could not, or could not effectively, be performed by a woman, or
  - (h) the job is one of two to be held by a married couple.
- (3) Subsection (2) applies where some only of the duties of the job fall within paragraphs (a) to (g) as well as where all of them do.
- (4) Paragraph (a), (b), (c), (d), (e) . . . <sup>F9</sup>or (g) of subsection (2) does not apply in relation to the filling of a vacancy at a time when the employer already has male employees—
- (a) who are capable of carrying out the duties falling within that paragraph, and
  - (b) whom it would be reasonable to employ on those duties, and
  - (c) whose numbers are sufficient to meet the employer’s likely requirements in respect of those duties without undue inconvenience.

**Textual Amendments**

- F7** S. 7(2)(ba) inserted by Sex Discrimination Act 1986 (c. 59, SIF 106:1), s. 1(2)
- F8** S. 7(2)(f) repealed by Employment Act 1989 (c. 38, SIF 43:1, 106:1), ss. 3(2), 29(4), Sch. 7 Pt. II (subject to a saving in Sch. 9 para. 1)
- F9** S. 7(4): ", (f)" repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. II

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

- C5** S. 7 modified by S.I. 1989/901, art. 3, Sch.
- C6** S. 7 modified (2.3.1998) by S.I. 1998/218, art. 3, Sch. (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, art. 1(2))
- C7** S. 7 modified (1.9.1999) by S.I. 1999/2256, art. 3, Sch.
- C8** S. 7 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, Sch.

**7A “Corresponding exception relating to gender reassignment.”**

- (1) In their application to discrimination falling within section 2A, subsections (1) and (2) of section 6 do not make unlawful an employer’s treatment of another person if—
- (a) in relation to the employment in question—
    - (i) being a man is a genuine occupational qualification for the job, or
    - (ii) being a woman is a genuine occupational qualification for the job, and
  - (b) the employer can show that the treatment is reasonable in view of the circumstances described in the relevant paragraph of section 7(2) and any other relevant circumstances.

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- (2) In subsection (1) the reference to the employment in question is a reference—
- (a) in relation to any paragraph of section 6(1), to the employment mentioned in that paragraph;
  - (b) in relation to section 6(2)—
    - (i) in its application to opportunities for promotion or transfer to any employment or for training for any employment, to that employment;
    - (ii) otherwise, to the employment in which the person discriminated against is employed or from which that person is dismissed.
- (3) In determining for the purposes of subsection (1) whether being a man or being a woman is a genuine occupational qualification for a job, section 7(4) applies in relation to dismissal from employment as it applies in relation to the filling of a vacancy.

## **7B “Supplementary exceptions relating to gender reassignment.”**

- (1) In relation to discrimination falling within section 2A—
- (a) section 6(1)(a) or (c) does not apply to any employment where there is a supplementary genuine occupational qualification for the job,
  - (b) section 6(2)(a) does not apply to a refusal or deliberate omission to afford access to opportunities for promotion or transfer to or training for such employment, and
  - (c) section 6(2)(b) does not apply to dismissing an employee from, or otherwise not allowing him to continue in, such employment.
- (2) Subject to subsection (3), there is a supplementary genuine occupational qualification for a job only if—
- (a) the job involves the holder of the job being liable to be called upon to perform intimate physical searches pursuant to statutory powers;
  - (b) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held otherwise than by a person who is undergoing or has undergone gender reassignment, because objection might reasonably be taken to allowing to such a person—
    - (i) the degree of physical or social contact with a person living in the home, or
    - (ii) the knowledge of intimate details of such a person’s life,
 which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job;
  - (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—
    - (i) the only such premises which are available for persons holding that kind of job are such that reasonable objection could be taken, for the purpose of preserving decency and privacy, to the holder of the job sharing accommodation and facilities with either sex whilst undergoing gender reassignment, and
    - (ii) it is not reasonable to expect the employer either to equip those premises with suitable accommodation or to make alternative arrangements; or
  - (d) the holder of the job provides vulnerable individuals with personal services promoting their welfare, or similar personal services, and in the reasonable

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view of the employer those services cannot be effectively provided by a person whilst that person is undergoing gender reassignment.

