



# Equality Act 2006

## 2006 CHAPTER 3

### PART 1

#### THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

##### *The Commission*

#### **1 Establishment**

There shall be a body corporate known as the Commission for Equality and Human Rights.

#### **2 Constitution, &c.**

Schedule 1 (constitution of the Commission, proceedings, money, &c.) shall have effect.

#### **3 General duty**

The Commission shall exercise its functions under this Part with a view to encouraging and supporting the development of a society in which—

- (a) people's ability to achieve their potential is not limited by prejudice or discrimination,
- (b) there is respect for and protection of each individual's human rights,
- (c) there is respect for the dignity and worth of each individual,
- (d) each individual has an equal opportunity to participate in society, and
- (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

#### **4 Strategic plan**

- (1) The Commission shall prepare a plan showing—

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- (a) activities or classes of activity to be undertaken by the Commission in pursuance of its functions under this Act,
  - (b) an expected timetable for each activity or class, and
  - (c) priorities for different activities or classes, or principles to be applied in determining priorities.
- (2) The Commission shall review the plan—
- (a) at least once during the period of three years beginning with its completion,
  - (b) at least once during each period of three years beginning with the completion of a review, and
  - (c) at such other times as the Commission thinks appropriate.
- (3) If the Commission thinks it appropriate as a result of a review, the Commission shall revise the plan.
- (4) The Commission shall send the plan and each revision to the Secretary of State, who shall lay a copy before Parliament.
- (5) The Commission shall publish the plan and each revision.

## 5 Strategic plan: consultation

Before preparing or reviewing a plan in accordance with section 4 the Commission shall—

- (a) consult such persons having knowledge or experience relevant to the Commission's functions as the Commission thinks appropriate,
- (b) consult such other persons as the Commission thinks appropriate,
- (c) issue a general invitation to make representations, in a manner likely in the Commission's opinion to bring the invitation to the attention of as large a class of persons who may wish to make representations as is reasonably practicable, and
- (d) take account of any representations made.

## 6 Disclosure

- (1) A person who is or was a Commissioner, an Investigating Commissioner, an employee of the Commission or a member of a committee established by the Commission commits an offence if he discloses information to which this section applies unless subsection (3) authorises the disclosure.
- (2) This section applies to information acquired by the Commission—
- (a) by way of representations made in relation to, or otherwise in the course of, an inquiry under section 16,
  - (b) by way of representations made in relation to, or otherwise in the course of, an investigation under section 20,
  - (c) by way of representations made in relation to, or otherwise in the course of, an assessment under section 31,
  - (d) by way of representations made in relation to, or otherwise in connection with, a notice under section 32, or
  - (e) from a person with whom the Commission enters into, or considers entering into, an agreement under section 23.

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- (3) This subsection authorises a disclosure made—
- (a) for the purpose of the exercise of a function of the Commission under any of sections 16, 20, 21, 24, 25, 31 and 32,
  - (b) in a report of an inquiry, investigation or assessment published by the Commission,
  - (c) in pursuance of an order of a court or tribunal,
  - (d) with the consent of each person to whom the disclosed information relates,
  - (e) in a manner that ensures that no person to whom the disclosed information relates can be identified,
  - (f) for the purpose of civil or criminal proceedings to which the Commission is party, or
  - (g) if the information was acquired by the Commission more than 70 years before the date of the disclosure.
- (4) But subsection (3) does not authorise, nor may the Commission make, a disclosure of information provided by or relating to an intelligence service unless the service has authorised the disclosure.
- (5) In subsection (4) “intelligence service” means—
- (a) the Security Service,
  - (b) the Secret Intelligence Service, and
  - (c) the Government Communications Headquarters.
- (6) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **7 Scotland: human rights**

- (1) The Commission shall not take human rights action in relation to a matter if the Scottish Parliament has legislative competence to enable a person to take action of that kind in relation to that matter.
- (2) In subsection (1) “human rights action” means action taken—
- (a) in accordance with section 9(1), and
  - (b) under, by virtue of or in pursuance of—
    - (i) section 11(1) in so far as it relates to the Human Rights Act 1998 (c. 42),
    - (ii) section 11(2)(c) or (d),
    - (iii) section 12,
    - (iv) section 13,
    - (v) section 16,
    - (vi) section 17, or
    - (vii) section 30.
- (3) Despite section 9(4), the Commission shall not, in the course of fulfilling a duty under section 8 or 10, consider the question whether a person's human rights have been contravened if the Scottish Parliament has legislative competence to enable a person to consider that question.
- (4) Subsections (1) and (3) shall not prevent the Commission from taking action with the consent (whether general or specific) of a person if—

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- (a) the person is established by Act of the Scottish Parliament, and
  - (b) the person's principal duties relate to human rights and are similar to any of the Commission's duties under section 9.
- (5) Subsections (1) and (3) shall not prevent the Commission from relying on section 13(1)(f) so as to act jointly or cooperate (but not assist) for a purpose relating to human rights and connected with Scotland.

### *Duties*

## **8 Equality and diversity**

- (1) The Commission shall, by exercising the powers conferred by this Part—
- (a) promote understanding of the importance of equality and diversity,
  - (b) encourage good practice in relation to equality and diversity,
  - (c) promote equality of opportunity,
  - (d) promote awareness and understanding of rights under the equality enactments,
  - (e) enforce the equality enactments,
  - (f) work towards the elimination of unlawful discrimination, and
  - (g) work towards the elimination of unlawful harassment.
- (2) In subsection (1)—
- “diversity” means the fact that individuals are different,
  - “equality” means equality between individuals, and
  - “unlawful” is to be construed in accordance with section 34.
- (3) In promoting equality of opportunity between disabled persons and others, the Commission may, in particular, promote the favourable treatment of disabled persons.
- (4) In this Part “disabled person” means a person who—
- (a) is a disabled person within the meaning of the Disability Discrimination Act 1995 (c. 50), or
  - (b) has been a disabled person within that meaning (whether or not at a time when that Act had effect).

## **9 Human rights**

- (1) The Commission shall, by exercising the powers conferred by this Part—
- (a) promote understanding of the importance of human rights,
  - (b) encourage good practice in relation to human rights,
  - (c) promote awareness, understanding and protection of human rights, and
  - (d) encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c. 42) (compliance with Convention rights).
- (2) In this Part “human rights” means—
- (a) the Convention rights within the meaning given by section 1 of the Human Rights Act 1998, and
  - (b) other human rights.

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- (3) In determining what action to take in pursuance of this section the Commission shall have particular regard to the importance of exercising the powers conferred by this Part in relation to the Convention rights.
- (4) In fulfilling a duty under section 8 or 10 the Commission shall take account of any relevant human rights.
- (5) A reference in this Part (including this section) to human rights does not exclude any matter by reason only of its being a matter to which section 8 or 10 relates.

