



# Sex Discrimination Act 1975

## 1975 CHAPTER 65

### PART VIII

#### SUPPLEMENTAL

#### **77 Validity and revision of contracts**

- (1) A term of a contract is void where—
  - (a) its inclusion renders the making of the contract unlawful by virtue of this Act, or
  - (b) it is included in furtherance of an act rendered unlawful by this Act, or
  - (c) it provides for the doing of an act which would be rendered unlawful by this Act.
- (2) Subsection (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against a party to the contract, but title term shall be unenforceable against that party.
- (3) A term in a contract which purports to exclude or limit any provision of this Act or the Equal Pay Act 1970 is unenforceable by any person in whose favour the term would operate apart from this subsection.
- (4) Subsection (3) does not apply—
  - (a) to a contract settling a complaint to which section 63(1) of this Act or section 2 of the Equal Pay Act 1970 applies where the contract is made with the assistance of a conciliation officer;
  - (b) to a contract settling a claim to which section 66 applies.
- (5) On the application of any person interested in a contract to which subsection (2) applies, a county court or sheriff court may make such order as it thinks just for removing or modifying any term made unenforceable by that subsection; but such an order shall not be made unless all persons affected have been given notice of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

- (6) An order under subsection (5) may include provision as respects any period before the making of the order.

## **78 Educational charities in England and Wales**

- (1) This section applies to any trust deed or other instrument—
- (a) which concerns property applicable for or in connection with the provision of education in any establishment in paragraphs 1 to 5 of the Table in section 22, and
  - (b) which in any way restricts the benefits available under the instrument to persons of one sex.
- (2) If on the application of the trustees, or of the responsible body (as defined in section 22), the Secretary of State is satisfied that the removal or modification of the restriction would conduce to the advancement of education without sex discrimination, he may by order make such modifications of the instrument as appear to him expedient for removing or modifying the restriction, and for any supplemental or incidental purposes.
- (3) If the trust was created by gift or bequest, no order shall be made until 25 years after the date on which the gift or bequest took effect, unless the donor or his personal representatives, or the personal representatives of the testator, have consented in writing to the making of the application for the order.
- (4) The Secretary of State shall require the applicant to publish notice—
- (a) containing particulars of the proposed order, and
  - (b) stating that representations may be made to the Secretary of State within a period specified in the notice.
- (5) The period specified in the notice shall not be less than one month from the date of the notice.
- (6) The applicants shall publish the notice in such manner as may be specified by the Secretary of State, and the cost of any publication of the notice may be defrayed out of the property of the trust.
- (7) Before making the order the Secretary of State shall take into account any representations duly made in accordance with the notice.
- (8) This section does not apply in Scotland.

## **79 Educational endowments etc. to which Part VI of the Education (Scotland) Act 1962 applies**

- (1) This section applies to any educational endowment to which Part VI of the Education (Scotland) Act 1962 applies and which in any way restricts the benefit of the endowment to persons of one sex, and any reference to an educational endowment in this section includes a reference to—
- (a) a scheme made or approved for that endowment under that Part of the Education (Scotland) Act 1962;
  - (b) any endowment which is, by virtue of section 121(1) of that Act, dealt with as if it were an educational endowment ; and

- (c) a university endowment, the Carnegie Trust, a theological endowment and a new endowment.
- (2) If, on the application of the governing body of an educational endowment, the Secretary of State is satisfied that the removal or modification of the provision which restricts the benefit of the endowment to persons of one sex would conduce to the advancement of education without sex discrimination, he may, by order, make such modifications to the endowment as appear to him expedient for removing or modifying the restriction and for any supplemental or incidental purposes.
- (3) Where the Secretary of State proposes to make an order under this section, he shall publish a notice, in such manner as he thinks sufficient for giving information to persons whom he considers may be interested in the endowment—
- (a) containing particulars of the proposed order; and
  - (b) stating that representations may be made with respect thereto within such period as may be specified in the notice, not being less than one month from the date of publication of the notice,
- and the cost of publication of any such notice shall be paid out of the funds of the endowment to which the notice relates.
- (4) Before making any order under this section, the Secretary of State shall consider any representations duly made in accordance with the said notice and he may cause a local inquiry to be held into such representations under section 68 of the Education (Scotland) Act 1962.
- (5) Without prejudice to section 81(5) of this Act, any order made under this section may be varied or revoked in a scheme made or approved under Part VI of the Education (Scotland) Act 1962.
- (6) For paragraph (b) of section 123(1) of the Education (Scotland) Act 1962, there shall be substituted the following paragraph—
- “(b) where he considers it expedient to do so, provide for extending to both sexes the benefit of the endowment”.
- (7) This section shall be construed as one with Part VI of the Education (Scotland) Act 1962.

