

# Equality Bill

---

---

## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Trade and Industry, are published separately as Bill 72 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Ms Secretary Hewitt has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Equality Bill are compatible with the Convention rights.

# Equality Bill

---

---

## CONTENTS

### PART 1

#### THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

##### *The Commission*

- 1 Establishment
- 2 Constitution, &c.
- 3 Fundamental duty
- 4 Strategic plan
- 5 Strategic plan: consultation
- 6 Disclosure
- 7 Scotland: human rights

##### *Duties*

- 8 Equality and diversity
- 9 Human rights
- 10 Disability
- 11 Communities
- 12 Monitoring the law
- 13 Monitoring progress

##### *General powers*

- 14 Information, advice, &c.
- 15 Codes of practice
- 16 Codes of practice: supplemental
- 17 Inquiries
- 18 Grants
- 19 Human rights
- 20 Disability
- 21 Communities

##### *Enforcement powers*

- 22 Investigations
- 23 Unlawful act notice

- 24 Action plans
- 25 Agreements
- 26 Applications to court
- 27 Application to restrain unlawful advertising, pressure, &c.
- 28 Section 27: supplemental
- 29 Conciliation
- 30 Legal assistance
- 31 Legal assistance: costs
- 32 Judicial review and other legal proceedings
- 33 Public sector duties: assessment
- 34 Public sector duties: compliance notice

*Interpretation*

- 35 Equality and human rights enactments
- 36 Unlawful
- 37 General

*Dissolution of Existing Commissions*

- 38 Dissolution
- 39 Transfer of property, &c.
- 40 Transfer of property: supplemental

*Miscellaneous*

- 41 Orders and regulations
- 42 Consequential amendments
- 43 Transitional: the Commission
- 44 Transitional: functions of the dissolved Commissions

**PART 2**

DISCRIMINATION ON GROUNDS OF RELIGION OR BELIEF

*Key concepts*

- 45 Religion and belief
- 46 Discrimination
- 47 Harassment

*Prohibited discrimination and harassment*

- 48 Goods, facilities and services
- 49 Premises
- 50 Section 49: exceptions
- 51 Educational establishments
- 52 Section 51: exceptions
- 53 Local education authorities and education authorities
- 54 Public authorities: general

*Other unlawful acts*

- 55 Discriminatory practices

- 56 Discriminatory advertisements
- 57 Instructing or causing discrimination or harassment

*General exceptions*

- 58 Statutory requirements
- 59 Organisations relating to religion or belief
- 60 Charities relating to religion or belief
- 61 Faith schools, &c.
- 62 Education, training and welfare
- 63 Care within family
- 64 National security
- 65 Amendment of exceptions

*Enforcement*

- 66 Restriction of proceedings
- 67 Claim of unlawful action
- 68 Immigration
- 69 Remedies
- 70 Timing
- 71 Information
- 72 National security

*General*

- 73 Aiding unlawful acts
- 74 Employers' and principals' liability
- 75 Police
- 76 Indirect provision of benefit, &c.
- 77 Employment Equality Regulations
- 78 Crown application
- 79 Interpretation
- 80 Territorial application

**PART 3**

PUBLIC FUNCTIONS: SEX DISCRIMINATION

- 81 Prohibition of discrimination
- 82 General duty to promote equality, &c.
- 83 Specific duties
- 84 Codes of practice
- 85 National security

**PART 4**

GENERAL

- 86 Repeals
- 87 Crown application
- 88 Money
- 89 Commencement
- 90 Extent

## 91 Short title

- 
- Schedule 1 – The Commission: Constitution, &c.
    - Part 1 – Constitution
    - Part 2 – Proceedings
    - Part 3 – Money
    - Part 4 – Status, &c.
    - Part 5 – Disability Committee
  - Schedule 2 – Inquiries, Investigations and Assessments
  - Schedule 3 – Amendments Consequential on Part 1
  - Schedule 4 – Repeals

A  
**B I L L**

TO

Make provision for the establishment of the Commission for Equality and Human Rights; to dissolve the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission; to make provision about discrimination on grounds of religion or belief; to impose duties relating to sex discrimination on persons performing public functions; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**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. 5

**2 Constitution, &c.**

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

**3 Fundamental duty** 10

The Commission shall exercise its functions under this Part with a view to the creation 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, 15

- (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 communities based on understanding and valuing of diversity and on shared respect for equality and human rights.

5

#### **4 Strategic plan**

- (1) The Commission shall prepare a plan showing –
  - (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 publish the plan and each revision.

10

15

20

#### **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.

25

30

#### **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 17,
  - (b) by way of representations made in relation to, or otherwise in the course of, an investigation under section 22, or

35

40

- (c) from a person with whom the Commission enters into, or considers entering into, an agreement under section 25.
- (3) This subsection authorises a disclosure made –
  - (a) for the purpose of the exercise of a function of the Commission under any of sections 17, 22, 23 and 26, 5
  - (b) in a report of an investigation 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, or 10
  - (f) for the purpose of civil or criminal proceedings to which the Commission is party.
- (4) 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. 15

## 7 Scotland: human rights

- (1) The Commission shall not take action under, by virtue of or in pursuance of any of the provisions listed in subsection (2) if the action would –
  - (a) be taken in pursuance of section 9(1), and
  - (b) concern a matter in respect of which the Scottish Parliament has legislative competence. 20
- (2) The provisions mentioned in subsection (1) are –
  - (a) section 12(1) in so far as it relates to the Human Rights Act 1998 (c. 42),
  - (b) section 12(2)(c) or (d),
  - (c) section 13, 25
  - (d) section 14,
  - (e) section 17,
  - (f) section 18, and
  - (g) section 32.
- (3) Despite section 9(4), the Commission shall not, in the course of fulfilling a duty under section 8, 10 or 11 in respect of a matter relating wholly or partly to Scotland, consider whether a person’s human rights have been contravened. 30
- (4) Subsections (1) and (3) shall not prevent the Commission from taking action with the consent (whether general or specific) of a body if –
  - (a) the body is established by Act of the Scottish Parliament, and 35
  - (b) the body’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 14(1)(f) so as to act jointly or cooperate (but not assist) for a purpose relating to human rights and connected with Scotland. 40

*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, 5
  - (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 10
  - (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 36. 15

## 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, 20  
and
  - (d) encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c. 42) (prohibition of action incompatible with Convention rights).
- (2) In this Part “human rights” means – 25
- (a) the Convention rights within the meaning given by section 1 of the Human Rights Act 1998, and
  - (b) other human rights.
- (3) Despite subsection (2)(b), the Commission may not take action in relation to non-Convention rights unless satisfied that it has taken or is taking all appropriate action in relation to the Convention rights. 30
- (4) In fulfilling a duty under section 8, 10 or 11 the Commission shall take account of any relevant human rights (and this subsection is not affected by subsection (3) above).
- (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, 10 or 11 relates. 35

## 10 Disability

- (1) The Commission shall, by exercising the powers conferred by this Part –
- (a) promote understanding of the importance of the fair treatment of disabled persons, 40
  - (b) encourage good practice in the treatment of disabled persons,

- (c) work towards the elimination of prejudice against, hatred of and hostility towards disabled persons, and
  - (d) work towards the elimination of the involuntary isolation of disabled persons.
- (2) In this Part “disabled person” means a person who – 5
- (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).
- (3) This section is without prejudice to the generality of section 8. 10

## 11 Communities

- (1) The Commission shall, by exercising the powers conferred by this Part –
- (a) promote understanding of the importance of good relations –
    - (i) between different communities, and
    - (ii) between communities and others, 15
  - (b) encourage good practice in relation to relations –
    - (i) between different communities, and
    - (ii) between communities and others,
  - (c) work towards the elimination of prejudice against, hatred of and hostility towards communities, and 20
  - (d) work towards the elimination of the involuntary isolation of communities.
- (2) In this Part “community” means a group or class of persons (irrespective of whether they regard themselves as a community) who share a common attribute in respect of any of the following matters – 25
- (a) age,
  - (b) gender,
  - (c) proposed, commenced or completed reassignment of gender (within the meaning given by section 82(1) of the Sex Discrimination Act 1975 (c. 65)), 30
  - (d) race,
  - (e) religion or belief, and
  - (f) sexual orientation.
- (3) For the purposes of this Part a reference to a community (as defined in subsection (2)) includes a reference to a sub-group or sub-class, within a community, of persons who share a common attribute (in addition to the attribute by reference to which the community is defined) in respect of any of the matters specified in subsection (2)(a) to (f). 35
- (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 communities defined by reference to race, religion or belief. 40
- (5) 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. 45

- (6) This section is without prejudice to the generality of section 8.

## 12 Monitoring the law

- (1) The Commission shall monitor the effectiveness of the equality and human rights enactments.
- (2) The Commission may – 5
- (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; 10
  - (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. 15
- (3) The Commission shall comply with a direction of the Secretary of State to advise about –
- (a) the effect of an enactment (including an enactment in or under an Act of the Scottish Parliament);
  - (b) the likely effect of a proposed change of law. 20
- (4) In this section –
- (a) “central government” means Her Majesty’s Government,
  - (b) “devolved government” means – 25
    - (i) the Scottish Ministers, and
    - (ii) the National Assembly for Wales, and
  - (c) a reference to the equality enactments shall be treated as including a reference to any provision of this Act.

## 13 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, 30
  - (b) results at which to aim for the purpose of creating the society described in section 3 (“outcomes”), and
  - (c) factors by reference to which progress towards those results may be measured (“indicators”). 35
- (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 40
  - (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 5
  - (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. 10

*General powers*

**14 Information, advice, &c.**

- (1) In pursuance of its duties under sections 8 to 11 the Commission may –
  - (a) publish or otherwise disseminate ideas or information;
  - (b) undertake research; 15
  - (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). 20
- (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.

**15 Codes of practice** 25

- (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 of that Act, 30
  - (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) Parts 2 and 3 of the Employment Equality (Sexual Orientation) Regulations 2003, and 35
  - (g) Parts 2 and 3 of the Employment Equality (Religion or Belief) Regulations 2003.
- (2) A code shall contain provision designed –
  - (a) to ensure or facilitate compliance with a provision or enactment listed in subsection (1), or 40
  - (b) to promote equality of opportunity.

- (3) The Commission shall comply with a direction of the Secretary of State to issue a code under subsection (1) in connection with a specified matter.
- (4) Before issuing a code under subsection (1) the Commission shall –
- (a) publish proposals, and
  - (b) consult such persons as it thinks appropriate. 5
- (5) Before issuing a code under subsection (1) the Commission shall submit a draft to the Secretary of State, who shall –
- (a) if he approves the draft –
    - (i) notify the Commission, and
    - (ii) lay a copy before Parliament, or 10
  - (b) otherwise, give the Commission written reasons why he does not approve the draft.
- (6) Where a draft is laid before Parliament under subsection (5)(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 15
  - (b) it shall come into force in accordance with provision made by the Secretary of State by order.
- (7) If, or in so far as, a code relates to a duty imposed by or under section 76A or 76B 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 National Assembly for Wales before –
- (a) approving a draft under subsection (5)(a) above, or 20
  - (b) making an order under subsection (6)(b) above. 25

## 16 Codes of practice: supplemental

- (1) The Commission may revise a code issued under section 15; 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 15(6) –
- (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 30
  - (b) shall be taken not to include a period during which –
    - (i) Parliament is prorogued or dissolved, or 35
    - (ii) both Houses are adjourned for more than four days.
- (3) A code issued under section 15 may be revoked by the Secretary of State, at the request of the Commission, by order.
- (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 40
  - (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) The Secretary of State may by order amend the list in section 15(1) so as to –
- (a) add an entry, 45

- (b) remove an entry, or
- (c) vary an entry.

## 17 Inquiries

- (1) The Commission –
  - (a) shall comply with a direction of the Secretary of State to conduct an inquiry into a specified matter relating to any of the Commission’s duties under sections 8, 9, 10 and 11, and 5
  - (b) may conduct an inquiry into any other matter relating to any of those duties.
- (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, 10
  - (b) the Commission may commence an investigation into that question under section 22, 15
  - (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. 20
- (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 25
  - (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. 30
- (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, 35
  - (b) specify a period of at least 28 days during which he may make written representations about the draft, and 40
  - (c) consider any representations made.
- (6) Schedule 2 makes supplemental provision about inquiries.

## 18 Grants

- (1) In pursuance of any of its duties under sections 8 to 11 the Commission may make grants to another person. 45

- (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. 5

## 19 Human rights

In pursuance of its duties under section 9 the Commission may (without prejudice to the generality of section 14) co-operate with persons interested in human rights within the United Kingdom or elsewhere.

## 20 Disability 10

- (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 14).
- (2) The Commission may make, co-operate with or assist in arrangements –
- (a) for the monitoring of kinds of crime affecting disabled persons;
  - (b) designed to prevent or reduce crime affecting disabled persons; 15
  - (c) for activities (whether social, recreational, sporting, civic, educational or otherwise) designed to involve disabled persons.

## 21 Communities

- (1) In pursuance of its duties under section 11 the Commission may do anything specified in this section (without prejudice to the generality of section 14). 20
- (2) The Commission may make, co-operate with or assist in arrangements –
- (a) for the monitoring of kinds of crime affecting certain communities;
  - (b) designed to prevent or reduce crime within or affecting certain communities;
  - (c) for activities (whether social, recreational, sporting, civic, educational or otherwise) designed to involve members of communities. 25

### *Enforcement powers*

## 22 Investigations

- (1) The Commission may investigate whether or not a person –
- (a) has committed an unlawful act, 30
  - (b) has complied with a requirement imposed by an unlawful act notice under section 23, or
  - (c) has complied with an undertaking given under section 25.
- (2) The Commission shall investigate a matter specified in subsection (1) if directed to do so by the Secretary of State. 35
- (3) The Commission may conduct an investigation under subsection (1)(a) only if it suspects that the person concerned may have committed an unlawful act (but this subsection is subject to subsection (2)).