## 10 Groups

- (1) The Commission shall, by exercising the powers conferred by this Part—
  - (a) promote understanding of the importance of good relations—
    - (i) between members of different groups, and
    - (ii) between members of groups and others,
  - (b) encourage good practice in relation to relations—
    - (i) between members of different groups, and
    - (ii) between members of groups and others,
  - (c) work towards the elimination of prejudice against, hatred of and hostility towards members of groups, and
  - (d) work towards enabling members of groups to participate in society.
- (2) In this Part “group” means a group or class of persons who share a common attribute in respect of any of the following matters—
  - (a) age,
  - (b) disability,
  - (c) gender,
  - (d) proposed, commenced or completed reassignment of gender (within the meaning given by section 82(1) of the Sex Discrimination Act 1975 (c. 65)),
  - (e) race,
  - (f) religion or belief, and
  - (g) sexual orientation.
- (3) For the purposes of this Part a reference to a group (as defined in subsection (2)) includes a reference to a smaller group or smaller class, within a group, of persons who share a common attribute (in addition to the attribute by reference to which the group is defined) in respect of any of the matters specified in subsection (2)(a) to (g).
- (4) In determining what action to take in pursuance of this section the Commission shall have particular regard to the importance of exercising the powers conferred by this Part in relation to groups defined by reference to race, religion or belief.
- (5) The Commission may, in taking action in pursuance of subsection (1) in respect of groups defined by reference to disability and others, promote or encourage the favourable treatment of disabled persons.
- (6) The Secretary of State may by order amend the list in subsection (2) so as to—
  - (a) add an entry, or
  - (b) vary an entry.
- (7) This section is without prejudice to the generality of section 8.

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## 11 Monitoring the law

- (1) The Commission shall monitor the effectiveness of the equality and human rights enactments.
- (2) The Commission may—
  - (a) advise central government about the effectiveness of any of the equality and human rights enactments;
  - (b) recommend to central government the amendment, repeal, consolidation (with or without amendments) or replication (with or without amendments) of any of the equality and human rights enactments;
  - (c) advise central or devolved government about the effect of an enactment (including an enactment in or under an Act of the Scottish Parliament);
  - (d) advise central or devolved government about the likely effect of a proposed change of law.
- (3) In this section—
  - (a) “central government” means Her Majesty's Government,
  - (b) “devolved government” means—
    - (i) the Scottish Ministers, and
    - (ii) the [<sup>F1</sup>Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government]<sup>F1</sup>, and
  - (c) a reference to the equality enactments shall be treated as including a reference to any provision of this Act.

### Textual Amendments

- F1** Words in s. 11(3)(b)(ii) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, [Sch. 1 para. 113](#), the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [Government of Wales Act 2006](#), ss. 46, 161(5)

## 12 Monitoring progress

- (1) The Commission shall from time to time identify—
  - (a) changes in society that have occurred or are expected to occur and are relevant to the aim specified in section 3,
  - (b) results at which to aim for the purpose of encouraging and supporting the development of the society described in section 3 (“outcomes”), and
  - (c) factors by reference to which progress towards those results may be measured (“indicators”).
- (2) In identifying outcomes and indicators the Commission shall—
  - (a) consult such persons having knowledge or experience relevant to the Commission's functions as the Commission thinks appropriate,
  - (b) consult such other persons as the Commission thinks appropriate,
  - (c) issue a general invitation to make representations, in a manner likely in the Commission's opinion to bring the invitation to the attention of as large a class of persons who may wish to make representations as is reasonably practicable, and

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- (d) take account of any representations made.
- (3) The Commission shall from time to time monitor progress towards each identified outcome by reference to any relevant identified indicator.
- (4) The Commission shall publish a report on progress towards the identified outcomes by reference to the identified indicators—
  - (a) within the period of three years beginning with the date on which this section comes into force, and
  - (b) within each period of three years beginning with the date on which a report is published under this subsection.
- (5) The Commission shall send each report to the Secretary of State, who shall lay a copy before Parliament.

### *General powers*

## **13 Information, advice, &c.**

- (1) In pursuance of its duties under sections 8 to 10 the Commission may—
  - (a) publish or otherwise disseminate ideas or information;
  - (b) undertake research;
  - (c) provide education or training;
  - (d) give advice or guidance (whether about the effect or operation of an enactment or otherwise);
  - (e) arrange for a person to do anything within paragraphs (a) to (d);
  - (f) act jointly with, co-operate with or assist a person doing anything within paragraphs (a) to (d).
- (2) The reference to giving advice in subsection (1)(d) does not include a reference to preparing, or assisting in the preparation of, a document to be used for the purpose of legal proceedings.

## **14 Codes of practice**

- (1) The Commission may issue a code of practice in connection with a matter addressed by any of the following—
  - (a) the Equal Pay Act 1970 (c. 41),
  - (b) Parts 2 to 4 and section 76A of the Sex Discrimination Act 1975 (c. 65) or an order under section 76B or 76C of that Act,
  - (c) Parts 2 to 4 and section 71 of the Race Relations Act 1976 (c. 74),
  - (d) Parts 2 to 4 and 5A of the Disability Discrimination Act 1995 (c. 50) except for sections 28D and 28E (accessibility in schools),
  - (e) Part 2 of this Act,
  - (f) regulations under Part 3 of this Act,
  - (g) Parts 2 and 3 of the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661),<sup>F2</sup> ...
  - (h) Parts 2 and 3 of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660).<sup>F3</sup> and
  - (i) Parts 2 and 3 of the Employment Equality (Age) Regulations 2006.]

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- <sup>F3</sup>(2) A code of practice under subsection (1) shall contain provision designed—
- (a) to ensure or facilitate compliance with a provision or enactment listed in subsection (1), or
  - (b) to promote equality of opportunity.
- (3) The Commission may issue a code of practice giving practical guidance to landlords and tenants in England or Wales about—
- (a) circumstances in which a tenant requires the consent of his landlord to make a relevant improvement, within the meaning of section 49G(7) of the Disability Discrimination Act 1995 (c. 50) (improvements), to a dwelling house,
  - (b) reasonableness in relation to that consent, and
  - (c) the application in relation to relevant improvements (within that meaning) to dwelling houses of—
    - (i) section 19(2) of the Landlord and Tenant Act 1927 (c. 36) (consent to improvements),
    - (ii) sections 81 to 85 of the Housing Act 1980 (c. 51) (tenant's improvements),
    - (iii) sections 97 to 99 of the Housing Act 1985 (c. 68) (tenant's improvements), and
    - (iv) section 49G of the Disability Discrimination Act 1995.
- (4) The Commission may issue a code of practice giving practical guidance to landlords and tenants of houses (within the meaning of the Housing (Scotland) Act 2006 (asp 01)) in Scotland about—
- (a) circumstances in which the tenant requires the consent of the landlord to carry out work in relation to the house for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence,
  - (b) circumstances in which it is unreasonable to withhold that consent,
  - (c) circumstances in which any condition imposed on the granting of that consent is unreasonable, and
  - (d) the application in relation to such work of—
    - (i) sections 28 to 31 and 34(6) of the Housing (Scotland) Act 2001 (asp 10), and
    - (ii) sections 52, 53 and 64(6) of the Housing (Scotland) Act 2006 (asp 01).
- (5) The Commission shall comply with a direction of the Secretary of State to issue a code under this section in connection with a specified matter if—
- (a) the matter is not listed in subsection (1), but
  - (b) the Secretary of State expects to add it by order under section 15(6).
- (6) Before issuing a code under this section the Commission shall—
- (a) publish proposals, and
  - (b) consult such persons as it thinks appropriate.
- (7) Before issuing a code under this section the Commission shall submit a draft to the Secretary of State, who shall—
- (a) if he approves the draft—
    - (i) notify the Commission, and



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- (ii) lay a copy before Parliament, or
  - (b) otherwise, give the Commission written reasons why he does not approve the draft.
- (8) Where a draft is laid before Parliament under subsection (7)(a)(ii), if neither House passes a resolution disapproving the draft within 40 days—
  - (a) the Commission may issue the code in the form of the draft, and
  - (b) it shall come into force in accordance with provision made by the Secretary of State by order.
- (9) If, or in so far as, a code relates to a duty imposed by or under section 76A, 76B or 76C of the Sex Discrimination Act 1975 (c. 65), section 71 of the Race Relations Act 1976 (c. 74) or section 49A or 49D of the Disability Discrimination Act 1995 (c. 50) (public authorities: general anti-discrimination duties) the Secretary of State shall consult the Scottish Ministers and the <sup>F4</sup>Welsh Ministers<sup>F4</sup> before—
  - (a) approving a draft under subsection (7)(a) above, or
  - (b) making an order under subsection (8)(b) above.
- (10) In relation to a code of practice under subsection (4), the Secretary of State shall consult the Scottish Ministers before—
  - (a) approving a draft under subsection (7)(a) above, or
  - (b) making an order under subsection (8)(b) above.

