

## SCHEDULES

### SCHEDULE 3

Sections 3(5), 4(6) and 5(12).

#### FORMAL INVESTIGATIONS AND NON-DISCRIMINATION NOTICES

##### PART I

##### CONDUCT OF FORMAL INVESTIGATIONS

###### *Introductory*

- 1 (1) This Part of this Schedule applies to a formal investigation which the Commission has decided or has been directed to conduct.
- (2) Any subsequent action required or authorised by this Part of this Schedule (or by Part IV of this Schedule) to be taken by the Commission in relation to the conduct of a formal investigation may be taken, so far as they are authorised to do so, by persons nominated under section 3(4) for the purposes of the investigation.

###### *Terms of reference and preliminary notices*

- 2 (1) The Commission shall not take any steps in the conduct of a formal investigation until—
- (a) terms of reference for the investigation have been drawn up; and
  - (b) notice of the holding of the investigation and the terms of reference has been served or published as required by sub-paragraph (3) or (4).
- (2) The terms of reference for the investigation shall be drawn up (and may be revised)—
- (a) if the investigation is held at the direction of the Secretary of State, by the Secretary of State after consulting the Commission; and
  - (b) in any other case, by the Commission.
- (3) Where the terms of reference confine the investigation to activities of one or more named persons, notice of the holding of the investigation and the terms of reference shall be served on each of those persons.
- (4) Where the terms of reference do not confine the investigation to activities of one or more named persons, notice of the holding of the investigation and the terms of reference shall be published in such manner as appears to the Commission appropriate to bring it to the attention of persons likely to be affected by it.
- (5) If the terms of reference are revised, this paragraph applies again in relation to the revised investigation and its terms of reference.

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*Investigation of unlawful acts etc.*

- 3 (1) This paragraph applies where the Commission proposes to investigate in the course of a formal investigation (whether or not the investigation has already begun) whether—
- (a) a person has committed or is committing any unlawful act;
  - (b) any requirement imposed by a non-discrimination notice served on a person (including a requirement to take action specified in an action plan) has been or is being complied with;
  - (c) any undertaking given by a person in an agreement made with the Commission under section 5 is being or has been complied with.
- (2) The Commission may not investigate any such matter unless the terms of reference of the investigation confine it to the activities of one or more named persons (and the person concerned is one of those persons).
- (3) The Commission may not investigate whether a person has committed or is committing any unlawful act unless—
- (a) it has reason to believe that the person concerned may have committed or may be committing the act in question, or
  - (b) that matter is to be investigated in the course of a formal investigation into his compliance with any requirement or undertaking mentioned in sub-paragraph (1)(b) or (c).
- (4) The Commission shall serve a notice on the person concerned offering him the opportunity to make written and oral representations about the matters being investigated.
- (5) If the Commission is investigating whether the person concerned has committed or is committing any unlawful act (otherwise than in the course of a formal investigation into his compliance with any requirement or undertaking mentioned in sub-paragraph (1)(b) or (c)) the Commission shall include in the notice required by sub-paragraph (4) a statement informing that person that the Commission has reason to believe that he may have committed or may be committing any unlawful act.
- (6) The Commission shall not make any findings in relation to any matter mentioned in sub-paragraph (1) without giving the person concerned or his representative a reasonable opportunity to make written and oral representations.
- (7) The Commission may refuse to receive oral representations made on behalf of the person concerned by a person (not being counsel or a solicitor) to whom the Commission reasonably objects as being unsuitable.
- (8) If the Commission refuses to receive oral representations from a person under sub-paragraph (7), it shall give reasons in writing for its objection.
- (9) A notice required by sub-paragraph (4) may be included in a notice required by paragraph 2(3).
- (10) In this paragraph “unlawful act” means an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of the 1995 Act or any other unlawful act of a description prescribed for the purposes of this paragraph.