## **80 Power to amend certain provisions of Act**

- (1) The Secretary of State may by an order the draft of which has been approved by each House of Parliament—
- (a) amend any of the following provisions, namely, sections 6(3), 7, 19, 20(1), (2) and (3), 31(2), 32, 34, 35 and 43 to 48 (including any such provision as amended by a previous order under this subsection);
  - (b) amend or repeal any of the following provisions, namely, sections 11(4), 12(4), 33 and 49 (including any such provision as amended by a previous order under this subsection);
  - (c) amend Part II, III or IV so as to render lawful an act which, apart from the amendment, would be unlawful by reason of section 6(1) or (2), 29(1), 30 or 31;
  - (d) amend section 11(1) so as to alter the number of partners specified in that provision.

- (2) The Secretary of State shall not lay before Parliament the draft of an order under subsection (1) unless he has consulted the Commission about the contents of the draft.
- (3) An order under subsection (1)(c) may make such amendments to the list of provisions given in subsection (1)(a) as in the opinion of the Secretary of State are expedient having regard to the contents of the order.

## **81 Orders**

- (1) Any power of the Secretary of State to make orders under the provisions of this Act (except sections 14(2)(d), 27, 47(4)(b) and 59(2)) shall be exercisable by statutory instrument.
- (2) An order made by the Secretary of State under the preceding provisions of this Act (except sections 14(2)(d), 27, 47(4)(b), 59(2) and 80(1)) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Subsections (1) and (2) do not apply to an order under section 78 or 79, but—
  - (a) an order under section 78 which modifies an enactment, and
  - (b) any order under section 79 other than one which relates to an endowment to which section 128 of the Education (Scotland) Act 1962 (small endowments) applies,
 shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) An order under this Act may make different provision in relation to different cases or classes of case, may exclude certain cases or classes of case, and may contain transitional provisions and savings.
- (5) Any power conferred by this Act to make orders includes power (exercisable in the like manner and subject to the like conditions) to vary or revoke any order so made.

## **82 General interpretation provisions**

- (1) In this Act, unless the context otherwise requires—
  - " access " shall be construed in accordance with section 50;
  - " act " includes a deliberate omission;
  - " advertisement " includes every form of advertisement, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the publishing of advertisements shall be construed accordingly;
  - " associated employer " shall be construed in accordance with subsection (2);
  - " the Commission " means the Equal Opportunities Commission;
  - " Commissioner " means a member of the Commission ;
  - " conciliation officer " means a person appointed under paragraph 26(1) of Schedule 1 to the Trade Union and Labour Relations Act 1974 ;
  - " designate " shall be construed in accordance with subsection (3);

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" discrimination " and related terms shall be construed in accordance with section 5(1);

" dispose ", in relation to premises, includes granting a right to occupy the premises, and any reference to acquiring premises shall be construed accordingly;

" education " includes any form of training or instruction;

" education authority " and " educational establishment " in relation to Scotland have the same meaning as they have respectively in section 145(16) and (17) of the Education (Scotland) Act 1962

" employment " means employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;

" employment agency " means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;

" equality clause " has the meaning given in section 1(2) of the Equal Pay Act 1970 (as set out in section 8(1) of this Act);

" estate agent " means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises ;

" final " shall be construed in accordance with subsection (4);

" firm " has the meaning given by section 4 of the Partnership Act 1890;

" formal investigation " means an investigation under section 57;

" further education " has the meaning given by section 41(a) of the Education Act 1944 and in Scotland has the meaning given by section 145(21) of the Education (Scotland) Act 1962 ;

" general notice ", in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

" genuine occupational qualification " shall be construed in accordance with section 7(2);

" Great Britain " includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain;

" independent school " has the meaning given by section 114(1) of the Education Act 1944 and in Scotland has the meaning given by section 145(23) of the Education (Scotland) Act 1962;

" industrial tribunal " means a tribunal established under section 12 of the Industrial Training Act 1964;

" man " includes a male of any age ;

" managers " has the same meaning for Scotland as in section 145(26) of the Education (Scotland) Act 1962 ;

" near relative " shall be construed in accordance with subsection (5);

" non-discrimination notice " means a notice under section 67;

" notice " means a notice in writing;

" prescribed " means prescribed by regulations made by the Secretary of State by statutory instrument; " profession " includes any vocation or occupation;

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" proprietor ", in relation to any school, has the meaning given by section 114(1) of the Education Act 1944 and in Scotland has the meaning given by section 145(37) of the Education (Scotland) Act 1962;

" pupil " in Scotland includes a student of any age;

" retirement " includes retirement (whether voluntary or not) on grounds of age, length of service or incapacity;

" school " has the meaning given by section 114(1) of the Education Act 1944, and in Scotland has the meaning given by section 145(42) of the Education (Scotland) Act 1962;

" school education " has the meaning given by section 145(43A) of the Education (Scotland) Act 1962; " trade " includes any business;

" training " includes any form of education or instruction;

" university " includes a university college and the college, school or hall of a university;

" upper limit of compulsory school age " means, subject to section 9 of the Education Act 1962, the age that is that limit by virtue of section 35 of the Education Act 1944 and the Order in Council made under that section;

" woman " includes a female of any age.