#### Textual Amendments

- F2** Word in s. 14(1)(g) omitted (1.10.2006) by virtue of [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 49(1), **Sch. 8 para. 38(2)** (with regs. 44-46)
- F3** S. 14(1)(i) and preceding word inserted (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 49(1), **Sch. 8 para. 38(3)** (with regs. 44-46)
- F4** Words in s. 14(9) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 114** the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - [Government of Wales Act 2006 \(c. 32\)](#), ss. 46, 161(5)

## 15 Codes of practice: supplemental

- (1) The Commission may revise a code issued under section 14; and a reference in this section or in that section to the issue of a code shall be treated as including a reference to the revision of a code.
- (2) The 40 day period specified in section 14(8)—
  - (a) shall begin with the date on which the draft is laid before both Houses (or, if laid before each House on a different date, with the later date), and
  - (b) shall be taken not to include a period during which—
    - (i) Parliament is prorogued or dissolved, or
    - (ii) both Houses are adjourned for more than four days.
- (3) A code issued under section 14 may be revoked by the Secretary of State, at the request of the Commission, by order.

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- (4) A failure to comply with a provision of a code shall not of itself make a person liable to criminal or civil proceedings; but a code—
  - (a) shall be admissible in evidence in criminal or civil proceedings, and
  - (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
- (5) Subsection (4)(b) does not apply in relation to a code issued under section 14(4).
- (6) The Secretary of State may by order amend section 14 so as to vary the range of matters that codes of practice under that section may address.

## 16 Inquiries

- (1) The Commission may conduct an inquiry into a matter relating to any of the Commission's duties under sections 8, 9 and 10.
- (2) If in the course of an inquiry the Commission begins to suspect that a person may have committed an unlawful act—
  - (a) in continuing the inquiry the Commission shall, so far as possible, avoid further consideration of whether or not the person has committed an unlawful act,
  - (b) the Commission may commence an investigation into that question under section 20,
  - (c) the Commission may use information or evidence acquired in the course of the inquiry for the purpose of the investigation, and
  - (d) the Commission shall so far as possible ensure (whether by aborting or suspending the inquiry or otherwise) that any aspects of the inquiry which concern the person investigated, or may require his involvement, are not pursued while the investigation is in progress.
- (3) The report of an inquiry—
  - (a) may not state (whether expressly or by necessary implication) that a specified or identifiable person has committed an unlawful act, and
  - (b) shall not otherwise refer to the activities of a specified or identifiable person unless the Commission thinks that the reference—
    - (i) will not harm the person, or
    - (ii) is necessary in order for the report adequately to reflect the results of the inquiry.
- (4) Subsections (2) and (3) shall not prevent an inquiry from considering or reporting a matter relating to human rights (whether or not a necessary implication arises in relation to the equality enactments).
- (5) Before settling a report of an inquiry which records findings which in the Commission's opinion are of an adverse nature and relate (whether expressly or by necessary implication) to a specified or identifiable person the Commission shall—
  - (a) send a draft of the report to the person,
  - (b) specify a period of at least 28 days during which he may make written representations about the draft, and
  - (c) consider any representations made.
- (6) Schedule 2 makes supplemental provision about inquiries.

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## 17 Grants

- (1) In pursuance of any of its duties under sections 8 to 10 the Commission may make grants to another person.
- (2) A grant under subsection (1) may be made subject to conditions (which may, in particular, include conditions as to repayment).
- (3) A power under this Part to co-operate with or assist a person may not be exercised by the provision of financial assistance otherwise than in accordance with this section.

## 18 Human rights

In pursuance of its duties under section 9 the Commission may (without prejudice to the generality of section 13) co-operate with persons interested in human rights within the United Kingdom or elsewhere.

## 19 Groups

- (1) In pursuance of its duties under section 10 the Commission may do anything specified in this section (without prejudice to the generality of section 13).
- (2) The Commission may make, co-operate with or assist in arrangements—
  - (a) for the monitoring of kinds of crime affecting certain groups;
  - (b) designed to prevent or reduce crime within or affecting certain groups;
  - (c) for activities (whether social, recreational, sporting, civic, educational or otherwise) designed to involve members of groups.

### *Enforcement powers*

## 20 Investigations

- (1) The Commission may investigate whether or not a person—
  - (a) has committed an unlawful act,
  - (b) has complied with a requirement imposed by an unlawful act notice under section 21, or
  - (c) has complied with an undertaking given under section 23.
- (2) The Commission may conduct an investigation under subsection (1)(a) only if it suspects that the person concerned may have committed an unlawful act.
- (3) A suspicion for the purposes of subsection (2) may (but need not) be based on the results of, or a matter arising during the course of, an inquiry under section 16.
- (4) Before settling a report of an investigation recording a finding that a person has committed an unlawful act or has failed to comply with a requirement or undertaking the Commission shall—
  - (a) send a draft of the report to the person,
  - (b) specify a period of at least 28 days during which he may make written representations about the draft, and
  - (c) consider any representations made.
- (5) Schedule 2 makes supplemental provision about investigations.

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## 21 Unlawful act notice

- (1) The Commission may give a person a notice under this section (an “unlawful act notice”) if—
  - (a) he is or has been the subject of an investigation under section 20(1)(a), and
  - (b) the Commission is satisfied that he has committed an unlawful act.
- (2) A notice must specify—
  - (a) the unlawful act, and
  - (b) the provision of the equality enactments by virtue of which the act is unlawful.
- (3) A notice must inform the recipient of the effect of—
  - (a) subsections (5) to (7),
  - (b) section 20(1)(b), and
  - (c) section 24(1).
- (4) A notice may—
  - (a) require the person to whom the notice is given to prepare an action plan for the purpose of avoiding repetition or continuation of the unlawful act;
  - (b) recommend action to be taken by the person for that purpose.
- (5) A person who is given a notice may, within the period of six weeks beginning with the day on which the notice is given, appeal to the appropriate court or tribunal on the grounds—
  - (a) that he has not committed the unlawful act specified in the notice, or
  - (b) that a requirement for the preparation of an action plan imposed under subsection (4)(a) is unreasonable.
- (6) On an appeal under subsection (5) the court or tribunal may—
  - (a) affirm a notice;
  - (b) annul a notice;
  - (c) vary a notice;
  - (d) affirm a requirement;
  - (e) annul a requirement;
  - (f) vary a requirement;
  - (g) make an order for costs or expenses.
- (7) In subsection (5) “the appropriate court or tribunal” means—
  - (a) an employment tribunal, if a claim in respect of the alleged unlawful act could be made to it, or
  - (b) a county court (in England and Wales) or the sheriff (in Scotland), if a claim in respect of the alleged unlawful act could be made to it or to him.