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#### *Power to obtain information*

- 4 (1) For the purposes of a formal investigation the Commission may serve a notice on any person requiring him—
- (a) to give such written information as may be described in the notice; or
  - (b) to attend and give oral information about any matter specified in the notice, and to produce all documents in his possession or control relating to any such matter.
- (2) A notice under this paragraph may only be served on the written authority of the Secretary of State unless the terms of reference confine the investigation to the activities of one or more named persons and the person being served is one of those persons.
- (3) A person may not be required by a notice under this paragraph—
- (a) to give information, or produce a document, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court or the Court of Session; or
  - (b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.
- 5 (1) The Commission may apply to a county court or by summary application to the sheriff for an order under this paragraph if—
- (a) a person has been served with a notice under paragraph 4; and
  - (b) he fails to comply with it or the Commission has reasonable cause to believe that he intends not to comply with it.
- (2) An order under this paragraph is an order requiring the person concerned to comply with the notice or with such directions for the same purpose as may be contained in the order.

#### *Recommendations*

- 6 (1) The Commission may make recommendations in the light of its findings in a formal investigation.
- (2) The recommendations may be—
- (a) recommendations to any person for changes in his policies or procedures, or as to any other matter, with a view to promoting the equalisation of opportunities for disabled persons or persons who have had a disability, or
  - (b) recommendations to the Secretary of State, for changes in the law or otherwise.
- (3) The Commission may make such recommendations before the conclusion of the investigation concerned.

#### *Reports*

- 7 (1) The Commission shall prepare a report of its findings in any formal investigation.
- (2) The Commission shall exclude from such a report any matter which relates to an individual's private affairs or any person's business interests if—
- (a) publication of that matter might, in the Commission's opinion, prejudicially affect that individual or person, and

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- (b) its exclusion is consistent with the Commission's duties and the object of the report.
- (3) The report of an investigation carried out at the direction of the Secretary of State shall be published by the Secretary of State or, if the Secretary of State so directs, by the Commission.
- (4) The report of any other investigation shall be published by the Commission.
- (5) Nothing in this paragraph affects the Commission's power to issue a non-discrimination notice before a report is prepared or published.

## PART II

### NON-DISCRIMINATION NOTICES

#### *Procedure for issuing and appealing against non-discrimination notices*

- 8 (1) The Commission shall not issue a non-discrimination notice addressed to any person unless it has complied with the requirements of this paragraph.
- (2) The Commission shall serve on the person concerned a notice—
  - (a) informing him that the Commission is considering issuing a non-discrimination notice and of the grounds for doing so,
  - (b) offering him the opportunity to make written and oral representations.
- (3) The Commission shall give the person concerned or his representative the opportunity of making oral and written representations within a period specified in the notice of not less than 28 days.
- (4) The Commission may refuse to receive oral representations made on behalf of the person concerned by a person (not being counsel or a solicitor) to whom the Commission reasonably objects as being unsuitable.
- (5) If the Commission refuses to receive oral representations from a person under subparagraph (4), it shall give reasons in writing for its objection.
- 9 On issuing a non-discrimination notice, the Commission shall serve a copy on the person to whom it is addressed.

#### *Appeal against non-discrimination notice*

- 10 (1) A person on whom a non-discrimination notice is served may, within the period of six weeks beginning on the day after the day on which the notice is served on him, appeal against any requirement imposed by the notice under section 4(1)(b) or (3).
- (2) An appeal under this paragraph lies—
  - (a) to an employment tribunal, so far as the requirement relates to acts within the tribunal's jurisdiction; and
  - (b) to a county court or a sheriff court, so far as the requirement relates to acts which are not within the jurisdiction of an employment tribunal.
- (3) The court or tribunal may quash or, in Scotland, recall any requirement appealed against—