- (3) Paragraphs (c) and (d) of subsection (2) apply only in relation to discrimination against a person who—
- (a) intends to undergo gender reassignment, or
  - (b) is undergoing gender reassignment.

## 8 [F1 Equal Pay Act 1970.]

- (1) In section 1 of the <sup>M1</sup>Equal Pay Act 1970, the following are substituted for subsections (1) to (3)—

“(1) If the terms of a contract under which a woman is employed at an establishment in Great Britain do not include (directly or by reference to a collective agreement or otherwise) an equality clause they shall be deemed to include one.

(2) An equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed (the “woman’s contract”), and has the effect that—

(a) where the woman is employed on like work with a man in the same employment—

(i) if (apart from the equality clause) any term of the woman’s contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman’s contract shall be treated as so modified as not to be less favourable, and

(ii) if (apart from the equality clause) at any time the woman’s contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman’s contract shall be treated as including such;

(b) where the woman is employed on work rated as equivalent with that of a man in the same employment—

(i) if (apart from the equality clause) any term of the woman’s contract determined by the rating of the work is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman’s contract shall be treated as so modified as not to be less favourable, and

(ii) if (apart from the equality clause) at any time the woman’s contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed and determined by the rating of the work, the woman’s contract shall be treated as including such a term.

(3) An equality clause shall not operate in relation to a variation between the woman’s contract and the man’s contract if the employer proves that the variation is genuinely due to a material difference (other than the difference in sex) between her case and his.”

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- (2) Section 1(1) of the <sup>M2</sup>Equal Pay Act 1970 (as set out in subsection (1) above) does not apply in determining for the purposes of section 6(1)(b) of this Act the terms on which employment is offered.
- (3) Where a person offers a woman employment on certain terms, and if she accepted the offer then, by virtue of an equality clause, any of those terms would fall to be modified, or any additional term would fall to be included, the offer shall be taken to contravene section 6(1)(b).
- (4) Where a person offers a woman employment on certain terms, and subsection (3) would apply but for the fact that, on her acceptance of the offer, section 1(3) of the <sup>M3</sup>Equal Pay Act 1970 (as set out in subsection (1) above) would prevent the equality clause from operating, the offer shall be taken not to contravene section 6(1)(b).
- (5) An act does not contravene section 6(2) if—
- (a) it contravenes a term modified or included by virtue of an equality clause, or
  - (b) it would contravene such a term but for the fact that the equality clause is prevented from operating by section 1(3) of the <sup>M4</sup>Equal Pay Act 1970.
- (6) The Equal Pay Act 1970 is further amended as specified in Part I of Schedule 1, and accordingly has effect as set out in Part II of Schedule 1.
- [<sup>F10</sup>(7) In its application to any discrimination falling within section 2A, this section shall have effect with the omission of subsections (3), (4) and (5)(b).]

#### Textual Amendments

**F10** S. 8(7) inserted (1.5.1999) by S.I. 1999/1102, reg. 3(2)

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

**C9** The text of ss. 8(1)(6), 18(2), 21(2), Sch. 1 Pt. I paras. 1–5, 6(1), Sch. 1 Pt. II, Sch. 3 para. 16(1)(2), Sch. 5 para. 1 and Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

**M1** 1970 c. 41.  
**M2** 1970 c. 41.  
**M3** 1970 c. 41.  
**M4** 1970 c. 41.

## 9 Discrimination against contract workers.

- (1) This section applies to any work for a person (“the principal”) which is available for doing by individuals (“contract workers”) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.
- (2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a woman who is a contract worker—
- (a) in the terms on which he allows her to do that work, or
  - (b) by not allowing her to do it or continue to do it, or