### Modifications etc. (not altering text)

- C1** S. 21(1)(a) applied (with modifications) (1.10.2007) by [The Equality Act 2006 \(Dissolution of Commissions and Consequential and Transitional Provisions\) Order 2007 \(S.I. 2007/2602\)](#), **art. 5(3)**

*Status: Point in time view as at 01/10/2007.*

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## 22 Action plans

- (1) This section applies where a person has been given a notice under section 21 which requires him (under section 21(4)(a)) to prepare an action plan.
- (2) The notice must specify a time by which the person must give the Commission a first draft plan.
- (3) After receiving a first draft plan from a person the Commission shall—
  - (a) approve it, or
  - (b) give the person a notice which—
    - (i) states that the draft is not adequate,
    - (ii) requires the person to give the Commission a revised draft by a specified time, and
    - (iii) may make recommendations about the content of the revised draft.
- (4) Subsection (3) shall apply in relation to a revised draft plan as it applies in relation to a first draft plan.
- (5) An action plan comes into force—
  - (a) if the period of six weeks beginning with the date on which a first draft or revised draft is given to the Commission expires without the Commission—
    - (i) giving a notice under subsection (3)(b), or
    - (ii) applying for an order under subsection (6)(b), or
  - (b) upon a court's declining to make an order under subsection (6)(b) in relation to a revised draft of the plan.
- (6) The Commission may apply to a county court (in England and Wales) or to the sheriff (in Scotland)—
  - (a) for an order requiring a person to give the Commission a first draft plan by a time specified in the order,
  - (b) for an order requiring a person who has given the Commission a revised draft plan to prepare and give to the Commission a further revised draft plan—
    - (i) by a time specified in the order, and
    - (ii) in accordance with any directions about the plan's content specified in the order, or
  - (c) during the period of five years beginning with the date on which an action plan prepared by a person comes into force, for an order requiring the person—
    - (i) to act in accordance with the action plan, or
    - (ii) to take specified action for a similar purpose.
- (7) An action plan may be varied by agreement between the Commission and the person who prepared it.
- (8) Paragraphs 10 to 14 of Schedule 2 apply (but omitting references to oral evidence) in relation to consideration by the Commission of the adequacy of a draft action plan as they apply in relation to the conduct of an inquiry.
- (9) A person commits an offence if without reasonable excuse he fails to comply with an order under subsection (6); and a person guilty of an offence under this subsection shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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## 23 Agreements

- (1) The Commission may enter into an agreement with a person under which—
  - (a) the person undertakes—
    - (i) not to commit an unlawful act of a specified kind, and
    - (ii) to take, or refrain from taking, other specified action (which may include the preparation of a plan for the purpose of avoiding an unlawful act), and
  - (b) the Commission undertakes not to proceed against the person under section 20 or 21 in respect of any unlawful act of the kind specified under paragraph (a) (i).
- (2) The Commission may enter into an agreement with a person under this section only if it thinks that the person has committed an unlawful act.
- (3) But a person shall not be taken to admit to the commission of an unlawful act by reason only of entering into an agreement under this section.
- (4) An agreement under this section—
  - (a) may be entered into whether or not the person is or has been the subject of an investigation under section 20,
  - (b) may include incidental or supplemental provision (which may include provision for termination in specified circumstances), and
  - (c) may be varied or terminated by agreement of the parties.
- (5) This section shall apply in relation to the breach of a duty specified in section 34(2) as it applies in relation to the commission of an unlawful act; and for that purpose the reference in subsection (1)(b) above to section 20 or 21 shall be taken as a reference to section 32.

## 24 Applications to court

- (1) If the Commission thinks that a person is likely to commit an unlawful act, it may apply—
  - (a) in England and Wales, to a county court for an injunction restraining the person from committing the act, or
  - (b) in Scotland, to the sheriff for an interdict prohibiting the person from committing the act.
- (2) Subsection (3) applies if the Commission thinks that a party to an agreement under section 23 has failed to comply, or is likely not to comply, with an undertaking under the agreement.
- (3) The Commission may apply to a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring the person—
  - (a) to comply with his undertaking, and
  - (b) to take such other action as the court or the sheriff may specify.

## 25 Application to restrain unlawful advertising, pressure, &c.

- (1) This section applies to an act which is unlawful under any of the following—
  - (a) sections 38 to 40 of the Sex Discrimination Act 1975 (c. 65) (advertising; and instructions or pressure to discriminate),

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- (b) sections 29 to 31 of the Race Relations Act 1976 (c. 74) (advertising; and instructions or pressure to discriminate),
  - (c) sections 16B and 16C of the Disability Discrimination Act 1995 (c. 50) (advertising; and instructions or pressure to discriminate),
  - [<sup>F5</sup>(ca) sections 28UB and 28UC of that Act (advertising; and instructions or pressure to discriminate),]<sup>F5</sup> and
  - (d) sections 54 and 55 below (religious discrimination: advertising; and instructions or pressure to discriminate) [<sup>F6</sup>, and
  - (e) regulations 10 and 11 of the Equality Act (Sexual Orientation) Regulations 2007].
- (2) Legal proceedings in relation to action to which this section applies—
- (a) may be brought by the Commission in accordance with this section, and
  - (b) may not be brought by anyone else.
- (3) Where the Commission thinks that a person has done an act to which this section applies the Commission may—
- (a) present a complaint to an employment tribunal, where the act is alleged to be unlawful by reference to—
    - (i) Part 2 of the Sex Discrimination Act 1975,
    - (ii) Part 2 of the Race Relations Act 1976,
    - (iii) Part 2 of the Disability Discrimination Act 1995,
    - (iv) Part 3 of that Act in so far as it relates to employment services, or
    - (v) Part 2 of this Act, or
  - (b) in any other case, apply to a county court (in England and Wales) or the sheriff (in Scotland).
- (4) On a complaint or application under subsection (3) in respect of an alleged act to which this section applies, the tribunal, court or sheriff shall determine whether the allegation is correct.
- (5) The Commission may apply to a county court (in England and Wales) for an injunction restraining a person from doing an act to which this section applies where—
- (a) either—
    - (i) a tribunal or court has determined under subsection (4) that the person has done an act to which this section applies, or
    - (ii) the Commission thinks that the person has done an act to which this section applies, and
  - (b) the Commission thinks that if unrestrained the person is likely to do another act to which this section applies.
- (6) The Commission may apply to the sheriff (in Scotland) for an interdict prohibiting a person from doing an act to which this section applies where—
- (a) either—
    - (i) a tribunal or the sheriff has determined under subsection (4) that the person has done an act to which this section applies, or
    - (ii) the Commission thinks that the person has done an act to which this section applies, and
  - (b) the Commission thinks that without an interdict the person is likely to do another act to which this section applies.

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(7) Subsection (1) does not apply to an act which constitutes an offence.

#### Textual Amendments

- F5** S. 25(1)(ca) inserted (30.6.2006 for certain purposes and 1.9.2006 in so far as not already in force) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), **reg. 22**
- F6** S. 25(1)(e) and word inserted (30.4.2007) by [The Equality Act \(Sexual Orientation\) Regulations 2007 \(S.I. 2007/1263\)](#), **regs. 1(1), 32** (with **regs. 12, 13, 18, 33, 34**)

## 26 Section 25: supplemental

- (1) A complaint or application under section 25(3) may be presented or made only—
- (a) within the period of six months beginning with the date (or last date) on which the alleged unlawful act occurred, or
  - (b) with the permission of the tribunal, court or sheriff.
- (2) A determination under section 25(4) shall not be relied upon by a county court or the sheriff in proceedings under section 25(5) or (6) while an appeal against the determination—
- (a) is pending, or
  - (b) may be brought (disregarding the possibility of an appeal out of time with permission).
- (3) An application under section 25(5) or (6) may be made only—
- (a) within the period of five years beginning with the date (or last date) on which the unlawful act referred to in that subsection occurred, or
  - (b) with the permission of the court or sheriff.