- (4) The Secretary of State may direct the Commission to investigate a matter only if he suspects that the person concerned may have committed an unlawful act.
- (5) A suspicion for the purposes of subsection (3) or (4) may (but need not) be based on the results of, or a matter arising during the course of, an inquiry under section 17. 5
- (6) 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 10
  - (c) consider any representations made.
- (7) Schedule 2 makes supplemental provision about investigations.

### 23 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 22(1)(a), and
  - (b) the Commission is satisfied that he has committed an unlawful act. 15
- (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. 20
- (3) A notice must inform the recipient of the effect of –
  - (a) subsections (5) to (7),
  - (b) section 22(1)(b), and
  - (c) section 26(1)(a). 25
- (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; 30
  - (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. 35
- (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; 40

- (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 5
  - (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.

## 24 Action plans

- (1) This section applies where a person has been given a notice under section 23 which requires him (under section 23(4)(a)) to prepare an action plan. 10
- (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— 15
- (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. 20
- (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— 25
- (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. 30
- (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, 35
  - (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 40
  - (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 45
    - (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 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. 5
- (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.
- 25 Agreements** 10
- (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 15
  - (b) the Commission undertakes not to proceed against the person under section 22 or 23 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. 20
- (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 22, 25
  - (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 36(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 22 or 23 shall be taken as a reference to section 34. 30
- 26 Applications to court**
- (1) Subsection (2) applies to a person during the period of five years beginning with the date on which –
- (a) he is given a notice under section 23, or
  - (b) a court or tribunal finds that he committed an unlawful act. 35
- (2) If the Commission thinks that a person to whom this subsection applies 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. 40

- (3) Subsection (4) applies if the Commission thinks that a party to an agreement under section 25 has failed to comply, or is likely not to comply, with an undertaking under the agreement.
- (4) The Commission may apply to a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring the person – 5
- (a) to comply with his undertaking, and
  - (b) to take such other action as the court or the sheriff may specify.

## 27 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), 10
  - (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), and 15
  - (d) sections 56 and 57 below (religious discrimination: advertising; and instructions or pressure to discriminate).
- (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 20
  - (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 – 25
    - (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 30
  - (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. 35
- (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 – 40
    - (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. 45

- (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 5
    - (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.
- (7) Subsection (1) does not apply to an act which constitutes an offence. 10

## 28 Section 27: supplemental

- (1) A complaint or application under section 27(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 15
  - (b) with the permission of the tribunal, court or sheriff.
- (2) A determination under section 27(4) shall not be relied upon by a county court or the sheriff in proceedings under section 27(5) or (6) while an appeal against the determination –
- (a) is pending, or 20
  - (b) may be brought (disregarding the possibility of an appeal out of time with permission).
- (3) An application under section 27(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 25
  - (b) with the permission of the court or sheriff.

## 29 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 – 30
- (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 or 31AE(1) of the Disability Discrimination Act 1995 (c. 50) (civil proceedings),
  - (d) section 67 below, 35
  - (e) regulation 31 of the Employment Equality (Religion or Belief) Regulations 2003 (civil proceedings), or
  - (f) regulation 31 of the Employment Equality (Sexual Orientation) Regulations 2003 (civil proceedings).
- (2) The Commission shall aim to exercise the power in subsection (1) so as to ensure that, so far as is reasonably practicable, conciliation services are available to parties who want them. 40
- (3) 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.

- (4) None of the following shall participate in the provision of conciliation services for which arrangements are made under this section – 5
- (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.
- (5) 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 – 10
- (a) a Commissioner, or
  - (b) a member of the Commission’s staff.
- (6) But subsection (5) shall not apply to a disclosure – 15
- (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.
- (7) In this section “conciliation services” means a service which is provided – 20
- (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.
- (8) The Secretary of State may by order amend the list in subsection (1) so as to – 25
- (a) add an entry,
  - (b) remove an entry, or
  - (c) vary an entry.

### **30 Legal assistance**

- (1) The Commission may assist an individual who is or may become party to legal proceedings if – 30
- (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) In giving assistance under this section the Commission may provide or arrange for the provision of – 35
- (a) legal advice;
  - (b) legal representation;
  - (c) facilities for the settlement of a dispute;
  - (d) any other form of assistance. 40
- (3) Assistance may not be given under this section in relation to alleged behaviour contrary to a provision of Part V of the Disability Discrimination Act 1995 (c. 50) (public transport).

- 
- (4) 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 this section in respect of any aspect of the proceedings while any provision of the equality enactments continues to be in issue, but 5
  - (b) if there ceases to be any provision of the equality enactments in issue, assistance may not be continued in respect of the proceedings (except in so far as it is permitted by virtue of subsection (5) or (6)).
- (5) The Lord Chancellor may by order disapply subsection (4)(b), and enable the Commission to give assistance under this section, in respect of legal proceedings which – 10
- (a) when instituted, relied both on a provision of the equality enactments and on section 7(1) of the Human Rights Act 1998 (c. 42) (proceedings in respect of action by public authority incompatible with Convention rights), and 15
  - (b) have ceased to rely on the provision of the equality enactments.
- (6) 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. 20
- (7) An order under subsection (5) or (6) may make provision generally or only in relation to proceedings of a specified kind or description (which may, in particular, refer to specified provisions of the equality enactments) or in relation to specified circumstances.
- (8) This section is without prejudice to the effect of any restriction imposed, in respect of representation – 25
- (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.
- 31 Legal assistance: costs** 30
- (1) This section applies where –
- (a) the Commission has assisted an individual under section 30 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). 35
- (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 – 40
- (a) 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), and
  - (b) in Scotland, after any sum of money payable to the Scottish Legal Aid Board under section 17(2A) of the Legal Aid (Scotland) Act 1986 (c.47) (recovery of expenses in favour of legally assisted person). 45

- (4) 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.
- (5) In the application of this section to Scotland a reference to costs shall be taken as a reference to expenses.

### 32 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. 10
- (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). 15
- (3) Subsections (1) and (2) –
- (a) do not create a cause of action,
  - (b) are 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, and
  - (c) in particular, are without prejudice to the effect of any restriction in section 7 of the Human Rights Act 1998 (c. 42). 20

### 33 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.). 30
- (2) The Commission shall assess a matter specified in subsection (1) if directed to do so by the Secretary of State.
- (3) Schedule 2 makes supplemental provision about assessments. 35
- (4) This section is without prejudice to the generality of sections 17 and 22.

### 34 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 or 76B 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 (c. 50) (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 for the purpose of complying with the duty. 5
- (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 –
  - (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. 10
- (4) A person who receives a notice under this section shall comply with it. 15
- (5) But a notice under this section shall not oblige a person to give information that he could not be compelled to give in proceedings before the High Court or the Court of Session.
- (6) 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 a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring the person to comply. 20

*Interpretation*

**35 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. 65),
  - (c) the Race Relations Act 1976 (c. 74),
  - (d) the Disability Discrimination Act 1995,
  - (e) Part 2 of this Act,
  - (f) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), and
  - (g) the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660). 25
- (2) In this Part “the equality and human rights enactments” means the equality enactments and the Human Rights Act 1998 (c. 42). 30
- (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. 35

**36 Unlawful**

- (1) In this Part “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) Part 5 or section 49A or 49D of the Disability Discrimination Act 1995 (c. 50) (public transport; public authorities duty to eliminate discrimination, &c.).

**37 General**

In this Part—

- “act” includes deliberate omission,
- “communities” has the meaning given by section 11,
- “the Commission” means the Commission for Equality and Human Rights,
- “disabled person” has the meaning given by section 10,
- “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 45), 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***38 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.

### 39 Transfer of property, &c.

- (1) An order under section 38(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; 10
  - (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; 15
  - (e) not to take action of a specified kind or in specified circumstances.
- (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 20
  - (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 25
  - (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). 30
- (5) Where a former Commission ceases to exist by virtue of section 38(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). 35
- (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. 40

### 40 Transfer of property: supplemental

- (1) A direction under section 39 –
  - (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 45

- (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 39 –
- (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 5
- (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. 10
- (3) In so far as is appropriate in consequence of a transfer effected by or by virtue of section 39 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. 15
- (4) Section 39, and a direction, scheme or order under or by virtue of that section, shall operate in relation to property, rights or liabilities –
- (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. 20
- (5) A scheme or order under or by virtue of section 39 which relates to rights or liabilities under a contract of employment –
- (a) must provide for the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794), and 25
- (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 30
- (ii) the transfer to that Commission shall not be treated as a break in service.

*Miscellaneous*

- 41 Orders and regulations** 35
- (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, 40
- (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 30, 45

- (b) section 31,
  - (c) section 38, and
  - (d) Part 5 of Schedule 1.
- (4) An order under section 11(5), 16(5), 29(8) or 35(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 5
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) An incidental provision included in an order or regulations under subsection (2)(c) may, in particular, impose a requirement for consent to action under or by virtue of the order or regulations. 10

## 42 Consequential amendments

Schedule 3 (consequential amendments) shall have effect.

## 43 Transitional: the Commission 15

- (1) If an order under section 89 provides for sections 1 to 3 and Schedule 1 to come into force at a time before any of sections 8 to 34 come into force –
- (a) the period between that time and the commencement of any of sections 8 to 34 is the “transitional period” for the purposes of this section, and
  - (b) the following provisions of this section shall have effect. 20
- (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) – 25
- (a) a commissioner of the Equal Opportunities Commission nominated by its chairman,
  - (b) a commissioner of the Commission for Racial Equality nominated by its chairman, and
  - (c) a commissioner of the Disability Rights Commission nominated by its chairman. 30
- (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 – 35
- (a) he shall cease to be a Transition Commissioner,
  - (b) the chairman of that Commission shall nominate a replacement, and
  - (c) 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 38, the Commission whose chairman nominated the Transition Commissioner – 40
- (a) ceases to exist, or
  - (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.
- (8) The Transition Commissioner nominated by the chairman of the Disability Rights Commission shall vacate office upon the establishment of the Disability Committee under Part 5 of Schedule 1 (and subsections (5) and (6) are subject to this subsection). 5

#### 44 Transitional: functions of the dissolved Commissions

- (1) An order under section 38(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; 10
  - (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 89 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). 15
- (3) A code of practice issued by a Commission dissolved by virtue of section 38, or which relates to a function of a Commission removed by virtue of section 38(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 20
  - (b) may be revised by the Commission for Equality and Human Rights as if it had been issued under section 15. 25
- (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 15. 30

## PART 2

### DISCRIMINATION ON GROUNDS OF RELIGION OR BELIEF

#### *Key concepts*

- 45 **Religion and belief** 35
- In this Part –
- (a) “religion” means any religion,
  - (b) “belief” means any religious or philosophical belief,
  - (c) a reference to religion includes a reference to lack of religion, and
  - (d) a reference to belief includes a reference to lack of belief. 40

## 46 Discrimination

- (1) A person (“A”) discriminates against another (“B”) for the purposes of this Part if on grounds of religion or belief A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances). 5
- (2) In subsection (1) the reference to religion or belief is a reference to –
- (a) a religion or belief of B or of any other person except A, and
  - (b) a religion or belief to which B or any other person except A is thought to belong or subscribe.
- (3) A person (“A”) discriminates against another (“B”) for the purposes of this Part if A applies to B a requirement, condition or practice – 10
- (a) which he applies or would apply equally to persons not of B’s religion or belief,
  - (b) which puts persons of B’s religion or belief at a disadvantage compared to some or all others (where there is no material difference in the relevant circumstances), 15
  - (c) which puts B at a disadvantage compared to some or all persons who are not of his religion or belief (where there is no material difference in the relevant circumstances), and
  - (d) which A cannot reasonably justify by reference to matters other than B’s religion or belief. 20
- (4) A person (“A”) discriminates against another (“B”) if A treats B less favourably than he treats or would treat another and does so by reason of the fact that, or by reason of A’s knowledge or suspicion that, B – 25
- (a) has brought or intended to bring, or intends to bring, proceedings under this Part,
  - (b) has given or intended to give, or intends to give, evidence in proceedings under this Part,
  - (c) has provided or intended to provide, or intends to provide, information in connection with proceedings under this Part, 30
  - (d) has done or intended to do, or intends to do, any other thing under or in connection with this Part, or
  - (e) has alleged or intended to allege, or intends to allege, that a person contravened this Part.
- (5) Subsection (4) does not apply where A’s treatment of B relates to B’s making or intending to make, not in good faith, a false allegation. 35

## 47 Harassment

- (1) For the purposes of this Part a person (“A”) harasses another (“B”) if on grounds of religion or belief A does anything which has the purpose or effect of – 40
- (a) violating B’s dignity, or
  - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) In subsection (1) –
- (a) “religion or belief” means a religion or belief of B or of any other person except A, and 45

- (b) a reference to a person’s religion or belief includes a reference to a religion or belief to which he is thought to belong or subscribe.
- (3) Action by A shall be regarded as having the effect described in subsection (1)(a) or (b) only if it should reasonably be regarded as having that effect having regard to – 5
  - (a) B’s perception, and
  - (b) all the other circumstances.
- (4) Where B wants A to do something, it is not harassment for the purposes of subsection (1).