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- (a) if it considers the requirement to be unreasonable; or
  - (b) in the case of a requirement imposed under section 4(1)(b), if it considers that the Commission's finding that the person concerned had committed or is committing the unlawful act in question was based on an incorrect finding of fact.
- (4) On quashing or recalling a requirement, the court or tribunal may direct that the non-discrimination notice shall have effect with such modifications as it considers appropriate.
- (5) The modifications which may be included in such a direction include—
- (a) the substitution of a requirement in different terms; and
  - (b) in the case of a requirement imposed under section 4(1)(b), modifications to the details given under section 4(1)(a) so far as necessary to describe any unlawful act on which the requirement could properly have been based.
- (6) Sub-paragraph (1) does not apply to any modifications contained in a direction under sub-paragraph (4).
- (7) If the court or tribunal allows an appeal under this paragraph without quashing or recalling the whole of the non-discrimination notice, the Commission may by notice to the person concerned vary the non-discrimination notice—
- (a) by revoking or altering any recommendation included in pursuance of the Commission's power under section 4(2); or
  - (b) by making new recommendations in pursuance of that power.
- 11 For the purposes of this Act a non-discrimination notice becomes final when—
- (a) an appeal under paragraph 10 is dismissed, withdrawn or abandoned or the time for appealing expires without an appeal having been brought; or
  - (b) an appeal under that paragraph is allowed without the whole notice being quashed or, in Scotland, recalled.

#### *Enforcement of non-discrimination notice*

- 12 (1) This paragraph applies during the period of five years beginning on the date on which a non-discrimination notice served on a person has become final.
- (2) During that period the Commission may apply to a county court or by summary application to the sheriff for an order under this paragraph, if—
- (a) it appears to the Commission that the person concerned has failed to comply with any requirement imposed by the notice under section 4(1)(b); or
  - (b) the Commission has reasonable cause to believe that he intends not to comply with any such requirement.
- (3) An order under this paragraph is an order requiring the person concerned to comply with the requirement or with such directions for the same purpose as are contained in the order.

#### *Register of non-discrimination notices*

- 13 (1) The Commission shall maintain a register of non-discrimination notices which have become final.

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- (2) The Commission shall, in the case of notices which impose a requirement to propose an action plan, note on the register the date on which any action plan proposed by the person concerned has become final.
- (3) The Commission shall arrange for—
  - (a) the register to be available for inspection at all reasonable times, and
  - (b) certified copies of any entry to be provided if required by any person.
- (4) The Commission shall publish those arrangements in such manner as it considers appropriate to bring them to the attention of persons likely to be interested.

### PART III

#### ACTION PLANS

##### *Introductory*

- 14 (1) This Part of this Schedule applies where a person (“P”) has been served with a non-discrimination notice which has become final and includes a requirement for him to propose an action plan.
- (2) In this Part “adequate” in relation to a proposed action plan means adequate (as defined in section 4(4)(b)) for the purposes of the requirement mentioned in section 4(1)(b).

##### *The first proposed action plan*

- 15 (1) P must serve his proposed action plan on the Commission within such period as may be specified in the non-discrimination notice.
- (2) If P fails to do so, the Commission may apply to a county court or by way of summary application to the sheriff for an order directing him to serve his proposed action plan within such period as the order may specify.
- (3) If P serves a proposed action plan on the Commission in response to the non-discrimination notice, or to an order under sub-paragraph (2), the action plan shall become final at the end of the prescribed period, unless the Commission has given notice to P under paragraph 16.

##### *Revision of first proposed action plan at invitation of Commission*

- 16 (1) If the Commission considers that a proposed action plan served on it is not an adequate action plan, the Commission may give notice to P—
  - (a) stating its view that the plan is not adequate; and
  - (b) inviting him to serve on the Commission a revised action plan which is adequate, within such period as may be specified in the notice.
- (2) A notice under this paragraph may include recommendations as to action which the Commission considers might be included in an adequate action plan.
- (3) If P serves a revised proposed action plan on the Commission in response to a notice under this paragraph, it shall supersede the previous proposed action plan and become

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final at the end of the prescribed period, unless the Commission has applied for an order under paragraph 17.