## 27 Conciliation

- (1) The Commission may make arrangements for the provision of conciliation services for disputes in respect of which proceedings have been or could be brought under or by virtue of—
- (a) section 66 of the Sex Discrimination Act 1975 (c. 65) (civil proceedings),
  - (b) section 57 of the Race Relations Act 1976 (c. 74) (civil proceedings),
  - (c) section 25, 28I, 28N, 28V [<sup>F7</sup>, 31ADA]<sup>F7</sup> or 31AE(1) of the Disability Discrimination Act 1995 (c. 50) (civil proceedings),
  - (d) section 66 below,
  - (e) a provision of regulations under Part 3 of this Act corresponding to section 66 below,
  - (f) regulation 31 of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660) (civil proceedings),<sup>F8</sup>...
  - (g) regulation 31 of the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661) (civil proceedings).<sup>F9</sup> or
  - (h) regulation 39 of the Employment Equality (Age) Regulations 2006 (Jurisdiction of County and Sheriff Courts).]

[<sup>F10F9</sup>(1A) The Commission may make arrangements for the provision of conciliation services for disputes in respect of which proceedings have been or could be brought in England



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and Wales or Scotland under regulation 9 of the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 (civil proceedings).]

- <sup>F10</sup>(2) The Commission may make arrangements for the provision of conciliation services for disputes about a landlord's reasonableness in relation to consent to the making of an improvement to a dwelling in England or Wales where the improvement would be likely to facilitate the enjoyment of the premises by the tenant or another lawful occupier having regard to a disability.
- (3) The Commission may make arrangements for the provision of conciliation services for disputes about whether—
- (a) it is unreasonable for a landlord of a house (within the meaning of the Housing (Scotland) Act 2006 (asp 01)) in Scotland to withhold consent to the carrying out of work in relation to the house for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence, or
  - (b) any condition imposed by such a landlord on consenting to the carrying out of such work is unreasonable.
- (4) The Commission shall aim to exercise the powers in subsections (1) to (3) so as to ensure that, so far as is reasonably practicable, conciliation services are available to parties who want them.
- (5) Information communicated to a person providing conciliation services in accordance with arrangements under this section may not be adduced in legal proceedings without the consent of the person who communicated the information.
- (6) None of the following shall participate in the provision of conciliation services for which arrangements are made under this section—
- (a) a Commissioner,
  - (b) a member of the Commission's staff,
  - (c) a member of a committee established by the Commission, and
  - (d) an Investigating Commissioner.
- (7) The Commission shall make administrative arrangements designed to secure that information in connection with conciliation services provided in accordance with arrangements made under this section is not disclosed to—
- (a) a Commissioner, or
  - (b) a member of the Commission's staff.
- (8) But subsection (7) shall not apply to a disclosure—
- (a) made with the consent of the parties to the dispute to which it relates,
  - (b) which does not identify individuals or enable them to be identified, or
  - (c) of information without which arrangements under this section cannot be made.
- (9) In this section “conciliation services” means a service which is provided—
- (a) by a person who is not party to a dispute,
  - (b) to the parties to the dispute, and
  - (c) with the aim of enabling the dispute to be settled by agreement and without legal proceedings.

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- (10) The Secretary of State may by order amend this section so as to vary the range of disputes in respect of which the Commission may make arrangements for the provision of conciliation services.

#### Textual Amendments

- F7** Words in s. 27(1)(c) inserted (1.9.2007) by [The Disability Discrimination Act 1995 \(Amendment etc.\) \(General Qualifications Bodies\) \(Alteration of Premises and Enforcement\) Regulations 2007 \(S.I. 2007/2405\)](#), [reg. 7](#)
- F8** Word in s. 27(1)(f) omitted (1.10.2006) by virtue of [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [reg. 49\(1\)](#), [Sch. 8 para. 39\(2\)](#) (with regs. 44-46)
- F9** S. 27(1)(g) and preceding word inserted (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [reg. 49\(1\)](#), [Sch. 8 para. 39\(3\)](#) (with regs. 44-46)
- F10** S. 27(1A) inserted (1.10.2007) by [The Civil Aviation \(Access to Air Travel for Disabled Persons and Persons with Reduced Mobility\) Regulations 2007 \(S.I. 2007/1895\)](#), [regs. 1\(3\)](#), [10](#)

## 28 Legal assistance

- (1) The Commission may assist an individual who is or may become party to legal proceedings if—
- (a) the proceedings relate or may relate (wholly or partly) to a provision of the equality enactments, and
  - (b) the individual alleges that he has been the victim of behaviour contrary to a provision of the equality enactments.
- (2) The Commission may assist an individual who is or may become party to legal proceedings in England and Wales if and in so far as the proceedings concern or may concern the question of a landlord's reasonableness in relation to consent to the making of an improvement to a dwelling where the improvement would be likely to facilitate the enjoyment of the premises by the tenant or another lawful occupier having regard to a disability.
- (3) The Commission may assist an individual who is or may become a party to legal proceedings in Scotland if and in so far as the proceedings concern or may concern the question whether—
- (a) it is unreasonable for a landlord to withhold consent to the carrying out of work in relation to a house (within the meaning of the [Housing \(Scotland\) Act 2006 \(asp 01\)](#)) for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence, or
  - (b) any condition imposed by a landlord on consenting to the carrying out of such work is unreasonable.
- (4) In giving assistance under this section the Commission may provide or arrange for the provision of—
- (a) legal advice;
  - (b) legal representation;
  - (c) facilities for the settlement of a dispute;
  - (d) any other form of assistance.

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- (5) Assistance may not be given under subsection (1) in relation to alleged behaviour contrary to a provision of Part V of the Disability Discrimination Act 1995 (c. 50) (public transport).
- (6) Where proceedings relate or may relate partly to a provision of the equality enactments and partly to other matters—
  - (a) assistance may be given under subsection (1) in respect of any aspect of the proceedings while they relate to a provision of the equality enactments, but
  - (b) if the proceedings cease to relate to a provision of the equality enactments, assistance may not be continued under subsection (1) in respect of the proceedings (except in so far as it is permitted by virtue of subsection (7) or (8)).
- (7) The Lord Chancellor may by order disapply subsection (6)(b), and enable the Commission to give assistance under subsection (1), in respect of legal proceedings which—
  - (a) when instituted, related (wholly or partly) to a provision of the equality enactments,
  - (b) have ceased to relate to the provision of the equality enactments, and
  - (c) relate (wholly or partly) to any of the Convention rights within the meaning given by section 1 of the Human Rights Act 1998 (c. 42).
- (8) The Secretary of State may by order enable the Commission to give assistance under this section in respect of legal proceedings in the course of which an individual who is or has been a disabled person relies or proposes to rely on a matter relating to his disability; but an order under this subsection may not permit assistance in relation to alleged behaviour contrary to a provision of Part V of the Disability Discrimination Act 1995 (c. 50).
- (9) An order under subsection (7) or (8) may make provision generally or only in relation to proceedings of a specified kind or description (which in the case of an order under subsection (7) may, in particular, refer to specified provisions of the equality enactments) or in relation to specified circumstances.
- (10) This section is without prejudice to the effect of any restriction imposed, in respect of representation—
  - (a) by virtue of an enactment (including an enactment in or under an Act of the Scottish Parliament), or
  - (b) in accordance with the practice of a court.
- (11) A legislative provision which requires insurance or an indemnity in respect of advice given in connection with a compromise contract or agreement shall not apply to advice provided by the Commission under this section.
- (12) A reference in this section to a provision of the equality enactments includes a reference to a provision of Community law which—
  - (a) relates to discrimination on grounds of sex (including reassignment of gender), racial origin, ethnic origin, religion, belief, disability, age or sexual orientation, and
  - (b) confers rights on individuals.
- (13) In its application by virtue of subsection (12), subsection (1)(b) shall have effect as if it referred to an allegation by an individual that he is disadvantaged by—

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- (a) an enactment (including an enactment in or under an Act of the Scottish Parliament) which is contrary to a provision of Community law, or
- (b) a failure by the United Kingdom to implement a right as required by Community law.