*Prohibited discrimination and harassment* 10

**48 Goods, facilities and services**

- (1) It is unlawful for a person (“A”) concerned with the provision to the public or a section of the public of goods, facilities or services to discriminate against a person (“B”) who seeks to obtain or use those goods, facilities or services – 15
  - (a) by refusing to provide B with goods, facilities or services,
  - (b) by refusing to provide B with goods, facilities or services of a quality which is the same as or similar to the quality of goods, facilities or services that A normally provides to – 20
    - (i) the public, or
    - (ii) a section of the public to which B belongs,
  - (c) by refusing to provide B with goods, facilities or services in a manner which is the same as or similar to that in which A normally provides goods, facilities or services to – 25
    - (i) the public, or
    - (ii) a section of the public to which B belongs, or
  - (d) by refusing to provide B with goods, facilities or services on terms which are the same as or similar to the terms on which A normally provides goods, facilities or services to – 30
    - (i) the public, or
    - (ii) a section of the public to which B belongs.
- (2) Subsection (1) applies, in particular, to – 35
  - (a) access to and use of a place which the public are permitted to enter,
  - (b) accommodation in a hotel, boarding house or similar establishment,
  - (c) facilities by way of banking or insurance or for grants, loans, credit or finance,
  - (d) facilities for entertainment, recreation or refreshment,
  - (e) facilities for transport or travel, and
  - (f) the services of a profession or trade.
- (3) Where a skill is commonly exercised in different ways in relation to or for the purposes of different religions or beliefs, a person who normally exercises it in relation to or for the purpose of a religion or belief does not contravene subsection (1) by – 40
  - (a) insisting on exercising the skill in the way in which he exercises it in relation to or for the purposes of that religion or belief, or

- (b) if he reasonably considers it impracticable to exercise the skill in that way in relation to or for the purposes of another religion or belief, to refuse to exercise it in relation to or for the purposes of that other religion or belief.
- (4) Subsection (1) – 5
  - (a) does not apply to a service provided by a person exercising a public function, and
  - (b) does not apply to a service if discrimination in relation to the provision of that service –
    - (i) is unlawful by virtue of another provision of this Part or by virtue of a provision of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), or 10
    - (ii) would be unlawful by virtue of another provision of this Part or of those regulations but for an express exception.
- (5) For the purposes of subsection (1) it is immaterial whether or not a person charges for the provision of goods, facilities or services. 15

#### 49 Premises

- (1) It is unlawful for a person to discriminate against another –
  - (a) in the terms on which he offers to dispose of premises to him,
  - (b) by refusing to dispose of premises to him, or 20
  - (c) in connection with a list of persons requiring premises.
- (2) It is unlawful for a person managing premises to discriminate against an occupier –
  - (a) in the manner in which he provides access to a benefit or facility,
  - (b) by refusing access to a benefit or facility, 25
  - (c) by evicting him, or
  - (d) by subjecting him to another detriment.
- (3) It is unlawful for a person managing premises to harass an occupier.
- (4) It is unlawful for a person concerned in the disposal of premises to harass a person who applies to occupy premises. 30
- (5) It is unlawful for a person to discriminate against another by refusing permission for the disposal of premises to him.
- (6) This section applies only to premises in Great Britain.

#### 50 Section 49: exceptions

- (1) Section 49 shall not apply to anything done in relation to the disposal of part of premises by a person (“the landlord”) if – 35
  - (a) the landlord or a near relative resides, and intends to continue to reside, in another part of the premises,
  - (b) the premises include parts (other than storage areas and means of access) shared by residents of the premises, and 40
  - (c) the premises are not normally sufficient to accommodate –
    - (i) in the case of premises to be occupied by households, more than two households in addition to that of the landlord or his near relative, or

- (ii) in the case of premises to be occupied by individuals, more than six individuals in addition to the landlord or his near relative.
- (2) In subsection (1) “near relative” means –
- (a) spouse or civil partner,
  - (b) parent or grandparent, 5
  - (c) child or grandchild (whether or not legitimate),
  - (d) the spouse or civil partner of a child or grandchild,
  - (e) brother or sister (whether of full blood or half-blood), and
  - (f) any of the relationships listed in paragraphs (b) to (e) above that arises through marriage, civil partnership or adoption. 10
- (3) Section 49 shall not apply to the disposal of premises by a person who –
- (a) owns an estate or interest in the premises,
  - (b) occupies the whole of the premises,
  - (c) does not use the services of an estate agent for the purposes of the disposal, and 15
  - (d) does not arrange for the publication of an advertisement for the purposes of the disposal.

## 51 Educational establishments

- (1) It is unlawful for the responsible body of an educational establishment listed in the Table to discriminate against a person – 20
- (a) in the terms on which it offers to admit him as a pupil,
  - (b) by refusing to accept an application to admit him as a pupil, or
  - (c) where he is a pupil of the establishment – 25
    - (i) in the way in which it affords him access to any benefit, facility or service,
    - (ii) by refusing him access to a benefit, facility or service,
    - (iii) by excluding him from the establishment, or
    - (iv) by subjecting him to any other detriment.
- (2) It is unlawful for the responsible body of an educational establishment listed in the Table to harass – 30
- (a) a pupil at the establishment, or
  - (b) a person who applies to be admitted as a pupil.
- (3) In the application of this section to England and Wales – 35
- (a) an expression also used in any of the Education Acts (within the meaning of section 578 of the Education Act 1996 (c. 56)) has the same meaning as in that Act, and
  - (b) “pupil” in relation to an establishment includes any person who receives education at the establishment.
- (4) In the application of this section to Scotland, an expression also used in the Education (Scotland) Act 1980 (c. 44) has the same meaning as in that Act. 40

*Establishment*

*Responsible body*

---

ENGLAND AND WALES

<i>Establishment</i>	<i>Responsible body</i>	
School maintained by a local education authority.	Local education authority or governing body.	
Independent school (other than a special school).	Proprietor.	5
Special school (not maintained by local education authority).	Proprietor.	
SCOTLAND		
Public school.	Education authority.	
Grant-aided school.	Manager.	10
Independent school.	Proprietor.	

## 52 Section 51: exceptions

- (1) Section 51 shall not apply in relation to—
  - (a) a school designated under section 69(3) of the School Standards and Framework Act 1998 (c. 31) (foundation or voluntary school with religious character), 15
  - (b) a school listed in the register of independent schools for England or for Wales if the school’s entry in the register records that the school has a religious ethos,
  - (c) a school transferred to an education authority under section 16 of the Education (Scotland) Act 1980 (c. 44) (transfer of certain schools to education authorities) which is conducted in the interest of a church or denominational body, 20
  - (d) a school provided by an education authority under section 17(2) of that Act (denominational schools), 25
  - (e) a grant-aided school (within the meaning of that Act) which is conducted in the interest of a church or denominational body, or
  - (f) a school registered in the register of independent schools for Scotland if the school—
    - (i) admits only pupils who belong, or whose parents belong, to one or more particular denominations, or 30
    - (ii) is conducted in the interest of a church or denominational body.
- (2) Section 51(1)(c)(i), (ii) or (iv) or (2)(a) shall not apply in relation to anything done in connection with—
  - (a) the content of the curriculum, or 35
  - (b) religious worship.
- (3) The Secretary of State may make regulations—
  - (a) amending or repealing an exception in subsection (1) or (2);
  - (b) providing for an additional exception to section 51;
  - (c) about the construction or application of section 46(3)(d) in relation to section 51. 40
- (4) Regulations under subsection (3)—

- (a) may include transitional or incidental provision,
- (b) may make provision generally or only in respect of specified cases or circumstances (which may, in particular, be defined by reference to location),
- (c) may make different provision in respect of different cases or circumstances (which may, in particular, be defined by reference to location), 5
- (d) shall be made by statutory instrument,
- (e) may not be made unless the Secretary of State has consulted such persons as he thinks appropriate, and 10
- (f) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### 53 Local education authorities and education authorities

- (1) It is unlawful for a local education authority (in England and Wales) or an education authority (in Scotland) in the exercise of their functions to discriminate against or harass a person. 15
- (2) In its application to local education authorities the prohibition in subsection (1) shall not apply to—
  - (a) the exercise of an authority’s functions under section 14 of the Education Act 1996 (c. 56) (provision of schools), 20
  - (b) the exercise of an authority’s functions in relation to transport,
  - (c) the exercise of an authority’s functions under section 13 of that Act (general responsibility for education) in so far as they relate to a matter specified in paragraph (a) or (b) above, or
  - (d) the exercise of functions as the responsible body for an establishment listed in the Table in section 51. 25
- (3) In its application to education authorities the prohibition in subsection (1) shall not apply to—
  - (a) the exercise of an authority’s functions under section 17 of the Education (Scotland) Act 1980 (c. 44) (provision etc. of schools), 30
  - (b) the exercise of an authority’s functions in relation to transport,
  - (c) the exercise of an authority’s functions under section 1 of that Act, section 2 of the Standards in Scotland’s Schools etc. Act 2000 (asp 6) and sections 4 and 5 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (duties in relation to provision of education) in so far as they relate to a matter specified in paragraph (a) or (b) above, 35
  - (d) the exercise of an authority’s functions under section 50(1) of the Education (Scotland) Act 1980 (education of pupils in exceptional circumstances) in so far as they consist of making arrangements of the kind referred to in subsection (2) of that section, or 40
  - (e) the exercise of functions as the responsible body for an establishment listed in the Table in section 51.

### 54 Public authorities: general

- (1) It is unlawful for a public authority exercising a function to do any act which constitutes discrimination or harassment. 45

- 
- (2) In subsection (1) –
- (a) “public authority” includes any person who has functions of a public nature (subject to subsections (3) and (4)), and
  - (b) “function” means function of a public nature.
- (3) The prohibition in subsection (1) shall not apply to – 5
- (a) the House of Commons,
  - (b) the House of Lords,
  - (c) the authorities of either House of Parliament,
  - (d) the Security Service,
  - (e) the Secret Intelligence Service, 10
  - (f) the Government Communications Headquarters, or
  - (g) a part of the armed forces of the Crown which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.
- (4) The prohibition in subsection (1) shall not apply to – 15
- (a) the exercise of a judicial function,
  - (b) anything done on behalf of or on the instructions of a person exercising a judicial function,
  - (c) preparing, passing (or making), confirming, approving or considering an enactment (including legislation made by or by virtue of a Measure of the General Synod of the Church of England), 20
  - (d) the making of an instrument by a Minister of the Crown under an enactment,
  - (e) the making of an instrument by the Scottish Ministers or a member of the Scottish Executive under an enactment, 25
  - (f) a decision to refuse entry clearance or to vary leave to enter or remain in the United Kingdom, in accordance with the Immigration Acts, or anything done for the purposes of or in pursuance of a decision of that kind,
  - (g) a decision not to institute or continue criminal proceedings (and anything done in pursuance of such a decision), 30
  - (h) action in relation to –
    - (i) the curriculum of an educational institution,
    - (ii) admission to an educational institution which has a religious ethos, 35
    - (iii) religious worship in an educational institution,
    - (iv) the governing body of an educational institution which has a religious ethos,
    - (v) transport to or from an educational institution, or
    - (vi) the establishment, alteration or closure of educational institutions, 40
  - (i) action which –
    - (i) is unlawful by virtue of another provision of this Part or by virtue of a provision of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), or 45
    - (ii) would be unlawful by virtue of another provision of this Part or of those regulations but for an express exception, or
  - (j) action of a kind, or in circumstances, specified for the purpose of this paragraph by order of the Secretary of State.

- (5) In an action under section 67 in respect of a contravention of this section –
- (a) the court shall not grant an injunction unless satisfied that it will not prejudice criminal proceedings or a criminal investigation, and
  - (b) the court shall grant any application to stay the section 67 proceedings on the grounds of prejudice to criminal proceedings or to a criminal investigation, unless satisfied that the proceedings or investigation will not be prejudiced. 5
- (6) Section 71(4) shall not apply in relation to a reply, or a failure to reply, to a question in connection with an alleged contravention of this section –
- (a) if the respondent or potential respondent reasonably asserts that to have replied differently or at all might have prejudiced criminal proceedings or a criminal investigation, 10
  - (b) if the respondent or potential respondent reasonably asserts that to have replied differently or at all would have revealed the reason for not instituting or not continuing criminal proceedings, 15
  - (c) where the reply is of a kind specified for the purposes of this paragraph by order of the Secretary of State,
  - (d) where the reply is given in circumstances specified for the purposes of this paragraph by order of the Secretary of State, or
  - (e) where the failure occurs in circumstances specified for the purposes of this paragraph by order of the Secretary of State. 20
- (7) In this section –
- “criminal investigation” means –
    - (a) an investigation into the commission of an alleged offence, and
    - (b) a decision whether to institute criminal proceedings, and 25  - “enactment” includes an Act of the Scottish Parliament.
- (8) An order under subsection (4)(j) or (6)(c) to (e) –
- (a) may include transitional or incidental provision,
  - (b) may make provision generally or only for specified cases or circumstances, 30
  - (c) may make different provision for different circumstances,
  - (d) shall be made by statutory instrument, and
  - (e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (9) In this application of this section to proceedings in Scotland – 35
- (a) a reference to the court shall be taken as a reference to the sheriff,
  - (b) a reference to an injunction shall be taken as a reference to an interdict,
  - (c) a reference to staying proceedings shall be taken as a reference to sisting proceedings, and
  - (d) a reference to the respondent or potential respondent shall be taken as a reference to the defender or potential defender. 40

*Other unlawful acts***55 Discriminatory practices**

- (1) It is unlawful for a person to operate a practice which –
- (a) results in unlawful discrimination or harassment, or 45

- (b) would be likely to result in unlawful discrimination if applied to persons of any religion or belief.
- (2) It is unlawful for a person to adopt or maintain a practice or arrangement in accordance with which in certain circumstances a practice would be operated in contravention of subsection (1). 5
- (3) In this section “unlawful discrimination or harassment” means discrimination or harassment which is unlawful by virtue of any of sections 48 to 54.
- (4) Proceedings in respect of a contravention of this section may be brought only –
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with sections 22 to 27. 10

## 56 Discriminatory advertisements

- (1) It is unlawful to publish an advertisement, or to cause an advertisement to be published, if it indicates (expressly or impliedly) an intention by any person to discriminate unlawfully.
- (2) In subsection (1) the reference to unlawful discrimination is a reference to discrimination which is unlawful by virtue of any of sections 48 to 54. 15
- (3) Proceedings in respect of a contravention of subsection (1) may be brought only –
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 27. 20
- (4) A person who publishes an advertisement shall not be liable in proceedings under that section in respect of the publication of the advertisement if he proves that –
  - (a) he published in reliance on a statement, made by a person causing the advertisement to be published, that subsection (1) would not apply, and 25
  - (b) that it was reasonable to rely on that statement.
- (5) A person commits an offence if he knowingly or recklessly makes a false statement of the kind mentioned in subsection (4)(a).
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale. 30

## 57 Instructing or causing discrimination or harassment

- (1) It is unlawful for a person to instruct another to unlawfully discriminate or to unlawfully harass.
- (2) It is unlawful for a person to cause or attempt to cause another to unlawfully discriminate or to unlawfully harass. 35
- (3) It is unlawful for a person to induce or attempt to induce another to unlawfully discriminate or to unlawfully harass.
- (4) For the purposes of subsection (3) inducement may be direct or indirect.
- (5) In this section a reference to unlawful discrimination or harassment is a reference to discrimination or harassment which is unlawful by virtue of any of sections 48 to 54. 40

- (6) Proceedings in respect of a contravention of this section may be brought only –
- (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 27.