- (4) If P does not serve a revised action plan in response to a notice under this paragraph, the action plan previously served on the Commission shall become final at the end of the prescribed period, unless the Commission has applied for an order under paragraph 17.

*Action by Commission as respects inadequate action plan*

- 17 (1) If the Commission considers that a proposed action plan served on it is not an adequate action plan it may apply to the county court or by way of summary application to the sheriff for an order under this paragraph.
- (2) The Commission may not make an application under this paragraph in relation to the first proposed action plan served on it by P (even where it was served in compliance with an order of the court under paragraph 15(2)) unless—
- (a) a notice under paragraph 16 has been served on P in relation to that proposed action plan; and
  - (b) P has not served a revised action plan on the Commission in response to it within the period specified in the notice under paragraph 16(1)(b).
- (3) An order under this paragraph is an order—
- (a) declaring that the proposed action plan in question is not an adequate action plan;
  - (b) requiring P to revise his proposals and serve on the Commission an adequate action plan within such period as the order may specify; and
  - (c) containing such directions (if any) as the court considers appropriate as to the action which should be specified in the adequate action plan required by the order.
- (4) If on an application under this paragraph the court does not make an order, the proposed action plan in question shall become final at the end of the prescribed period.
- 18 (1) This paragraph applies where an order of the court under paragraph 17 (“the order”) requires P to serve an adequate action plan on the Commission.
- (2) If, in response to the order, P serves an action plan on the Commission, that action plan shall become final at the end of the prescribed period unless the Commission has applied to a county court or, in Scotland, to the sheriff to enforce the order on the ground that the plan does not comply with the order (and any directions under paragraph 17(3)(c)).
- (3) Where an application is made as mentioned in sub-paragraph (2)—
- (a) if the Commission withdraws its application, the action plan in question shall become final at the end of the prescribed period;
  - (b) if the court considers that the action plan in question complies with the order, that action plan shall become final at the end of the prescribed period.

*Variation of action plans*

- 19 An action plan which has become final may be varied by agreement in writing between the Commission and P.

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*Enforcement of action plans*

- 20 (1) This paragraph applies during the period of five years beginning on the date on which an action plan drawn up by P becomes final.
- (2) If during that period the Commission considers that P has failed to comply with the requirement under section 4(3)(b) to carry out any action specified in the action plan, the Commission may apply to a county court or by summary application to the sheriff for an order under this paragraph.
- (3) An order under this paragraph is an order requiring P to comply with that requirement or with such directions for the same purpose as are contained in the order.

*Power to obtain information*

- 21 (1) For the purposes of determining whether—
- (a) an action plan proposed by P is an adequate action plan; or
  - (b) P has complied or is complying with the requirement to take the action specified in an action plan which has become final,
- the Commission may serve a notice on any person requiring him to give such information in writing, or copies of documents in his possession or control, relating to those matters as may be described in the notice.
- (2) A person may not be required by a notice under this paragraph to give information, or produce a document, which he could not be compelled to give in evidence or produce in civil proceedings before the High Court or the Court of Session.
- (3) The Commission may apply to a county court or by summary application to the sheriff for an order under this sub-paragraph if a person has been served with a notice under this paragraph and fails to comply with it.
- (4) An order under sub-paragraph (3) is an order requiring the person concerned to comply with the notice or with such directions for the same purpose as may be contained in the order.

**PART IV**

SUPPLEMENTARY

*Restriction on disclosure of information*

- 22 (1) No information given to the Commission by any person (“the informant”) in connection with—
- (a) a formal investigation; or
  - (b) the exercise of any of its functions in relation to non-discrimination notices, action plans and agreements under section 5,
- shall be disclosed by the Commission or by any person who is or has been a commissioner, an additional commissioner or an employee of the Commission.
- (2) Sub-paragraph (1) does not apply to any disclosure made—
- (a) on the order of a court,
  - (b) with the informant’s consent,