## **29 Legal assistance: costs**

- (1) This section applies where—
  - (a) the Commission has assisted an individual under section 28 in relation to proceedings, and
  - (b) the individual becomes entitled to some or all of his costs in the proceedings (whether by virtue of an award or by virtue of an agreement).
- (2) The Commission's expenses in providing the assistance—
  - (a) shall be charged on sums paid to the individual by way of costs, and
  - (b) may be enforced as a debt due to the Commission.
- (3) A requirement to pay money to the Commission under subsection (2) ranks, in England and Wales, after a requirement imposed by virtue of section 11(4)(f) of the Access to Justice Act 1999 (c. 22) (recovery of costs in funded cases).
- (4) Subsection (2), in its application to Scotland, shall not affect the operation of section 17(2A) of the Legal Aid (Scotland) Act 1986 (c. 47) (requirement in certain cases to pay to the Scottish Legal Aid Board sums recovered under awards of, or agreements as to, expenses).
- (5) For the purposes of subsection (2) the Commission's expenses shall be calculated in accordance with such provision (if any) as the Secretary of State makes for the purpose by regulations; and regulations may, in particular, provide for the apportionment of expenditure incurred by the Commission—
  - (a) partly for one purpose and partly for another, or
  - (b) for general purposes.
- (6) In the application of this section to Scotland a reference to costs shall be taken as a reference to expenses.

## **30 Judicial review and other legal proceedings**

- (1) The Commission shall have capacity to institute or intervene in legal proceedings, whether for judicial review or otherwise, if it appears to the Commission that the proceedings are relevant to a matter in connection with which the Commission has a function.
- (2) The Commission shall be taken to have title and interest in relation to the subject matter of any legal proceedings in Scotland which it has capacity to institute, or in which it has capacity to intervene, by virtue of subsection (1).
- (3) The Commission may, in the course of legal proceedings for judicial review which it institutes (or in which it intervenes), rely on section 7(1)(b) of the Human Rights Act 1998 (c. 42) (breach of Convention rights); and for that purpose—
  - (a) the Commission need not be a victim or potential victim of the unlawful act to which the proceedings relate,

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- (b) the Commission may act only if there is or would be one or more victims of the unlawful act,
- (c) section 7(3) and (4) of that Act shall not apply, and
- (d) no award of damages may be made to the Commission (whether or not the exception in section 8(3) of that Act applies);

and an expression used in this subsection and in section 7 of the Human Rights Act 1998 has the same meaning in this subsection as in that section.

- (4) Subsections (1) and (2)—
  - (a) do not create a cause of action, and
  - (b) are, except as provided by subsection (3), subject to any limitation or restriction imposed by virtue of an enactment (including an enactment in or under an Act of the Scottish Parliament) or in accordance with the practice of a court.

### **31 Public sector duties: assessment**

- (1) The Commission may assess the extent to which or the manner in which a person has complied with a duty under or by virtue of—
  - (a) section 76A, 76B or 76C of the Sex Discrimination Act 1975 (c. 65) (public authorities: duty to eliminate discrimination, &c.),
  - (b) section 71 of the Race Relations Act 1976 (c. 74) (public authorities: duty to eliminate discrimination, &c.), or
  - (c) section 49A or 49D of the Disability Discrimination Act 1995 (c. 50) (public authorities: duty to eliminate discrimination, &c.).
- (2) Schedule 2 makes supplemental provision about assessments.
- (3) This section is without prejudice to the generality of sections 16 and 20.

### **32 Public sector duties: compliance notice**

- (1) This section applies where the Commission thinks that a person has failed to comply with a duty under or by virtue of—
  - (a) section 76A, 76B or 76C of the Sex Discrimination Act 1975 (public authorities: duty to eliminate discrimination, &c.),
  - (b) section 71 of the Race Relations Act 1976 (public authorities: duty to eliminate discrimination, &c.), or
  - (c) section 49A or 49D of the Disability Discrimination Act 1995 (public authorities: duty to eliminate discrimination, &c.).
- (2) The Commission may give the person a notice requiring him—
  - (a) to comply with the duty, and
  - (b) to give the Commission, within the period of 28 days beginning with the date on which he receives the notice, written information of steps taken or proposed for the purpose of complying with the duty.
- (3) A notice under this section may require a person to give the Commission information required by the Commission for the purposes of assessing compliance with the duty; in which case the notice shall specify—

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- (a) the period within which the information is to be given (which shall begin with the date on which the notice is received and shall not exceed three months), and
  - (b) the manner and form in which the information is to be given.
- (4) The Commission may not give a notice under this section in respect of a duty under section 76A of the Sex Discrimination Act 1975, section 71(1) of the Race Relations Act 1976 or section 49A of the Disability Discrimination Act 1995 unless—
- (a) the Commission has carried out an assessment under section 31 above, and
  - (b) the notice relates to the results of the assessment.
- (5) A person who receives a notice under this section shall comply with it.
- (6) But a notice under this section shall not oblige a person to give information—
- (a) that he is prohibited from disclosing by virtue of an enactment, or
  - (b) that he could not be compelled to give in proceedings before the High Court or the Court of Session.
- (7) Paragraphs 11 and 14 of Schedule 2 shall have effect (with any necessary modifications) in relation to a requirement imposed by a notice under this section as they have effect in relation to a requirement imposed by a notice under paragraph 9 of that Schedule.
- (8) If the Commission thinks that a person, to whom a notice under this section has been given, has failed to comply with a requirement of the notice, the Commission may apply to the court for an order requiring the person to comply.
- (9) In subsection (8) “the court” means—
- (a) where the notice related to a duty under section 76A of the Sex Discrimination Act 1975 (c. 65), section 71(1) of the Race Relations Act 1976 (c. 74) or section 49A of the Disability Discrimination Act 1995 (c. 50), the High Court (in England and Wales) or (in Scotland) the Court of Session, and
  - (b) in any other case, a county court (in England and Wales) or the sheriff (in Scotland).
- (10) A notice under this section shall specify a time before which the Commission may not make an application under subsection (8) in respect of the notice.
- (11) Legal proceedings in relation to a duty by virtue of section 76B or 76C of the Sex Discrimination Act 1975, section 71(2) of the Race Relations Act 1976 or section 49D of the Disability Discrimination Act 1995—
- (a) may be brought by the Commission in accordance with subsection (8) above, and
  - (b) may not be brought in any other way.