*General exceptions*

- 58 Statutory requirements** 5
- Nothing in this Part shall make it unlawful to do anything which is necessary, or in so far as it is necessary, for the purpose of complying with –
- (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) legislation made or to be made – 10
    - (i) by a Minister of the Crown,
    - (ii) by Order in Council,
    - (iii) by the Scottish Ministers or a member of the Scottish Executive,
    - (iv) by the National Assembly for Wales, or
    - (v) by or by virtue of a Measure of the General Synod of the Church of England, or
  - (d) a condition or requirement imposed by a Minister of the Crown by virtue of anything listed in paragraphs (a) to (c). 15
- 59 Organisations relating to religion or belief**
- (1) This section applies to an organisation the purpose of which is – 20
    - (a) to practice a religion or belief,
    - (b) to advance a religion or belief,
    - (c) to teach the practice or principles of a religion or belief,
    - (d) to enable persons of a religion or belief to share any benefit, or to engage in any activity, within the framework of that religion or belief, or 25
    - (e) to improve relations, or maintain good relations, between persons of different religions or beliefs.
  - (2) But this section does not apply to an organisation whose sole or main purpose is commercial. 30
  - (3) Nothing in this Part shall make it unlawful for an organisation to which this section applies or anyone acting on behalf of or under the auspices of an organisation to which this section applies –
    - (a) to restrict membership of the organisation,
    - (b) to restrict participation in activities undertaken by the organisation or on its behalf or under its auspices, 35
    - (c) to restrict the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices, or
    - (d) to restrict the use of premises owned or controlled by the organisation. 40
  - (4) Nothing in this Part shall make it unlawful for a minister –
    - (a) to restrict participation in activities carried on in the performance of his functions in connection with or in respect of an organisation to which this section relates, or

- (b) to restrict the provision of goods, facilities or services in the course of activities carried on in the performance of his functions in connection with or in respect of an organisation to which this section relates.
- (5) But subsections (3) and (4) permit a restriction only in so far as it is necessary –
  - (a) having regard to the purpose of the organisation, or 5
  - (b) to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.
- (6) In subsection (4) the reference to a minister is a reference to a minister of religion, or other person, who –
  - (a) performs functions in connection with a religion or belief to which an organisation, to which this section applies, relates, and 10
  - (b) holds an office or appointment in, or is accredited, approved or recognised for purposes of, an organisation to which this section applies.
- 60 Charities relating to religion or belief 15**
  - (1) Nothing in this Part shall make it unlawful for a person who provides benefits to provide them only to persons of a particular religion or belief, if he acts in pursuance of a provision of a charitable instrument.
  - (2) In this section “charitable instrument” –
    - (a) means an instrument establishing or governing a charity, and 20
    - (b) includes a charitable instrument made before the commencement of this section.
- 61 Faith schools, &c.**
  - (1) Nothing in this Part shall make it unlawful for an educational institution established or conducted for the purpose of providing education relating to, or within the framework of, a specified religion or belief – 25
    - (a) to restrict the provision of goods, facilities or services, or
    - (b) to restrict the use of premises.
  - (2) But subsection (1) permits a restriction only in so far as it is necessary –
    - (a) having regard to the purpose of the institution, or 30
    - (b) to avoid causing offence, on grounds of the religion or belief to which the institution relates, to persons connected with the institution.
  - (3) In this Part a reference to the provision of facilities or services shall not, in so far as it applies to an educational institution, include a reference to educational facilities or educational services provided to students of the institution. 35
- 62 Education, training and welfare**
  - Nothing in this Part shall make it unlawful to do anything by way of –
    - (a) meeting special needs for education, training or welfare of persons of a religion or belief, or
    - (b) providing ancillary benefits in connection with meeting the needs mentioned in paragraph (a). 40

**63 Care within family**

Nothing in this Part shall make it unlawful for a person to take into his home, and treat in the same manner as a member of his family, a person who requires a special degree of care and attention (whether by reason of being a child or an elderly person or otherwise).

5

**64 National security**

Nothing in this Part shall make unlawful anything which is done for, and justified by, the purpose of safeguarding national security.

**65 Amendment of exceptions**

- (1) The Secretary of State may by order amend this Part so as to – 10
  - (a) create an exception to a prohibition under this Part,
  - (b) vary an exception to a prohibition under this Part, or
  - (c) remove an exception to a prohibition under this Part.
- (2) Before making an order under subsection (1) the Secretary of State shall consult the Commission for Equality and Human Rights. 15
- (3) An order under subsection (1) –
  - (a) may include transitional, incidental or consequential provision (including provision amending an enactment (including an enactment in or under an Act of the Scottish Parliament)),
  - (b) shall be made by statutory instrument, and 20
  - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

*Enforcement***66 Restriction of proceedings**

- (1) Except as provided by this Act, no proceedings, whether criminal or civil, may be brought against a person on the grounds that an act is unlawful by virtue of this Part. 25
- (2) But subsection (1) does not prevent –
  - (a) an application for judicial review,
  - (b) proceedings under the Immigration Acts, 30
  - (c) proceedings under the Special Immigration Appeals Commission Act 1997 (c. 68), or
  - (d) in Scotland, the exercise of the jurisdiction of the Court of Session to entertain an application for reduction or suspension of an order or determination or otherwise to consider the validity of an order or determination, or to require reasons for an order or determination to be stated. 35

**67 Claim of unlawful action**

- (1) A claim that a person has done anything that is unlawful by virtue of this Part may be brought in a county court (in England and Wales) or in the sheriff court 40

- (in Scotland) by way of proceedings in tort (or reparation) for breach of statutory duty.
- (2) Proceedings in England and Wales alleging that any of the following bodies has acted unlawfully by virtue of section 51 or 53 may not be brought unless the claimant has given written notice to the Secretary of State; and those bodies are – 5
- (a) a local education authority, and
  - (b) the responsible body of an educational establishment listed in the Table in section 51.
- (3) Proceedings in Scotland alleging that any of the following bodies has acted unlawfully by virtue of section 51 or 53 may not be brought unless the pursuer has given written notice to the Scottish Ministers; and those bodies are – 10
- (a) an education authority, and
  - (b) the responsible body of an educational establishment listed in the Table in section 51. 15
- (4) In subsection (1) the reference to a claim that a person has done an unlawful act includes a reference to a claim that a person is to be treated by virtue of this Part as having done an unlawful act.
- (5) In proceedings under this section, if the claimant (or pursuer) proves facts from which the court could conclude, in the absence of a reasonable alternative explanation, that an act which is unlawful by virtue of this Part has been committed, the court shall assume that the act was unlawful unless the respondent (or defender) proves that it was not. 20
- 68 Immigration**
- (1) Proceedings may not be brought under section 67 alleging that a person has acted unlawfully by virtue of section 54 if the question of the lawfulness of the act could be raised (and has not been raised) in immigration proceedings (disregarding the possibility of proceedings brought out of time with permission). 25
- (2) If in immigration proceedings a court or tribunal has found that an act was unlawful by virtue of section 54, a court hearing proceedings under section 67 shall accept that finding. 30
- (3) In this section “immigration proceedings” means proceedings under or by virtue of – 35
- (a) the Immigration Acts, or
  - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).
- 69 Remedies**
- (1) This section applies to proceedings under section 67.
- (2) A court may, in addition to any remedy available to it in proceedings for tort, grant any remedy that the High Court could grant in proceedings for judicial review. 40
- (3) A court may not award damages in proceedings in respect of an act that is unlawful by virtue of section 46(3) if the respondent proves that there was no intention to treat the claimant unfavourably on grounds of religion or belief.

- (4) A court may award damages by way of compensation for injury to feelings (whether or not other damages are also awarded).
- (5) In this application of this section to proceedings in Scotland –
- (a) a reference to the High Court shall be taken as a reference to the Court of Session, 5
  - (b) a reference to tort shall be taken as a reference to reparation,
  - (c) a reference to the respondent shall be taken as a reference to the defender, and
  - (d) a reference to the claimant shall be taken as a reference to the pursuer.
- (6) This section is subject to section 54(5). 10

## 70 Timing

- (1) Proceedings under section 67 may be brought only –
- (a) within the period of six months beginning with the date of the act (or last act) to which the proceedings relate, or
  - (b) with the permission of the court in which the proceedings are brought. 15
- (2) In relation to immigration proceedings within the meaning of section 68, the period specified in subsection (1)(a) above shall begin with the first date on which proceedings under section 67 may be brought.

## 71 Information

- (1) In this section –
- (a) a reference to a claimant is a reference to a person who has brought proceedings under this Part, 20
  - (b) a reference to a potential claimant is a reference to a person who –
    - (i) thinks he may have been the subject of an act that is unlawful by virtue of this Part, and 25
    - (ii) wishes to consider whether to bring proceedings under this Part, and
  - (c) a person questioned by a potential claimant for the purpose of considering whether to bring proceedings is referred to as a potential respondent. 30
- (2) The Secretary of State shall by order prescribe –
- (a) forms by which a claimant or potential claimant may question the respondent or a potential respondent about the reasons for an action or about any matter that is or may be relevant, and
  - (b) forms by which a respondent or potential respondent may reply (if he wishes). 35
- (3) A claimant's or potential claimant's questions, and a respondent or potential respondent's replies, (in each case whether or not put by a prescribed form) shall be admissible as evidence in proceedings in respect of the act to which the questions relate if (and only if) the questions are put –
- (a) within the period of six months beginning with the date of the act (or last act) to which they relate, and
  - (b) in such manner as the Secretary of State may prescribe by order. 40
- (4) A court may draw an inference from –

- (a) a failure to reply to a claimant’s or potential claimant’s questions (whether or not put by a prescribed form) within the period of eight weeks beginning with the date of receipt, or
  - (b) an evasive or equivocal reply to a claimant’s or potential claimant’s questions (whether or not put by a prescribed form). 5
- (5) The Lord Chancellor may by order amend subsection (3)(a) so as to substitute a new period for that specified.
- (6) In the application of this section to Scotland –
  - (a) a reference to a claimant or potential claimant shall be taken as a reference to a pursuer or potential pursuer, and 10
  - (b) a reference to a respondent or potential respondent shall be taken as a reference to a defender or potential defender.
- (7) An order under this section –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (8) This section is subject to section 54(6).

## 72 National security

- (1) Rules of court may make provision for enabling a county court or sheriff court in which a claim is brought under section 67, where the court considers it expedient in the interests of national security – 20
  - (a) to exclude from all or part of the proceedings –
    - (i) the claimant;
    - (ii) the claimant’s representatives;
    - (iii) any assessors; 25
  - (b) to permit a claimant or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or the part of the proceedings, from which he is excluded;
  - (c) to take steps to keep secret all or part of the reasons for the court’s decision in the proceedings. 30
- (2) The Attorney General or, in Scotland, the Advocate General for Scotland, may appoint a person to represent the interests of a claimant in, or in any part of, proceedings from which the claimant or his representatives are excluded by virtue of subsection (1).
- (3) A person may be appointed under subsection (2) only – 35
  - (a) in relation to proceedings in England and Wales, if he has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), or
  - (b) in relation to proceedings in Scotland, if he is –
    - (i) an advocate, or 40
    - (ii) a solicitor who by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46) has rights of audience in the Court of Session or the High Court of Justiciary.
- (4) A person appointed under subsection (2) shall not be responsible to the person whose interests he is appointed to represent. 45

*General*

- 73 Aiding unlawful acts**
- (1) It is unlawful knowingly to help another person (whether or not as his employee or agent) to do anything which is unlawful under this Part.
  - (2) A person commits an offence if he knowingly or recklessly makes a false statement, in connection with assistance sought from another, that a proposed act is not unlawful under this Part. 5
  - (3) A person guilty of an offence under subsection (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 74 Employers' and principals' liability** 10
- (1) Anything done by a person in the course of his employment shall be treated for the purposes of this Part as done by the employer as well as by the person.
  - (2) Anything done by a person as agent for another shall be treated for the purposes of this Part as done by the principal as well as by the agent.
  - (3) It is immaterial for the purposes of this section whether an employer or principal knows about or approves of an act. 15
  - (4) In proceedings under this Part against a person in respect of an act alleged to have been done by his employee it shall be a defence for the employer to provide that he took such steps as were reasonably practicable to prevent the employee – 20
    - (a) from doing the act, or
    - (b) from doing acts of that kind in the course of his employment.
  - (5) Subsections (1) and (2) shall not apply to the commission of an offence under section 56.
- 75 Police** 25
- (1) This section applies to –
    - (a) a constable who is a member of a police force maintained under the Police Act 1996 (c. 16) or the Police (Scotland) Act 1967 (c. 77),
    - (b) a special constable appointed for a police area in accordance with either of those Acts, and 30
    - (c) a person appointed as a police cadet in accordance with either of those Acts.
  - (2) A person to whom this section applies shall be treated for the purposes of this Part as the employee of his chief officer of police; and anything done by the person in the performance or purported performance of his functions shall be treated as done in the course of that employment. 35
  - (3) There shall be paid out of the police fund –
    - (a) compensation, costs or expenses awarded against a chief officer of police in proceedings brought against him under this Part;
    - (b) costs or expenses incurred by a chief officer of police in proceedings brought against him under this Part so far as not recovered in the proceedings; 40