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- (c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them, or
  - (d) by subjecting her to any other detriment.
- (3) [<sup>F11</sup>Subject to subsection (3A),]The principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when if the work were to be done by a person taken into his employment being a man would be a genuine occupational qualification for the job.
- [<sup>F12</sup>(3A) Subsection (3) does not apply in relation to discrimination falling within section 2A.
- (3B) In relation to discrimination falling within section 2A, the principal does not contravene subsection (2)(a), (b), (c) or (d) by doing any act in relation to a woman if—
- (a) he does it at a time when, if the work were to be done by a person taken into his employment—
    - (i) being a man would be a genuine occupational qualification for the job, or
    - (ii) being a woman would be a genuine occupational qualification for the job, and
  - (b) he can show that the act is reasonable in view of the circumstances relevant for the purposes of paragraph (a) and any other relevant circumstances.
- (3C) In relation to discrimination falling within section 2A, the principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when, if the work were to be done by a person taken into his employment, there would be a supplementary genuine occupational qualification for the job.]
- (4) Subsection (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

#### Textual Amendments

**F11** Words in s. 9(3) inserted (1.5.1999) by S.I. 1999/1102, reg. 4(2)

**F12** S. 9(3A)(3B)(3C) inserted (1.5.1999) by S.I. 1999/1102, reg. 4(3)

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

**C10** S. 9 modified by S.I. 1989/901, art. 3, Sch.

**C11** S. 9 modified (2.3.1998) by S.I. 1998/218, art. 3, Sch. (which S.I. was revoked (1.9.1999) by S.I. 1999/2556, art. 1(2))

**C12** S. 9 modified (1.9.1999) by S.I. 1999/2256, art. 3, Sch.

**C13** S. 9 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, Sch.

## 10 Meaning of employment at establishment in Great Britain.

- (1) For the purposes of this Part and section 1 of the <sup>M5</sup>Equal Pay Act 1970 (“the relevant purposes”), employment is to be regarded as being at an establishment in Great Britain unless the employee does his work wholly <sup>F13</sup>. . . outside Great Britain.
- [<sup>F14</sup>(2) The reference to “employment” in subsection (1) includes—

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- (a) employment on board a ship registered at a port of registry in Great Britain, and
  - (b) employment on aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Great Britain.]
- (3) In the case of employment on board a ship registered at a port of registry in Great Britain (except where the employee does his work wholly outside Great Britain, and outside any area added under subsection (5)) the ship shall for the relevant purposes be deemed to be the establishment.
- (4) Where work is not done at an establishment it shall be treated for the relevant purposes as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.
- (5) In relation to employment concerned with [any activity within section 11(2) of the Petroleum Act 1998], Her Majesty may by Order in Council provide that subsections (1) and (2) shall each have effect as if the last reference to Great Britain included any area for the time being designated under section 1(7) of the <sup>M6</sup>Continental Shelf Act 1964 [or specified under section 10(8) of the Petroleum Act 1998], except an area or part of an area in which the law of Northern Ireland applies.
- (6) An Order in Council under subsection (5) may provide that, in relation to employment to which the Order applies, this Part and section 1 of the <sup>M7</sup>Equal Pay Act 1970 are to have effect with such modifications as are specified in the Order.
- (7) An Order in Council under subsection (5) shall be of no effect unless a draft of the Order was laid before and approved by each House of Parliament.

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#### **Textual Amendments**

**F13** Words in s. 10(1) omitted (16.12.1999) by virtue of S.I. 1999/3163, **reg. 2**

**F14** S. 10(2) substituted (16.12.1999) by S.I. 1999/3163, **reg. 2**

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

**C14** S. 10(1) extended by S.I. 1987/930, **art. 2**

**C15** S. 10(5) extended by **Employment (Continental Shelf) Act 1978 (c. 46), s. 1(2)**

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#### **Marginal Citations**

**M5** 1970 c. 41.

**M6** 1964 c. 29.

**M7** 1970 c. 41.

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