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

- C2** S. 32(8) applied (with modifications) (1.10.2007) by [The Equality Act 2006 \(Dissolution of Commissions and Consequential and Transitional Provisions\) Order 2007 \(S.I. 2007/2602\)](#), **art. 5(4)**

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## Interpretation

### 33 Equality and human rights enactments

- (1) In this Part “the equality enactments” means—
- (a) the Equal Pay Act 1970 (c. 41),
  - (b) the Sex Discrimination Act 1975,
  - (c) the Race Relations Act 1976,
  - (d) the Disability Discrimination Act 1995,
  - (e) Part 2 of this Act,
  - (f) regulations under Part 3 of this Act,
  - (g) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661),<sup>F11</sup>...
  - (h) the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660).<sup>F12</sup> and
  - (i) the Employment Equality (Age) Regulations 2006.]
- <sup>F12</sup>(2) In this Part “the equality and human rights enactments” means the equality enactments and the Human Rights Act 1998 (c. 42).
- (3) The Secretary of State may by order amend the list in subsection (1) so as to—
- (a) add an entry,
  - (b) remove an entry, or
  - (c) vary an entry.

#### Textual Amendments

**F11** Word in s. 33(1)(g) omitted (1.10.2006) by virtue of [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 49(1), **Sch. 8 para. 40(2)** (with regs. 44-46)

**F12** S. 33(1)(i) and preceding word inserted (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 49(1), **Sch. 8 para. 40(3)** (with regs. 44-46)

### 34 Unlawful

- (1) In this Part (except section 30(3)) “unlawful” means contrary to a provision of the equality enactments.
- (2) But action is not unlawful for the purposes of this Part by reason only of the fact that it contravenes a duty under or by virtue of—
- (a) section 76A, 76B or 76C of the Sex Discrimination Act 1975 (c. 65) (public authorities: duty to eliminate discrimination, &c.),
  - (b) section 71 of the Race Relations Act 1976 (c. 74) (public authorities: duty to eliminate discrimination, &c.), or
  - (c) any of the following provisions of the Disability Discrimination Act 1995 (c. 50)—
    - (i) Part 5 (public transport),
    - (ii) sections 49A and 49D (public authorities), and
    - (iii) section 49G (consent to tenant's improvements).

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## 35 General

In this Part—

- “act” includes deliberate omission,
- “groups” has the meaning given by section 10,
- “the Commission” means the Commission for Equality and Human Rights,
- “disabled person” has the meaning given by section 8,
- “human rights” has the meaning given by section 9,
- “race” includes colour, nationality, ethnic origin and national origin,
- “religion or belief” has the same meaning as in Part 2 (as defined by section 44), and
- “sexual orientation” means an individual's sexual orientation towards—
  - (a) persons of the same sex as him or her,
  - (b) persons of the opposite sex, or
  - (c) both.

### *Dissolution of Existing Commissions*

## 36 Dissolution

- (1) The Secretary of State may by order provide for—
  - (a) any of the former Commissions to cease to exist, or
  - (b) the removal from any of the former Commissions of a specified function.
- (2) In this Part “the former Commissions” means—
  - (a) the Equal Opportunities Commission,
  - (b) the Commission for Racial Equality, and
  - (c) the Disability Rights Commission.
- (3) The Secretary of State shall by exercising the power under subsection (1) ensure that each of the former Commissions ceases to exist not later than the end of 31st March 2009.

## 37 Transfer of property, &c.

- (1) An order under section 36(1) in respect of any of the former Commissions may provide for the transfer to the Commission for Equality and Human Rights of specified property, rights and liabilities of the former Commission.
- (2) The Secretary of State may give a former Commission any direction that the Secretary of State thinks appropriate in connection with the dissolution of the former Commission or the establishment of the Commission for Equality and Human Rights; and a direction may, in particular, require the former Commission—
  - (a) to provide information in connection with property, rights or liabilities;
  - (b) to provide information in connection with the exercise of functions;
  - (c) to transfer specified property, rights and liabilities to a specified person;
  - (d) to make property, staff or facilities available, on such terms or conditions as may be specified in the direction, to the Commission for Equality and Human Rights;
  - (e) not to take action of a specified kind or in specified circumstances.



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- (3) The Secretary of State may direct a former Commission to prepare a scheme for the transfer of specified property, rights and liabilities to—
  - (a) the Commission for Equality and Human Rights, or
  - (b) another person specified in the direction.
- (4) If the Secretary of State gives a direction under subsection (3)—
  - (a) the former Commission shall prepare a scheme in accordance with the direction, having consulted either the Commission for Equality and Human Rights or the person specified under subsection (3)(b), and
  - (b) the scheme shall have effect—
    - (i) when approved by the Secretary of State, and
    - (ii) subject to any modifications made by him, having consulted the former Commission and either the Commission for Equality and Human Rights or the person specified under subsection (3)(b).
- (5) Where a former Commission ceases to exist by virtue of section 36(1)(a), its property, rights and liabilities shall by virtue of this subsection vest in the Commission for Equality and Human Rights (and this subsection operates in addition to any transfer provided for by virtue of subsection (1) above).
- (6) An order, direction or scheme under or by virtue of this section may, in particular—
  - (a) specify property, rights or liabilities;
  - (b) specify a class or description of property, rights or liabilities;
  - (c) specify property, rights or liabilities to a specified extent.

### **38 Transfer of property: supplemental**

- (1) A direction under section 37—
  - (a) shall be in writing,
  - (b) may be given only following consultation with the former Commission to which the direction relates and, where the Secretary of State thinks it appropriate, the Commission for Equality and Human Rights, and
  - (c) may be varied or revoked by a further direction.
- (2) In so far as is appropriate as a consequence of a transfer effected by or by virtue of section 37—
  - (a) anything done by or in relation to any of the former Commissions which has effect immediately before the transfer shall continue to have effect as if done by or in relation to the Commission for Equality and Human Rights, and
  - (b) anything (including any legal proceedings) which immediately before the transfer is in the process of being done by or in relation to any of the former Commissions may be continued by or in relation to the Commission for Equality and Human Rights.
- (3) In so far as is appropriate in consequence of a transfer effected by or by virtue of section 37 a reference to any of the former Commissions in an agreement, instrument or other document shall be treated as a reference to the Commission for Equality and Human Rights.
- (4) Section 37, and a direction, scheme or order under or by virtue of that section, shall operate in relation to property, rights or liabilities—

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- (a) whether or not they would otherwise be capable of being transferred,
  - (b) without any instrument or other formality being required, and
  - (c) irrespective of any requirement for consent that would otherwise apply.
- (5) A scheme or order under or by virtue of section 37 which relates to rights or liabilities under a contract of employment—
- (a) must provide for the application of the [<sup>F13</sup>Transfer of Undertakings (Protection of Employment) Regulations 2006]<sup>F13</sup>, and
  - (b) must provide that for any purpose relating to an employee of a former commission who becomes an employee of the Commission for Equality and Human Rights by virtue of the scheme or order—
    - (i) a period of employment with the former commission shall be treated as a period of employment with the Commission for Equality and Human Rights, and
    - (ii) the transfer to that Commission shall not be treated as a break in service.

#### Textual Amendments

**F13** Words in s. 38(5) substituted (6.4.2006) by virtue of [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 20, **Sch. 2 para. 1(I)** (with application according to reg. 21(1))

#### *Miscellaneous*

### 39 Orders and regulations

- (1) An order of a Minister of the Crown under this Part and regulations under this Part shall be made by statutory instrument.
- (2) An order of a Minister of the Crown under this Part and regulations under this Part—
  - (a) may make provision generally or only for specified purposes,
  - (b) may make different provision for different purposes, and
  - (c) may include transitional, incidental or consequential provision.
- (3) An order or regulations under any of the following provisions shall be subject to annulment in pursuance of a resolution of either House of Parliament—
  - (a) section 15(3),
  - (b) section 28,
  - (c) section 29,
  - (d) section 36, and
  - (e) Part 5 of Schedule 1.
- (4) An order under section 10(6), 15(6), 27(10) or 33(3)—
  - (a) may, in particular, make consequential amendment of an enactment (including this Act and including an enactment in or under an Act of the Scottish Parliament), and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

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- (5) An incidental provision included in an order or regulations by virtue of subsection (2) (c) may, in particular, impose a requirement for consent to action under or by virtue of the order or regulations.