- 
- (c) sums required by a chief officer of police for the settlement of a claim made against him under this Part if the settlement is approved by the police authority.
- (4) A police authority may pay out of the police fund –
- (a) damages or costs awarded in proceedings under this Part against a person under the direction and control of the chief officer of police; 5
  - (b) costs incurred and not recovered by such a person in such proceedings;
  - (c) sums required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- 76 Indirect provision of benefit, &c. 10**
- A reference in this Part to providing a service, facility or benefit of any kind includes a reference to facilitating access to the service, facility or benefit.
- 77 Employment Equality Regulations 15**
- For regulation 2(1) of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660) (definition of “religion or belief”) substitute –
- “(1) In these Regulations –
- (a) “religion” means any religion,
  - (b) “belief” means any religious or philosophical belief,
  - (c) a reference to religion includes a reference to lack of religion, and 20
  - (d) a reference to belief includes a reference to lack of belief.”
- 78 Crown application**
- (1) Section 54 binds the Crown.
- (2) The remainder of this Part applies to an act done on behalf of the Crown as it applies to an act done by a private person. 25
- (3) For the purposes of subsection (2) an act is done on behalf of the Crown if (and only if) done –
- (a) by or on behalf of a Minister of the Crown,
  - (b) by or on behalf of the Scottish Ministers, 30
  - (c) by a government department,
  - (d) by a body established by an enactment (including an enactment in or under an Act of the Scottish Parliament) acting on behalf of the Crown,
  - (e) by or on behalf of the holder of an office established by an enactment (including an enactment in or under an Act of the Scottish Parliament) acting on behalf of the Crown, or 35
  - (f) by or on behalf of an office-holder in the Scottish Administration (within the meaning of section 126(7) of the Scotland Act 1998 (c. 46)).
- 79 Interpretation**
- (1) In this Part “charity” – 40

- (a) in relation to England and Wales, has the meaning given by the Charities Act 2005, and
  - (b) in relation to Scotland, means a recognised body within the meaning given by section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40). 5
- (2) In this Part –
- (a) a reference to action includes a reference to deliberate omission, and
  - (b) a reference to refusal includes a reference to deliberate omission.
- 80 Territorial application**
- (1) This Part applies in relation to anything done in Great Britain. 10
- (2) This Part also applies to the provision of –
- (a) facilities for travel on a British ship, a British hovercraft or a British aircraft, and
  - (b) benefits, facilities or services provided on a British ship, a British hovercraft or a British aircraft. 15
- (3) Section 54, in so far as it relates to granting entry clearance (within the meaning of the Immigration Acts), applies to anything done whether inside or outside the United Kingdom.
- (4) In this section –
- “British aircraft” means an aircraft registered in Great Britain, 20
  - “British hovercraft” means a hovercraft registered in Great Britain, and
  - “British ship” means a ship which is –
    - (a) registered in Great Britain, or
    - (b) owned by or used for purposes of the Crown.
- (5) This section shall not make it unlawful to do anything in or over a country other than the United Kingdom, or in or over the territorial waters of a country other than the United Kingdom, for the purpose of complying with a law of the country. 25

### PART 3

#### PUBLIC FUNCTIONS: SEX DISCRIMINATION 30

### 81 Prohibition of discrimination

- (1) In the Sex Discrimination Act 1975 (c. 65) the following shall be inserted at the beginning of Part III (discrimination in non-employment fields) –
- “21A Public authorities**
- (1) It is unlawful for a public authority exercising a function to do any act which constitutes discrimination. 35
- (2) In subsection (1) –
- (a) “public authority” includes any person who has functions of a public nature (subject to subsections (3) and (4)), and
  - (b) “function” means function of a public nature. 40
- (3) The prohibition in subsection (1) shall not apply to –

	(a) the House of Commons,	
	(b) the House of Lords,	
	(c) the Security Service,	
	(d) the Secret Intelligence Service,	
	(e) the Government Communications Headquarters, or	5
	(f) a part of the armed forces of the Crown which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.	
(4)	The prohibition in subsection (1) shall not apply to the functions and actions listed in the Table of Exceptions in subsection (9).	10
(5)	The Secretary of State may by order amend the Table of Exceptions.	
(6)	In an action under section 66 in respect of a contravention of this section –	
	(a) the court shall not grant an injunction or interdict unless satisfied that it will not prejudice criminal proceedings or a criminal investigation, and	15
	(b) the court shall grant any application to stay or sist the section 66 proceedings on the grounds of prejudice to criminal proceedings or to a criminal investigation, unless satisfied that the proceedings or investigation will not be prejudiced.	20
(7)	Section 74(2)(b) shall not apply in relation to a respondent’s reply, or a failure to reply, to a question in connection with an alleged contravention of this section –	
	(a) if the respondent reasonably asserts that to have replied differently or at all might have prejudiced criminal proceedings or a criminal investigation,	25
	(b) if the respondent reasonably asserts that to have replied differently or at all would have revealed the reason for not instituting or not continuing criminal proceedings,	
	(c) where the reply is of a kind specified for the purposes of this paragraph by order of the Secretary of State,	30
	(d) where the reply is given in circumstances specified for the purposes of this paragraph by order of the Secretary of State, or	
	(e) where the failure occurs in circumstances specified for the purposes of this paragraph by order of the Secretary of State.	35
(8)	In this section “criminal investigation” means –	
	(a) an investigation into the commission of an alleged offence, and	
	(b) a decision whether to institute criminal proceedings.	
(9)	The following is the Table of Exceptions referred to in subsection (4).	
	<i>Legislation</i>	40
1	Preparing, making, or considering –	
	(a) an Act of Parliament,	
	(b) a Bill for an Act of Parliament,	
	(c) an Act of the Scottish Parliament, or	
	(d) a Bill for an Act of the Scottish Parliament.	45

2	Preparing, making, confirming, approving, or considering legislation made or to be made—	
	(a) by a Minister of the Crown,	
	(b) by Order in Council,	
	(c) by the Scottish Ministers or any member of the Scottish Executive,	5
	(d) by the National Assembly for Wales, or	
	(e) by or by virtue of a Measure of the General Synod of the Church of England.	
3	Action which is necessary, or in so far as it is necessary, for the purpose of complying with—	10
	(a) an Act of Parliament,	
	(b) an Act of the Scottish Parliament, or	
	(c) legislation of a kind described in Item 2.	
	<i>The courts, &amp;c.</i>	15
4	A judicial function (whether in connection with a court or a tribunal).	
5	Anything done on behalf of or on the instructions of a person exercising a judicial function (whether in connection with a court or a tribunal).	
6	A decision not to institute or continue criminal proceedings.	20
7	Anything done for the purpose of reaching, or in pursuance of, a decision not to institute or continue criminal proceedings.	
	<i>Separate services, &amp;c.</i>	
8	The provision of a service for one sex only where only persons of that sex require the service.	25
9	The provision of separate services for each sex where a joint service would or might be less effective.	
10	The provision of a service for one sex only where—	
	(a) the service is also provided jointly for both sexes, and	
	(b) if the service were provided only jointly it would or might be insufficiently effective.	30
11	The provision of a service for one sex only where—	
	(a) if the service were provided for both sexes jointly it would or might be less effective, and	
	(b) the extent to which the service is required by the other sex makes it not reasonably practicable to provide separate services for that sex.	35

12	The provision of separate services for each sex in different ways or to different extents where— (a) if the service were provided for both sexes jointly it would or might be less effective, and (b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service for that sex in the same way or to the same extent as for the other sex.	5
13	Action taken for the purpose of assisting one sex to overcome— (a) a disadvantage (as compared with the other sex), or (b) the effects of discrimination.	10
	<i>Miscellaneous</i>	
14	The exercise of a function of the Charity Commissioners for England and Wales in relation to an instrument in relation to which section 43 applies.	
15	Action which is unlawful by virtue of another provision of this Act.	15
16	Action which would be unlawful by virtue of another provision of this Act but for an express exception.”	
(2)	In section 17(5) of the Sex Discrimination Act 1975 (c. 65) (police) for “by virtue of subsection (1)” substitute “by virtue of subsection (1) or (1A)”.	
(3)	In section 81 of that Act (orders)— (a) in subsection (2) after “sections” insert “21A,”, and (b) after subsection (2) insert— “(2A) An order under section 21A(5) may not be made unless— (a) the Secretary of State has consulted the Commission, and (b) a draft has been laid before and approved by resolution of each House of Parliament.”	20 25
(4)	In section 85 of that Act (Crown application) after subsection (3) insert— “(3A) Section 21A binds the Crown.”	
<b>82</b>	<b>General duty to promote equality, &amp;c.</b>	30
(1)	In the Sex Discrimination Act 1975 the following shall be inserted at the beginning of Part VIII (supplemental)— <b>“76A Public authorities: general statutory duty</b> (1) A public authority shall in carrying out its functions have due regard to the need— (a) to eliminate unlawful discrimination, and (b) to promote equality of opportunity between men and women. (2) In subsection (1)— (a) “public authority” includes any person who has functions of a public nature (subject to subsections (3) and (4)), (b) “functions” means functions of a public nature, and	35 40

- (c) the reference to unlawful discrimination shall be treated as including a reference to contravention of terms of contracts having effect in accordance with an equality clause within the meaning of section 1 of the Equal Pay Act 1970 (c. 41).
- (3) The duty in subsection (1) shall not apply to— 5
- (a) the House of Commons,
  - (b) the House of Lords,
  - (c) the Scottish Parliament,
  - (d) the General Synod of the Church of England,
  - (e) the Security Service, 10
  - (f) the Secret Intelligence Service,
  - (g) the Government Communications Headquarters,
  - (h) a part of the armed forces of the Crown which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters, or 15
  - (i) a person specified for the purpose of this paragraph by order of the Secretary of State (and a person may be specified generally or only in respect of specified functions).
- (4) The duty in subsection (1) shall not apply to the exercise of— 20
- (a) a function in connection with proceedings in the House of Commons or the House of Lords,
  - (b) a function in connection with proceedings in the Scottish Parliament (other than a function of the Scottish Parliamentary Corporate Body),
  - (c) a judicial function (whether in connection with a court or a tribunal), 25
  - (d) a function exercised on behalf of or on the instructions of a person exercising a judicial function (whether in connection with a court or a tribunal), or
  - (e) a function specified for the purpose of this paragraph by order of the Secretary of State. 30
- (5) Subsection (1)(b) is without prejudice to the effect of any exception to or limitation of the law about sex discrimination.
- (6) A failure in respect of performance of the duty under subsection (1) does not confer a cause of action at private law.” 35
- (2) In section 81 of the Sex Discrimination Act 1975 (c. 65) (orders) after subsection (2A) (inserted by section 81 above) insert—
- “(2B) An order under section 76A(3)(i) or (4)(e) may not be made unless the Secretary of State has consulted the Commission.”
- (3) In section 85 of that Act (Crown application) after subsection (3A) (inserted by section 81 above) insert— 40
- “(3B) Section 76A binds the Crown.”

### 83 Specific duties

- (1) In the Sex Discrimination Act 1975 the following shall be inserted after section

76A (inserted by section 82 above) –

**“76B Specific duties**

- (1) The Secretary of State may by order impose on a person to whom the duty in section 76A(1) applies, or in so far as that duty applies to a person, a duty which the Secretary of State thinks will ensure better performance of the duty under section 76A(1). 5
- (2) Before making an order under subsection (1) the Secretary of State shall consult the Commission.
- (3) The Secretary of State –
  - (a) must consult the National Assembly for Wales before making an order under subsection (1) in respect of a person exercising functions in relation to Wales, and 10
  - (b) may not, without the consent of the National Assembly for Wales, make an order under subsection (1) in respect of a person all of whose functions are public functions in relation to Wales. 15
- (4) A failure in respect of performance of a duty imposed under subsection (1) does not confer a cause of action at private law.

**76C Specific duties: Scotland**

- (1) Section 76B(1) shall not apply in relation to a person who is a relevant Scottish authority or a cross-border authority. 20
- (2) The Secretary of State may by order impose on a cross-border authority to whom the duty under section 76A(1) applies, or in so far as that duty applies to the cross-border authority, a duty which the Secretary of State thinks will ensure better performance of the duty under section 76A(1), to the extent that the cross-border authority’s functions are not Scottish functions. 25
- (3) The Scottish Ministers may by order impose on a relevant Scottish authority to whom the duty under section 76A(1) applies, or in so far as that duty applies to the relevant Scottish authority, a duty which the Scottish Ministers think will ensure better performance of the duty under section 76A(1). 30
- (4) The Scottish Ministers may by order impose on a cross-border authority to whom the duty under section 76A(1) applies, or in so far as that duty applies to the cross-border authority, a duty which the Scottish Ministers think will ensure better performance of the duty under section 76A(1), to the extent that the cross-border authority’s functions are Scottish functions. 35
- (5) Before making an order under any of subsections (2) to (4) the person making the order shall consult the Commission. 40
- (6) Before making an order under subsection (2) the Secretary of State shall consult the Scottish Ministers.
- (7) Before making an order under subsection (4) the Scottish Ministers shall consult the Secretary of State.