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- (c) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates,
  - (d) in a report of the investigation published by the Commission,
  - (e) to a commissioner, an additional commissioner or an employee of the Commission, or, so far as is necessary for the proper performance of the Commission's functions, to other persons, or
  - (f) for the purpose of any civil proceedings to which the Commission is a party, or of any criminal proceedings.
- (3) A person who discloses information contrary to sub-paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### *Enforcement of court orders*

- 23 (1) This paragraph applies to any order made by a county court or the sheriff under section 5(8) or under any provision of this Schedule.
- (2) Section 55 of the County Courts Act 1984 (penalty for failure to give evidence) shall have effect in relation to a failure to comply with an order made by a county court to which this paragraph applies with the following modifications—
- (a) for subsection (1) there shall be substituted—

“(1) Any person who fails without reasonable excuse to comply with an order made by a county court under section 5(8) of or any provision of Schedule 3 to the Disability Rights Commission Act 1999 shall forfeit such fine as the judge may direct.”;
  - (b) subsection (3) shall be omitted (but without prejudice to the operation of paragraph 4(3)(b) of this Schedule); and
  - (c) in subsection (4), for the words “the party injured by the refusal or neglect” there shall be substituted the words “the Disability Rights Commission for expenses incurred or wasted in consequence of the failure to comply with the order concerned”.
- (3) Where the sheriff finds a person to be in contempt of court in respect of the failure of a person to comply with an order made by the sheriff to which this paragraph applies—
- (a) notwithstanding section 15 of the Contempt of Court Act 1981, the sheriff shall not commit the person to prison; and
  - (b) the sheriff may grant decree in favour of the Commission for such amount of any fine imposed for the contempt as appears to the sheriff to be appropriate in respect of the expense incurred or wasted by the Commission (including the expenses of any proceedings under this Schedule) in consequence of the failure to comply with the order.
- (4) If the Commission applies to a county court or, in Scotland, to the sheriff to enforce an order to which this paragraph applies, the court may modify the order.

#### *Offences*

- 24 (1) A person who—

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- (a) deliberately alters, suppresses, conceals or destroys a document to which a notice under paragraph 4 or 21, or an order under paragraph 5 or 21(3), relates; or
- (b) in complying with—
  - (i) a notice under paragraph 4 or 21;
  - (ii) a non-discrimination notice;
  - (iii) an agreement under section 5; or
  - (iv) an order of a court under section 5(8) or under any provision of this Schedule,

makes any statement which he knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (2) Proceedings for an offence under this paragraph may (without prejudice to any jurisdiction exercisable apart from this sub-paragraph) be instituted—
  - (a) against any person at any place at which he has an office or other place of business;
  - (b) against an individual at any place where he resides, or at which he is for the time being.

#### *Service of notices*

- 25 (1) Any notice required or authorised by any provision of this Schedule to be served on a person may be served by delivering it to him, by leaving it at his proper address or by sending it by post to him at that address.
- (2) Any such notice may—
  - (a) in the case of a body corporate, be served on the secretary or clerk of that body;
  - (b) in the case of a partnership, be served on any partner or a person having control or management of the partnership business;
  - (c) in the case of an unincorporated association (other than a partnership), may be served on any member of its governing body.
- (3) For the purposes of this paragraph and section 7 of the Interpretation Act 1978 (service of documents) in its application to this paragraph, the proper address of any person is—
  - (a) in the case of a body corporate, its secretary or clerk, the address of its registered or principal office in the United Kingdom;
  - (b) in the case of an unincorporated association (other than a partnership) or a member of its governing body, its principal office in the United Kingdom;
  - (c) in any other case, his usual or last-known address (whether of his residence or of a place where he carries on business or is employed).

#### *Regulations*

- 26 The Secretary of State may make regulations making provision—

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- (a) supplementing Part I or II of this Schedule in connection with any matter concerned with the conduct of formal investigations or the procedure for issuing non-discrimination notices; or
- (b) amending Part III of this Schedule in relation to the procedures for finalising action plans.