#### 40 Consequential amendments

Schedule 3 (consequential amendments) shall have effect.

##### Commencement Information

- II** [S. 40](#) wholly in force at 1.10.2007; [s. 40](#) not in force at Royal Assent, see [s. 93](#); [s. 40](#) in force for certain purposes at 18.4.2006 by [S.I. 2006/1082](#), [art. 2](#); [s. 40](#) in force for certain further purposes at 30.4.2007 by [S.I. 2007/1092](#), [art. 2](#); [s. 40](#) in force at 1.10.2007 in so far as not already in force by [S.I. 2007/2603](#), [art. 2](#)

#### 41 Transitional: the Commission

- (1) If an order under section 93 provides for any of sections 1 to 3 and Schedule 1 to come into force (to any extent) at a time before any of sections 8 to 32 come into force (to any extent)—
- the period between that time and the commencement of any of sections 8 to 32 (to any extent) is the “transitional period” for the purposes of this section, and
  - the following provisions of this section shall have effect.
- (2) During the transitional period the minimum number of Commissioners shall be five (and not as provided by paragraph 1 of Schedule 1).
- (3) The Secretary of State shall, as soon as is reasonably practicable after making the first appointments under that paragraph, appoint as additional members of the Commission (to be known as Transition Commissioners)—
- a commissioner of the Equal Opportunities Commission nominated by its chairman,
  - a commissioner of the Commission for Racial Equality nominated by its chairman, and
  - a commissioner of the Disability Rights Commission nominated by its chairman.
- (4) A person may nominate himself as a Transition Commissioner.
- (5) If a Transition Commissioner ceases to be a commissioner of the Commission whose chairman nominated him—
- he shall cease to be a Transition Commissioner,
  - the chairman of that Commission shall nominate a replacement, and
  - the Secretary of State shall appoint the nominated replacement.
- (6) A person shall hold appointment as a Transition Commissioner until a time specified by order of the Secretary of State (subject to subsection (5)); and the Secretary of State shall specify a time which in his opinion is not more than two years after the time when, by virtue of section 36, the Commission whose chairman nominated the Transition Commissioner—
- ceases to exist, or

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(b) loses its principal functions.

(7) In all other respects the provisions of this Part apply in relation to a Transition Commissioner as in relation to another Commissioner.

#### **42 Transitional: functions of the dissolved Commissions**

- (1) An order under section 36(1)(a) or (b) may—
  - (a) provide for a former Commission to continue to exercise a function in respect of a transitional case of a kind specified;
  - (b) provide for the Commission for Equality and Human Rights to exercise a function of a former Commission in respect of a transitional case of a kind specified.
- (2) An order under section 93 commencing a provision of Schedule 3 or 4 may include a saving or a consequential or incidental provision for the purpose of the operation of provision made by virtue of subsection (1) above; and the saving, consequential or incidental provision may, in particular, include provision applying, disapplying or modifying the application of a provision of this Act or of another enactment (including an enactment in or under an Act of the Scottish Parliament).
- (3) A code of practice issued by a Commission dissolved by virtue of section 36, or which relates to a function of a Commission removed by virtue of section 36(1)(b)—
  - (a) shall continue to have effect until revoked by the Secretary of State, at the request of the Commission for Equality and Human Rights, by order made by statutory instrument, and
  - (b) may be revised by the Commission for Equality and Human Rights as if it had been issued under section 14.
- (4) Consultation undertaken by a former Commission in relation to the issue or revision of a code of practice may be relied upon by the Commission for Equality and Human Rights for a purpose of section 14.
- (5) An order under subsection (3)(a) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **43 Transitional: rented housing in Scotland**

- (1) In the Disability Discrimination Act 1995 (c. 50), the following shall be inserted after section 49H (conciliation of disputes about improvements to let dwelling houses in England and Wales)—

##### **“49I Conciliation of disputes: rented housing in Scotland**

- (1) The Disability Rights Commission may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in relation to a dispute of any description concerning the question whether—
  - (a) it is unreasonable for a landlord to withhold consent to the carrying out of any relevant work in relation to a house (within the meaning of the Housing (Scotland) Act 2006 (asp 01)) in Scotland, or
  - (b) any condition imposed by a landlord on consenting to the carrying out of any such work is unreasonable.

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- (2) Subsections (2) to (8) of section 28 apply for the purpose of this section as they apply for the purpose of that section and for that purpose a reference in that section to—
- (a) a dispute arising under Part 3 is to be construed as a reference to a dispute mentioned in subsection (1), and
  - (b) arrangements under that section is to be construed as a reference to arrangements under subsection (1).
- (3) In subsection (1), “relevant work”, in relation to a house, means work for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence.”
- (2) In section 53A (codes of practice) of that Act—
- (a) after subsection (1E) insert—

“(1F) The Commission may prepare and issue codes of practice giving practical guidance to landlords and tenants of houses (within the meaning of the Housing (Scotland) Act 2006 (asp 01)) in Scotland as to—

    - (a) circumstances in which the tenant requires the consent of the landlord to the carrying out of work in relation to the house for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence,
    - (b) circumstances in which it is unreasonable to withhold such consent,
    - (c) circumstances in which any condition imposed on the granting of such consent is unreasonable, and
    - (d) the application, in relation to such work, of—
      - (i) sections 28 to 31 and 34(6) of the Housing (Scotland) Act 2001 (asp 10), and
      - (ii) sections 52, 53 and 64(6) of the Housing (Scotland) Act 2006 (asp 01).”
  - (b) after subsection (4A) insert—

“(4B) Where a draft code of practice under subsection (1F) is submitted to the Secretary of State for approval, the Secretary of State must, before deciding whether to approve it, consult the Scottish Ministers.”
  - (c) after subsection (6A) insert—

“(6B) Before appointing a day under subsection (6)(a) for the coming into effect of a code of practice under subsection (1F), the Secretary of State shall consult the Scottish Ministers.”
  - (d) after subsection (8A) insert—

“(8B) Subsection (8A) does not apply to a code of practice under subsection (1F).”
- (3) In section 7 of the Disability Rights Commission Act 1999 (c. 17) (provision of assistance in relation to proceedings), in subsection (1), after paragraph (aa) insert—

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- “(ab) proceedings in Scotland of any description to the extent that the question whether—
- (i) it is unreasonable for a landlord to withhold consent to the carrying out of work in relation to a house (within the meaning of the Housing (Scotland) Act 2006 (asp 01)) in Scotland for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence, or
  - (ii) any condition imposed by a landlord on consenting to the carrying out of any such work is unreasonable,
- falls to be considered in the proceedings,”.

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#### **Commencement Information**

**I2** [S. 43](#) wholly in force at 4.12.2006; [s. 43](#) not in force at Royal Assent, see [s. 93](#); [s. 43\(2\)](#) in force at 18.4.2006 by [S.I. 2006/1082](#), [art. 2](#); [s. 43\(1\)\(3\)](#) in force at 4.12.2006 by [S.I. 2006/1082](#), [art. 3](#)

**Status:**

Point in time view as at 01/10/2007.

**Changes to legislation:**

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