- (8) A failure in respect of performance of a duty imposed under this section does not confer a cause of action at private law.
- (9) In this section—
- “relevant Scottish authority” means—
- (a) a member of the Scottish Executive or a junior Scottish Minister, 5
  - (b) the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland,
  - (c) an office of a description specified in an Order in Council under section 126(8)(b) of the Scotland Act 1998 (c. 46) (other non-ministerial offices in the Scottish Administration), or 10
  - (d) a public body, public office or holder of a public office—
    - (i) which is not a cross-border authority or the Scottish Parliamentary Corporate Body, 15
    - (ii) whose functions are exercisable only in or as regards Scotland, and
    - (iii) some at least of whose functions do not relate to reserved matters (within the meaning of the Scotland Act 1998), 20
- “cross-border authority” means a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998, and
- “Scottish functions” means functions which are exercisable in or as regards Scotland and which do not relate to reserved matters (within the meaning of the Scotland Act 1998). 25
- 76D Specific duties: enforcement**
- (1) This section applies where the Commission thinks that a person has failed to comply with a duty imposed under section 76B or 76C. 30
- (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 for the purpose of complying with the duty. 35
- (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— 40
- (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) A person who receives a notice under this section shall comply with it. 45
- (5) But a notice under this section shall not oblige a person to give information that he could not be compelled to give in proceedings before the High Court or the Court of Session.

- (6) 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 a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring the person to comply.” 5
- (2) In section 81 of the Sex Discrimination Act 1975 (c. 65) (orders) after subsection (2B) (inserted by section 82 above) insert –
- “(2C) An order under section 76C(3) or (4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- 84 Codes of practice** 10
- In the Sex Discrimination Act 1975 the following shall be inserted after section 76D (inserted by section 83 above) –
- “76E Codes of practice**
- (1) The Commission may issue a code of practice about the performance of – 15
- (a) the duty under section 76A(1), or
- (b) a duty imposed under section 76B or 76C.
- (2) The Commission shall comply with a direction of the Secretary of State to issue a code under subsection (1) in respect of a specified matter.
- (3) Section 56A(2) to (11) shall apply to a code under this section as to a code under that section. 20
- (4) The Secretary of State shall consult the Scottish Ministers and the National Assembly for Wales before –
- (a) approving a draft under section 56A(4)(a) as applied by subsection (3) above, or 25
- (b) making an order under section 56A(7) as applied by subsection (3) above.”
- 85 National security**
- (1) In the Sex Discrimination Act 1975 the following shall be inserted after section 66A (burden of proof in county and sheriff courts) – 30
- “66B National security**
- (1) Rules of court may make provision for enabling a county court or sheriff court in which a claim is brought under section 66(1), where the court considers it expedient in the interests of national security –
- (a) to exclude from all or part of the proceedings – 35
- (i) the claimant;
- (ii) the claimant’s representatives;
- (iii) any assessors;
- (b) to permit a claimant or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or the part of the proceedings, from which he is excluded; 40

- (c) to take steps to keep secret all or part of the reasons for the court’s decision in the proceedings.
- (2) The Attorney General or, in Scotland, the Advocate General for Scotland, may appoint a person to represent the interests of a claimant in, or in any part of, proceedings from which the claimant or his representatives are excluded by virtue of subsection (1). 5
- (3) A person may be appointed under subsection (2) only –
- (a) in relation to proceedings in England and Wales, if he has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), or 10
- (b) in relation to proceedings in Scotland, if he is –
- (i) an advocate, or
- (ii) a solicitor who by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46) has rights of audience in the Court of Session or the High Court of Justiciary. 15
- (4) A person appointed under subsection (2) shall not be responsible to the person whose interests he is appointed to represent.”
- (2) In section 67A(2) of the Race Relations Act 1976 (c. 74) (national security) for “the claimant and his representatives” substitute “the claimant or his representatives”. 20

#### PART 4

##### GENERAL

#### 86 Repeals

The enactments listed in Schedule 4 are hereby repealed to the extent specified.

#### 87 Crown application

25

This Act applies (except as is otherwise expressly provided) to –

- (a) Ministers of the Crown,
- (b) government departments,
- (c) office-holders in the Scottish Administration (within the meaning of section 126(7) of the Scotland Act 1998 (c. 46), and 30
- (d) other agents of the Crown.

#### 88 Money

*Any expenditure incurred by a Minister of the Crown in connection with this Act shall be paid out of money provided by Parliament.*

#### 89 Commencement

35

- (1) The preceding provisions of this Act, except for sections 43 and 44, shall come into force in accordance with provision made by the Secretary of State by order.
- (2) An order under subsection (1) –
- (a) shall be made by statutory instrument,

- (b) may make provision generally or only for a specified purpose,
- (c) may make different provision for different purposes, and
- (d) may include transitional provisions and savings.

**90 Extent**

- (1) This Act extends only to— 5
  - (a) England and Wales, and
  - (b) Scotland.
- (2) But an amendment of an enactment by this Act shall have the same extent as the enactment amended (or as the relevant part of the enactment amended).

**91 Short title**

10

This Act may be cited as the Equality Act 2005.

## SCHEDULES

## SCHEDULE 1

Section 2

## THE COMMISSION: CONSTITUTION, &amp;c.

## PART 1

## CONSTITUTION

5

*Membership*

- 1 (1) The Secretary of State shall appoint not less than 10 or more than 15 individuals as members of the Commission (to be known as Commissioners).
- (2) The chief executive of the Commission (appointed under paragraph 7 below) shall be a Commissioner *ex officio*. 10
- 2 (1) In appointing Commissioners the Secretary of State shall have regard to the desirability of their together having experience and knowledge relating to the matters in respect of which the Commission has functions including, in particular – 15
- (a) discrimination (whether on grounds of age, disability, gender, gender reassignment, race, religion or belief, sexual orientation or otherwise), and
- (b) human rights.
- (2) The Secretary of State shall ensure that the Commission includes – 20
- (a) a Commissioner appointed under paragraph 1(1) who is (or has been) a disabled person,
- (b) a Commissioner appointed under paragraph 1(1), with the consent of the Scottish Ministers, who knows about conditions in Scotland, and 25
- (c) a Commissioner appointed under paragraph 1(1), with the consent of the National Assembly for Wales, who knows about conditions in Wales.
- (3) A person may not be appointed for the purpose of satisfying more than one paragraph of sub-paragraph (2). 30

*Tenure*

- 3 (1) A Commissioner shall hold and vacate office in accordance with the terms of his appointment (subject to this Schedule).
- (2) The appointment of a Commissioner must be expressed to be for a specified period of not less than two years or more than five years. 35

- (3) A Commissioner whose period of membership has expired may be re-appointed.
- (4) A Commissioner may resign by notice in writing to the Secretary of State.
- (5) The Secretary of State may dismiss a Commissioner who is, in the opinion of the Secretary of State, unable, unfit or unwilling to perform his functions. 5
- (6) This paragraph does not apply to the chief executive.

*Chairman*

- 4 (1) The Secretary of State shall appoint—
  - (a) a Commissioner as Chairman, and
  - (b) one or more Commissioners as deputy Chairman. 10
- (2) The Chairman shall—
  - (a) preside over meetings of the Commission,
  - (b) perform such functions as may be specified in the terms of his appointment, and
  - (c) perform such other functions as may be assigned to him by the Commission. 15
- (3) A deputy Chairman—
  - (a) may act for the Chairman when he is unavailable, and
  - (b) shall perform—
    - (i) such functions as may be specified in the terms of his appointment, and
    - (ii) such other functions as the Chairman may delegate or assign to him. 20
- (4) The Chairman or a deputy Chairman—
  - (a) shall vacate office if he ceases to be a Commissioner, 25
  - (b) may resign by notice in writing to the Secretary of State, and
  - (c) otherwise, shall hold and vacate office in accordance with the terms of his appointment (and may be reappointed).
- (5) If the Chairman resigns he shall cease to be a Commissioner (but he may be reappointed as a Commissioner). 30
- (6) The chief executive may not be appointed Chairman or deputy Chairman.

PART 2

PROCEEDINGS

*Procedure*

- 5 The Commission may regulate its own proceedings (subject to this Schedule). 35
- 6 (1) The Commission shall determine a quorum for its meetings.
- (2) At least five Commissioners must participate in the process by which a determination under sub-paragraph (1) is made.

### Staff

- 7 (1) The Commission –
- (a) shall appoint a chief executive, and
  - (b) may appoint other staff.
- (2) A person may be appointed under sub-paragraph (1)(a) only with the consent of the Secretary of State. 5
- (3) An appointment may be made under sub-paragraph (1)(b) only if consistent with arrangements determined by the Commission and approved by the Secretary of State as to –
- (a) numbers, and 10
  - (b) terms and conditions of appointment.
- 8 At the end of section 3(2) of the Employers’ Liability (Compulsory Insurance) Act 1969 (c. 57) (exempt employers) add –
- “; and
  - (c) the Commission for Equality and Human Rights.” 15

### Investigating Commissioners

- 9 (1) The Commission may appoint one or more Investigating Commissioners.
- (2) An Investigating Commissioner may be appointed only –
- (a) for the purpose of having delegated to him by the Commission the function of taking action which is of a kind listed in sub-paragraph (3) and which relates to a specified person, and 20
  - (b) with the consent of the Secretary of State.
- (3) The kinds of action referred to in sub-paragraph (2)(a) are –
- (a) carrying out an inquiry under section 17,
  - (b) carrying out an investigation under section 22, 25
  - (c) giving an unlawful act notice under section 23, and
  - (d) entering into an agreement under section 25.
- (4) An Investigating Commissioner is not a Commissioner; but paragraphs 3(1), (4) and (5) and 33 apply to him as if he were (and with the substitution of references to the Commission for references to the Secretary of State). 30

### Delegation

- 10 (1) The Commission may delegate a function –
- (a) to a Commissioner,
  - (b) to staff, or
  - (c) in accordance with paragraph 9, to an Investigating Commissioner. 35
- (2) Paragraphs 15, 21, 22, 29, 30 and 52 make provision about delegation to committees.

### Committees

- 11 (1) The Commission may establish one or more committees (to be known as advisory committees) to advise – 40
- (a) the Commission, or

- (b) an Investigating Commissioner.
- (2) An advisory committee may include any of the following –
  - (a) Commissioners;
  - (b) staff;
  - (c) other non-Commissioners. 5
- 12 (1) The Commission may establish one or more committees to whom the Commission may delegate functions (to be known as decision-making committees).
- (2) A decision-making committee may include any of the following –
  - (a) Commissioners; 10
  - (b) staff;
  - (c) other non-Commissioners.
- (3) The Commission shall ensure that the Chairman of each decision-making committee is a Commissioner.
- (4) In allocating its resources the Commission shall ensure that each decision-making committee receives a share sufficient to enable it to exercise its functions. 15
- 13 A member of a committee shall hold and vacate office in accordance with the terms of his appointment by the Commission (which may include provision for dismissal). 20
- 14 The Commission –
  - (a) may, to any extent, regulate the proceedings of a committee (and may, in particular, determine a quorum for meetings),
  - (b) may, to any extent, permit a committee to regulate its own proceedings (and may, in particular, enable a committee to determine a quorum for meetings), and 25
  - (c) may dissolve a committee.
- 15 (1) The Commission may delegate a function to a decision-making committee.
- (2) This paragraph is subject to paragraphs 21, 22, 29 and 30 and Part 5.
- Scotland Committee* 30
- 16 (1) The Commission shall establish a decision-making committee to be known as the Scotland Committee.
- (2) The Commission shall ensure that the Scotland Committee is established before sections 8 to 13 come into force.
- 17 The Commission shall appoint as the Chairman of the Scotland Committee a Commissioner appointed for the purpose of satisfying paragraph 2(2)(b). 35
- 18 The Commission shall appoint each member of the Scotland Committee for a period of not less than two years or more than 5 years, subject to the possibilities of –
  - (a) reappointment, and 40
  - (b) dismissal in accordance with the terms of appointment.
- 19 The Scotland Committee shall advise the Commission about the exercise of the Commission’s functions in so far as they affect Scotland.

- 
- 20 Before exercising a function in a manner which in the opinion of the Commission is likely to affect persons in Scotland, the Commission shall consult the Scotland Committee.
- 21 (1) The power under section 14 –
- (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Scotland Committee in so far as its exercise, in the opinion of the Commission, affects Scotland, and 5
  - (b) to that extent shall not be exercisable by the Commission.
- (2) Sub-paragraph (1) shall not apply to the power under section 14 in so far as it is treated as delegated to the Disability Committee in accordance with paragraph 52. 10
- (3) Sub-paragraph (1) shall not prevent the Commission from making arrangements under section 14(1)(d) to make advice or guidance available to persons anywhere in Great Britain.
- 22 (1) The power under section 12(2)(c) – 15
- (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Scotland Committee in so far as it concerns the giving of advice to devolved government about enactments which, in the opinion of the Commission, affect only Scotland, and
  - (b) to that extent shall not be exercisable by the Commission. 20
- (2) The power under section 12(2)(d) –
- (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Scotland Committee in so far as it concerns the giving of advice to devolved government about proposed changes in the law which, in the opinion of the Commission, would affect only Scotland, and 25
  - (b) to that extent shall not be exercisable by the Commission.
- 23 In allocating its resources the Commission shall ensure that the Scotland Committee receives a share sufficient to enable it to exercise its functions.
- Wales Committee* 30
- 24 (1) The Commission shall establish a decision-making committee to be known as the Wales Committee.
- (2) The Commission shall ensure that the Wales Committee is established before sections 8 to 13 come into force.
- 25 The Commission shall appoint as the Chairman of the Wales Committee a Commissioner appointed for the purpose of satisfying paragraph 2(2)(c). 35
- 26 The Commission shall appoint each member of the Wales Committee for a period of not less than two years or more than 5 years, subject to the possibilities of –
- (a) reappointment, and 40
  - (b) dismissal in accordance with the terms of appointment.
- 27 The Wales Committee shall advise the Commission about the exercise of its functions in so far as they affect Wales.