- (2) For the purposes of this Act two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control.
- (3) Any power conferred by this Act to designate establishments or persons may be exercised either by naming them or by identifying them by reference to a class or other description.
- (4) For the purposes of this Act a non-discrimination notice or a finding by a court or tribunal becomes final when an appeal against the notice or finding is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought; and for this purpose an appeal against a non-discrimination notice shall be taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under section 68(3).
- (5) For the purposes of this Act a person is a near relative of another if that person is the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the other (whether of full blood or half-blood or by affinity), and " child " includes an illegitimate child and the wife or husband of an illegitimate child.
- (6) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.
- (7) In this Act, except where otherwise indicated—
  - (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
  - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
  - (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered, and
  - (d) a reference to any provision of an Act (including this Act) includes a Schedule incorporated in the Act by that provision.

### **83 Transitional and commencement provisions, amendments and repeals**

- (1) The provisions of Schedule 4 shall have effect for making transitional provision for the purposes of this Act.
- (2) Parts II to VII shall come into operation on such day as the Secretary of State may by order appoint, and different days may be so appointed for different provisions and for different purposes.
- (3) Subject to subsection (4)—
  - (a) the enactments specified in Schedule 5 shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential on the preceding provisions of this Act), and
  - (b) the enactments specified in Schedule 6 are hereby repealed to the extent shown in column 3 of that Schedule.
- (4) The Secretary of State shall by order provide for the coming into operation of the amendments contained in Schedule 5 and the repeals contained in Schedule 6, and those amendments and repeals shall have effect only as provided by an order so made.
- (5) An order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into operation, including such adaptations of those provisions, or of any provisions of this Act then in operation, as appear to the Secretary of State necessary or expedient in consequence of the partial operation of this Act.

### **84 Financial provisions**

There shall be defrayed out of money provided by Parliament—

- (a) sums required by the Secretary of State for making payments under paragraph 5 or 14 of Schedule 3, and for defraying any other expenditure falling to be made by him under or by virtue of this Act;
- (b) payments falling to be made under section 66(6)(b) or (7) in respect of the remuneration of assessors; and
- (c) any increase attributable to the provisions of this Act in the sums payable out of money provided by Parliament under any other Act.

### **85 Application to Crown**

- (1) This Act applies—
  - (a) to an act done by or for purposes of a Minister of the Crown or government department, or
  - (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,as it applies to an act done by a private person.
- (2) Parts II and IV apply to-
  - (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or
  - (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,

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as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

- (3) Subsections (1) and (2) have effect subject to section 17.
- (4) Subsections (1) and (2) do not apply in relation to service in—
  - (a) the naval, military or air forces of the Crown, or
  - (b) any women's service administered by the Defence Council.
- (5) Nothing in this Act shall render unlawful discrimination hi admission to the Army Cadet Force, Air Training Corps, Sea Cadet Corps or Combined Cadet Force, or any other cadet training corps for the time being administered by the Ministry of Defence.
- (6) This Act (except section 8(1) and (6)) does not apply to employment in the case of which the employee may be required to serve in support of a force or service mentioned in subsection (4)(a) or (b).
- (7) Subsection (2) of section 10 shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of the United Kingdom as it has effect in relation to a ship, aircraft or hovercraft mentioned in paragraph (a) or (b) of that subsection, and section 10(5) shall apply accordingly.
- (8) The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Act as they apply to proceedings in England and Wales which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under this Act section 20 of that Act (removal of proceedings from county court to High Court) shall not apply.
- (9) The provisions of Part V of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Act as they apply to proceedings in Scotland which by virtue of the said Part are treated as civil proceedings by or against the Crown, except that in their application to proceedings under this Act the proviso to section 44 of that Act (removal of proceedings from the sheriff court to the Court of Session) shall not apply.
- (10) In this section " statutory body " means a body set up by or in pursuance of an enactment, and " statutory office " means an office so set up; and service " for purposes of" a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975 as for the time being in force.

## **86 Government appointments outside section 6**

- (1) This section applies to any appointment by a Minister of the Crown or government department to an office or post where section 6 does not apply in relation to the appointment.
- (2) In making the appointment, and in making the arrangements for determining who should be offered the office or post,
 

the Minister of the Crown or government department shall not do an act which would be unlawful under section 6 if the Crown were the employer for the purposes of this Act.



**87 Short title and extent**

- (1) This Act may be cited as the Sex Discrimination Act 1975.
- (2) This Act (except paragraph 16 of Schedule 3) does not extend to Northern Ireland.