- 
- 28 Before exercising a function in a manner which in the opinion of the Commission is likely to affect persons in Wales, the Commission shall consult the Wales Committee.
- 29 (1) The power under section 14 –
- (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Wales Committee in so far as its exercise, in the opinion of the Commission, affects Wales, and 5
  - (b) to that extent shall not be exercisable by the Commission.
- (2) Sub-paragraph (1) does not apply to the power under section 14 in so far as it is treated as delegated to the Disability Committee in accordance with paragraph 52. 10
- (3) Sub-paragraph (1) shall not prevent the Commission from making arrangements under section 14(1)(d) to make advice or guidance available to persons anywhere in Great Britain.
- 30 (1) The power under section 12(2)(c) – 15
- (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Wales Committee in so far as it concerns the giving of advice to devolved government about enactments which, in the opinion of the Commission, affect only Wales, and
  - (b) to that extent shall not be exercisable by the Commission. 20
- (2) The power under section 12(2)(d) –
- (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Wales Committee in so far as it concerns the giving of advice to devolved government about proposed changes in the law which, in the opinion of the Commission, would affect only Wales, and 25
  - (b) to that extent shall not be exercisable by the Commission.
- 31 In allocating its resources the Commission shall ensure that the Wales Committee receives a share sufficient to enable it to exercise its functions.
- Annual report* 30
- 32 (1) The Commission shall for each financial year prepare a report on the performance of its functions in that year (to be known as its annual report).
- (2) An annual report shall, in particular, indicate in what manner and to what extent the Commission’s performance of its functions has accorded to the plan under section 4. 35
- (3) The matters addressed by an annual report shall, in particular, include the Commission’s activities in relation to –
- (a) Scotland, and
  - (b) Wales.
- (4) The Commission shall send each annual report to the Secretary of State within such period, beginning with the end of the financial year to which the report relates, as he may specify. 40
- (5) The Secretary of State shall lay before Parliament a copy of each annual report received under sub-paragraph (4).

- (6) The Commission shall send a copy of each annual report to –
- (a) the Scottish Parliament, and
  - (b) the National Assembly for Wales.

*Savings*

- |    |  |    |
|----|--|----|
| 33 | The validity of proceedings of the Commission shall not be affected by –                               | 5  |
|    | (a) a vacancy (whether for Commissioner, Chairman, deputy Chairman or chief executive), or             |    |
|    | (b) a defect in relation to an appointment.  |    |
| 34 | The validity of proceedings of a committee of the Commission shall not be affected by –                | 10 |
|    | (a) a vacancy (including a vacancy in the office of Chairman), or                                      |    |
|    | (b) a defect in relation to an appointment (including a defect in relation to the office of Chairman). |    |

PART 3

MONEY 15

*Remuneration, &c.*

- |    |   |    |
|----|---|----|
| 35 | (1) The Commission may pay to the Chairman, a deputy Chairman or another Commissioner –   |    |
|    | (a) such remuneration as the Secretary of State may determine, and  |    |
|    | (b) such travelling and other allowances as the Secretary of State may determine.   | 20 |
|    | (2) The Commission may pay to or in respect of the Chairman, a deputy Chairman or another Commissioner such sums as the Secretary of State may determine by way of, or in respect of, pensions, allowances or gratuities.   |    |
|    | (3) If the Secretary of State thinks that there are special circumstances that make it right for a person ceasing to hold office as Chairman, deputy Chairman or Commissioner to receive compensation, the Commission may pay to him such compensation as the Secretary of State may determine. | 25 |
|    | (4) This paragraph does not apply to the Chief Executive.   |    |
| 36 | (1) The Commission may pay sums to or in respect of a member or former member of staff by way of or in respect of –   | 30 |
|    | (a) remuneration,   |    |
|    | (b) allowances,   |    |
|    | (c) pensions,   |    |
|    | (d) gratuities, or  | 35 |
|    | (e) compensation for loss of employment.  |    |
|    | (2) <i>In Schedule 1 to the Superannuation Act 1972 (c. 11) (employment to which superannuation schemes may extend) in the list of other bodies insert at the appropriate place –</i>   |    |
|    | (a) <i>“The Commission for Equality and Human Rights.”</i>  | 40 |
|    | (3) The Commission shall pay to the Minister for the Civil Service such sums as he may determine in respect of any increase attributable to sub-paragraph   |    |

(2) in the sums payable out of money provided by Parliament under the Superannuation Act 1972 (c. 11).

- 37 (1) The Commission may, with the approval of the Secretary of State, pay sums to or in respect of a member or former member of an advisory or decision-making committee by way of or in respect of – 5
- (a) remuneration,
  - (b) allowances, or
  - (c) gratuities.
- (2) This paragraph does not apply in relation to a person who is a member of staff of the Commission. 10
- (3) Approval for the purposes of sub-paragraph (1) may be general or specific.

#### *Funding by Secretary of State*

- 38 *The Secretary of State shall pay to the Commission such sums as appear to the Secretary of State appropriate for the purpose of enabling the Commission to perform its functions.* 15

#### *Charging*

- 39 The Commission may make a charge for a service provided under section 14 or 29.

#### *Accounts*

- 40 (1) The Commission shall – 20
- (a) keep proper accounting records, and
  - (b) prepare a statement of accounts in respect of each financial year in such form as the Secretary of State may direct.
- (2) The Commission shall send a copy of a statement under sub-paragraph (1)(b) to – 25
- (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General.
- (3) A copy of a statement must be sent under sub-paragraph (2) within such period, beginning with the end of the financial year to which the statement relates, as the Secretary of State may direct. 30
- (4) The Comptroller and Auditor General shall –
- (a) examine, certify and report on a statement received under this paragraph, and
  - (b) lay a copy of the statement and his report before Parliament.
- (5) The Secretary of State may make a direction under sub-paragraph (1)(b) only with the consent of the Treasury. 35

#### *Financial year*

- 41 (1) The financial year of the Commission shall be the period of 12 months ending with 31st March.
- (2) But the first financial year of the Commission shall be the period – 40

- (a) beginning with the coming into force of section 1, and
- (b) ending with—
  - (i) the following 31st March, if that section comes into force on 1st April, and
  - (ii) the second following 31st March, in any other case. 5

PART 4

STATUS, &c.

*Status*

- 42 (1) The Commission shall not—
- (a) be regarded as the servant or agent of the Crown, or 10
  - (b) enjoy any status, immunity or privilege of the Crown.
- (2) Service as Commissioner, Investigating Commissioner or employee of the Commission is not employment in the civil service of the State.

*Supervision*

- 43 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments, &c. subject to investigation) at the appropriate place insert— 15
- “The Commission for Equality and Human Rights.”

*Disqualifications*

- 44 (1) In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies all members of which are disqualified) at the appropriate place insert— 20
- “The Commission for Equality and Human Rights.”
- (2) In Part III of that Schedule (other disqualifying offices) at the appropriate place insert— 25
- “Investigating Commissioner of, or member of a decision-making committee of, the Commission for Equality and Human Rights.”
- 45 (1) In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies all members of which are disqualified) at the appropriate place insert— 30
- “The Commission for Equality and Human Rights.”
- (2) In Part III of that Schedule (other disqualifying offices) at the appropriate place insert— 35
- “Investigating Commissioner of, or member of a decision-making committee of, the Commission for Equality and Human Rights.”
- 46 A Commissioner or Investigating Commissioner, and a member of a decision-making committee of the Commission, shall be disqualified from being a member of the National Assembly for Wales.

*Records*

- 47 In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records) at the appropriate place in Part II of the Table at the end of paragraph 3 insert—  
“The Commission for Equality and Human Rights.” 5

*Freedom of information*

- 48 In Part VI of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public bodies) at the appropriate place insert—  
“The Commission for Equality and Human Rights.”

PART 5 10

DISABILITY COMMITTEE

*Establishment*

- 49 (1) The Commission shall establish a decision-making committee to be known as the Disability Committee.  
(2) The Commission shall ensure that the Disability Committee is established before sections 8 and 10 come into force. 15

*Membership*

- 50 The Commission shall ensure that—  
(a) there are not less than 7 or more than 9 members of the Disability Committee, 20  
(b) at least one half of the members are (or have been) disabled persons, and  
(c) the Chairman is (or has been) a disabled person.
- 51 The appointment of each member of the Disability Committee shall be for a period of not less than two years or more than 5 years, subject to the possibilities of—  
(a) reappointment,  
(b) dismissal in accordance with the terms of appointment, and  
(c) the lapsing of the appointment upon the dissolution of the Committee. 30

*Functions*

- 52 (1) The Commission shall by virtue of this paragraph be treated as having delegated to the Disability Committee—  
(a) the Commission’s duty under section 8 in so far as it relates to disability matters and may be fulfilled by the exercise of the powers conferred by or referred to in—  
(i) section 14(1)(a), (c) or (d) (or paragraph (e) or (f) in so far as it relates to paragraph (a), (c) or (d)),  
(ii) section 15,  
(iii) section 16, 40  
(iv) section 20,

	(v) section 29,	
	(vi) section 30,	
	(vii) section 32, or	
	(viii) section 12,	
	(b) the Commission’s duty under section 10 in so far as it may be fulfilled by the exercise of those powers, and	5
	(c) those powers in so far as they are or may be exercised for the purpose of disability matters.	
	(2) Delegation under this paragraph shall not prevent the exercise by the Commission of a power, or the fulfilment by the Commission of a duty, by action which relates partly to disability matters and partly to other matters.	10
	(3) In this paragraph “disability matters” means –	
	(a) matters provided for in Parts 1, 3, 4 and 5 of the Disability Discrimination Act 1995 (c. 50), and	
	(b) section 10 above.	15
53	Before exercising a power or fulfilling a duty wholly or partly in relation to a matter affecting disabled persons (including, in particular, any matter provided for in Part 2 of the Disability Discrimination Act 1995) the Commission shall consult the Disability Committee.	
54	The Disability Committee shall advise the Commission about the exercise of the Commission’s functions in so far as they affect disabled persons (including, in particular, in so far as they relate to any matter provided for in Part 2 of the Disability Discrimination Act 1995).	20
<i>Resources</i>		
55	In allocating its resources the Commission shall ensure that the Disability Committee receives a share sufficient to enable it to exercise its functions.	25
<i>Report</i>		
56	(1) The Disability Committee shall for each financial year of the Commission submit to the Commission a report on the Committee’s activities in that year.	30
	(2) The Commission shall incorporate each report of the Disability Committee under sub-paragraph (1) into the relevant annual report of the Commission.	
<i>5-year review</i>		
57	The Commission shall arrange for a review of the activities of the Disability Committee to be conducted as soon as is reasonably practicable after the end of the period of five years beginning with the date on which sections 8 and 10 come into force.	35
58	The following may not participate in the review (although those conducting the review may seek views from any of the following) –	
	(a) a Commissioner or former Commissioner,	40
	(b) staff or former staff of the Commission,	
	(c) a person who is or has been an Investigating Commissioner, and	

- (d) a person who is or has been a member of a committee established by the Commission.
- 59 The Commission shall ensure –
- (a) that those conducting the review consult persons whom they think likely to have an interest, 5
  - (b) that those conducting the review submit a report to the Commission which, in particular, recommends for how long the Disability Committee should continue in existence, and
  - (c) that the report is published.
- 60 As soon as is reasonably practicable after receiving a report under paragraph 59 the Commission shall recommend to the Secretary of State for how long the Disability Committee should continue in existence. 10
- 61 As soon as is reasonably practicable after receiving a recommendation under paragraph 60 the Secretary of State shall by order –
- (a) dissolve the Disability Committee with effect from such time as shall be specified in the order, and 15
  - (b) repeal this Part of this Schedule with effect from that time.
- 62 An order under paragraph 61 may include provision about –
- (a) the conduct of the business of the Disability Committee before its dissolution; 20
  - (b) the conduct of the Commission after the dissolution of the Disability Committee in relation to functions formerly delegated to that committee.
- 63 The dissolution of the Disability Committee is without prejudice to any power of the Commission under this Schedule – 25
- (a) to establish a committee, or
  - (b) to delegate to a committee.
- 64 The Disability Committee may not be dissolved under paragraph 14(c).

## SCHEDULE 2

Sections 17 and 22

### INQUIRIES, INVESTIGATIONS AND ASSESSMENTS 30

#### *Introduction*

- 1 This Schedule applies to –
- (a) inquiries under section 17,
  - (b) investigations under section 22, and
  - (c) assessments under section 33. 35

#### *Terms of reference*

- 2 Before conducting an inquiry the Commission shall –
- (a) publish the terms of reference of the inquiry in a manner that the Commission thinks is likely to bring the inquiry to the attention of persons whom it concerns or who are likely to be interested in it, and 40

- (b) in particular, give notice of the terms of reference to any persons specified in them.
- 3 Before conducting an investigation the Commission shall –
- (a) prepare terms of reference specifying the person to be investigated and the nature of the unlawful act which the Commission suspects, 5
  - (b) give the person to be investigated notice of the proposed terms of reference,
  - (c) give the person to be investigated an opportunity to make representations about the proposed terms of reference,
  - (d) consider any representations made, and 10
  - (e) publish the terms of reference once settled.
- 4 Before conducting an assessment of a person’s compliance with a duty the Commission shall –
- (a) prepare terms of reference,
  - (b) give the person notice of the proposed terms of reference, 15
  - (c) give the person an opportunity to make representations about the proposed terms of reference,
  - (d) consider any representations made, and
  - (e) publish the terms of reference once settled.
- 5 Paragraphs 2 to 4 shall apply in relation to revised terms of reference as they apply in relation to original terms of reference. 20
- 6 Where the Secretary of State directs the holding of an inquiry, investigation or assessment –
- (a) he shall, after consulting the Commission, prepare the terms of reference, and 25
  - (b) paragraph 3(a) to (d) or 4(a) to (d) shall apply to the Secretary of State and not to the Commission.

### *Representations*

- 7 (1) The Commission shall make arrangements for giving persons an opportunity to make representations in relation to inquiries, investigations and assessments. 30
- (2) In particular, in the course of an investigation, inquiry or assessment the Commission must give any person specified in the terms of reference an opportunity to make representations.
- 8 Arrangements under paragraph 6 may (but need not) include arrangements for oral representations. 35
- 9 (1) The Commission shall consider representations made in relation to an inquiry, investigation or assessment.
- (2) But the Commission may, where they think it appropriate, refuse to consider representations – 40
- (a) made neither by nor on behalf of a person specified in the terms of reference, or
  - (b) made on behalf of a person specified in the terms of reference by a person who is not a barrister, an advocate or a solicitor.

- (3) If the Commission refuse to consider representations in reliance on sub-paragraph (2) they shall give the person who makes them written notice of the Commission’s decision and the reasons for it.

*Evidence*

- 10 In the course of an inquiry, investigation or assessment the Commission may give a notice under this paragraph to any person. 5
- 11 (1) A notice given to a person under paragraph 10 may require him –  
(a) to provide information in his possession,  
(b) to produce documents in his possession, or  
(c) to give oral evidence. 10
- (2) A notice under paragraph 10 may include provision about –  
(a) the form of information, documents or evidence;  
(b) timing.
- (3) A notice under paragraph 10 –  
(a) may not require a person to do anything that he could not be compelled to do in proceedings before the High Court or the Court of Session, and  
(b) may not require a person to attend at a place unless the Commission undertakes to pay the expenses of his journey. 15
- 12 The recipient of a notice under paragraph 10 may apply to a county court (in England and Wales) or to the sheriff (in Scotland) to have the notice cancelled on the grounds that the requirement imposed by the notice is –  
(a) unnecessary having regard to the purpose of the inquiry, investigation or assessment to which the notice relates,  
(b) undesirable for reasons of national security, or  
(c) otherwise unreasonable. 25
- 13 (1) Sub-paragraph (2) applies where the Commission thinks that a person –  
(a) has failed without reasonable excuse to comply with a notice under paragraph 10, or  
(b) is likely to fail without reasonable excuse to comply with a notice under paragraph 10. 30
- (2) The Commission may apply to a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring a person to take such steps as may be specified in the order to comply with the notice.
- 14 (1) A person commits an offence if without reasonable excuse he –  
(a) fails to comply with a notice under paragraph 10 or an order under paragraph 13(2),  
(b) falsifies anything provided or produced in accordance with a notice under paragraph 10 or an order under paragraph 13(2), or  
(c) makes a false statement in giving oral evidence in accordance with a notice under paragraph 10. 40
- (2) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Adjournment, &c.*

- 15 The Commission may abort or adjourn an inquiry, investigation or assessment conducted in pursuance of a requirement of the Secretary of State only with his consent.

*Reports*

5

- 16 (1) The Commission shall prepare a report of its findings on an inquiry, investigation or assessment.
- (2) In the case of an inquiry or investigation directed by the Secretary of State—
- (a) the Commission shall send the report to the Secretary of State, and
- (b) the Secretary of State shall publish it.
- (3) In any other case, the Commission shall publish the report.

10

*Recommendations*

- 17 (1) The Commission may make recommendations—
- (a) as part of a report of an inquiry, investigation or assessment under paragraph 16, or
- (b) in respect of a matter arising in the course of an inquiry, investigation or assessment.
- (2) A recommendation may be addressed to any class of person.

15

*Effect of report*

- 18 (1) A court or tribunal—
- (a) may have regard to a finding of the report of an inquiry, investigation or assessment, but
- (b) shall not treat it as conclusive.
- 19 A person to whom a recommendation in the report of an inquiry, investigation or assessment is addressed shall have regard to it.

20

25

*Courts and tribunals*

- 20 An inquiry, investigation or assessment may not question (whether expressly or by necessary implication) the findings of a court or tribunal.

## SCHEDULE 3

Section 86

## AMENDMENTS CONSEQUENTIAL ON PART 1

30

*Sex Discrimination Act 1975 (c. 65)*

- 1 The Sex Discrimination Act 1975 shall be amended as follows.
- 2 In section 37(3) (discriminatory practices) for “sections 67 to 71 of this Act” substitute “sections 22 to 26 of the Equality Act 2005”.

- 
- 3 At the end of section 38 (discriminatory advertisements) add –
- “(6) Proceedings in respect of a contravention of subsection (1) may be brought only –
- (a) by the Commission, and
- (b) in accordance with section 27 of the Equality Act 2005.” 5
- 4 At the end of section 39 (instructions to discriminate (which becomes subsection (1))) add –
- “(2) Proceedings in respect of a contravention of subsection (1) may be brought only –
- (a) by the Commission, and 10
- (b) in accordance with section 27 of the Equality Act 2005.”
- 5 At the end of section 40 (pressure to discriminate) add –
- “(3) Proceedings in respect of a contravention of subsection (1) may be brought only –
- (a) by the Commission, and 15
- (b) in accordance with section 27 of the Equality Act 2005.”
- 6 Part VI (the Equal Opportunities Commission) shall cease to have effect.
- 7 Sections 67 to 73 (enforcement) shall cease to have effect.
- 8 Section 75 (assistance by Equal Opportunities Commission) shall cease to have effect. 20
- 9 (1) Section 76 (timing of proceedings) shall be amended as follows.
- (2) After subsection (2B) insert –
- “(2C) The period allowed by subsection (2)(a) or (b) shall be extended by three months in the case of a dispute which is referred for conciliation in pursuance of arrangements under section 29 of the Equality Act 2005.” 25
- (3) Subsections (3) to (5) shall cease to have effect.
- 10 Section 76D (public authorities: enforcement) (inserted by section 83 of this Act) shall cease to have effect.
- 11 Section 76E (codes of practice) (inserted by section 84 of this Act) shall cease to have effect. 30
- 12 In section 82(1) (interpretation) in the definition of “the Commission”, for “Equal Opportunities Commission” substitute “Commission for Equality and Human Rights”.
- 13 In Schedule 2 (education admissions: transitional exemption) – 35
- (a) in paragraph 5(1) for “Equal Opportunities Commission set up under Part VI” substitute “the Commission”, and
- (b) in paragraph 6 for “Equal Opportunities Commission” substitute “the Commission”.
- 14 Schedule 3 (Equal Opportunities Commission) shall cease to have effect. 40

*Race Relations Act 1976 (c. 74)*

- 15 The Race Relations Act 1976 shall be amended as follows.
- 16 In section 28(3) (discriminatory practices), for “sections 58 to 62” substitute “sections 22 to 26 of the Equality Act 2005”.
- 17 At the end of section 29 (discriminatory advertisements) add – 5
- “(6) Proceedings in respect of a contravention of subsection (1) may be brought only –
- (a) by the Commission, and
- (b) in accordance with section 27 of the Equality Act 2005.”
- 18 At the end of section 30 (instructions to discriminate, &c. (which becomes subsection (1))) add – 10
- “(2) Proceedings in respect of a contravention of subsection (1) may be brought only –
- (a) by the Commission, and
- (b) in accordance with section 27 of the Equality Act 2005.” 15
- 19 At the end of section 31 (pressure to discriminate, &c.) add –
- “(3) Proceedings in respect of a contravention of subsection (1) may be brought only –
- (a) by the Commission, and
- (b) in accordance with section 27 of the Equality Act 2005.” 20
- 20 Part VII (Commission for Racial Equality) shall cease to have effect.
- 21 Sections 58 to 64 (enforcement) shall cease to have effect.
- 22 Section 66 (assistance by Commission for Racial Equality) shall cease to have effect.
- 23 Section 71C (codes of practice) shall cease to have effect. 25
- 24 Sections 71D and 71E (general public authority duty: compliance notice) shall cease to have effect.
- 25 (1) Section 68 (timing of proceedings) shall be amended as follows.
- (2) After subsection (2A) insert –
- “(2B) The period allowed by subsection (2)(a) shall be extended by three months in the case of a dispute which is referred for conciliation in pursuance of arrangements under section 29 of the Equality Act 2005.” 30
- (3) Subsections (3) to (5) shall cease to have effect.
- 26 In section 78(1) (interpretation) in the definition of “the Commission” for “Commission for Racial Equality” substitute “Commission for Equality and Human Rights”. 35
- 27 Schedule 1 (Commission for Racial Equality) shall cease to have effect.

*Estate Agents Act 1979 (c. 38)*

- 28 In section 9(6) of the Estate Agents Act 1979 (provision of information to Office of Fair Trading) –
- (a) for paragraph (a) substitute –
- “(a) the Commission for Equality and Human Rights, and”, and
- (b) paragraph (c) (and the word “and” immediately before it) shall cease to have effect. 5

*Employment Act 1989 (c. 38)*

- 29 In section 28(2) of the Employment Act 1989 (orders) for “Equal Opportunities Commission” substitute “Commission for Equality and Human Rights”. 10

*Disability Discrimination Act 1995 (c. 50)*

- 30 The Disability Discrimination Act 1995 shall be amended as follows.
- 31 At the end of section 16B (discriminatory advertisements) add – 15
- “(5) Proceedings in respect of a contravention of subsection (1) may be brought only –
- (a) by the Commission for Equality and Human Rights, and
- (b) in accordance with section 27 of the Equality Act 2005.”
- 32 At the end of section 16C (instructions and pressure to discriminate) add – 20
- “(4) Proceedings in respect of a contravention of this section may be brought only –
- (a) by the Commission for Equality and Human Rights, and
- (b) in accordance with section 27 of the Equality Act 2005.”
- 33 Section 17B (proceedings by Disability Rights Commission) shall cease to have effect. 25
- 34 Section 28 (conciliation services) shall cease to have effect.
- 35 In sections 28C(4) and 28T(2) (non-discrimination in education) for “section 53A.” substitute “section 15 of the Equality Act 2005.”
- 36 Section 31B (conciliation services) shall cease to have effect. 30
- 37 Sections 49E and 49F (public authorities: enforcement) (shall cease to have effect).
- 38 Section 53A (codes of practice) shall cease to have effect.
- 39 (1) In the provisions of Schedule 3 (enforcement) specified in sub-paragraph (2) – 35
- (a) for “section 28” or “section 31B” substitute “section 29 of the Equality Act 2005”, and
- (b) for “two months.” substitute “three months.”
- (2) Those provisions are –
- (a) paragraph 6(2), 40

- (b) paragraph 10(2), and
- (c) paragraph 13(2).

*Employment Tribunals Act 1996 (c. 17)*

- 40 After section 21(1)(gb) of the Employment Tribunals Act 1996 (jurisdiction of Employment Appeal Tribunal) insert – 5  
“(gc) the Equality Act 2005.”

*Asylum and Immigration Act 1996 (c. 49)*

- 41 In section 8A(4)(a) of the Asylum and Immigration Act 1996, for “Commission for Racial Equality;” substitute “Commission for Equality and Human Rights;” 10

*Disability Rights Commission Act 1999 (c. 17)*

- 42 The Disability Rights Commission Act 1999 shall cease to have effect.

*Anti-terrorism, Crime and Security Act 2001 (c. 24)*

- 43 In Schedule 4 to the Anti-terrorism, Crime and Security Act 2001 (disclosure) – 15  
(a) paragraphs 13, 14 and 46 shall cease to have effect, and  
(b) after paragraph 53A insert –  
“**Equality Act 2005**  
53B Section 6 of the Equality Act 2005.”

## SCHEDULE 4

Section 86 20

## REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Sex Discrimination Act 1975 (c. 65)	Part VI. Sections 67 to 73. Section 75. Section 76(3) to (5). Section 76C. Section 76E. Schedule 3.	25
Race Relations Act 1976 (c. 74)	Part VII. Sections 58 to 64. Section 66. Sections 71C to 71E. Section 68(3) to (5). Schedule 1. Paragraph 1 of Schedule 4.	30
Estate Agents Act 1979 (c. 38)	Section 9(6)(c) (and the word “and” immediately before it).	35
County Courts Act 1984 (c. 28)	Paragraph 61 of Schedule 2.	
Housing Act 1988 (c. 50)	Section 137.	40

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Disability Discrimination Act 1995 (c. 50)	Section 17B. Section 28. Section 31B.	
Disability Discrimination Act 1995 (c. 50) – <i>cont.</i>	Section 49E. Section 49F. Section 53A.	5
Disability Rights Commission Act 1999 (c. 17)	The whole Act.	
Special Educational Needs and Disability Act 2001 (c. 10)	Section 36. Section 37. Schedule 7.	10
Anti-terrorism, Crime and Security Act 2001 (c. 24)	Paragraphs 13, 14 and 46 of Schedule 4.	

# Equality Bill

---

---

A

## B I L L

To make provision for the establishment of the Commission for Equality and Human Rights; to dissolve the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission; to make provision about discrimination on grounds of religion or belief; to impose duties relating to sex discrimination on persons performing public functions; and for connected purposes.

*Presented by Ms Secretary Hewitt  
supported by  
The Prime Minister, Mr Secretary Prescott,  
Mr Chancellor of the Exchequer,  
Mr Secretary Clarke, Mr Secretary Johnson,  
Secretary Ruth Kelly, Jacqui Smith,  
Mr David Lammy and Fiona Mactaggart.*

---

*Ordered, by the House of Commons,  
to be Printed, 2nd March 2005.*

---

© Parliamentary copyright House of Commons 2005  
*Applications for reproduction should be made in writing to the Copyright Unit,  
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS  
LONDON – THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by  
The Stationery Office Limited  
£x.xx