

Equality Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Lord Lester of Herne Hill, will be made available.

Equality Bill [HL]

CONTENTS

PART 1

INTRODUCTORY

- 1 Purpose of Act
- 2 General principles
- 3 Exclusivity of remedies under this Act
- 4 Interpretation

PART 2

MEASURES TO TARGET PARTICULAR BEHAVIOUR OR ARRANGEMENTS

CHAPTER 1

UNLAWFUL ACTS

General

- 5 Unlawful acts, remedies and interpretation of Chapter 1
- 6 Protected areas of activity
- 7 Power to make complaints concerning contraventions of this Part
- 8 Time limit for bringing complaints

Discrimination

- 9 Discrimination
- 10 Meaning of direct discrimination
- 11 Meaning of indirect discrimination

Harassment

- 12 Harassment

Victimisation

- 13 Victimisation

Other unlawful acts

- 14 Publishing discriminatory advertisements
 15 Giving instructions to discriminate
 16 Imposing pressure on another to discriminate
 17 Aiding unlawful acts

Miscellaneous and supplemental

- 18 Relationships in the employment field that have come to an end
 19 Persons liable for the acts of others
 20 Application of section 19 to the police etc

CHAPTER 2

DIRECT MODIFICATION OF AGREEMENTS CONTRARY TO THIS ACT

Equal pay etc

- 21 Equality clause in contract of employment
 22 Equality clause in contract of employment: interpretation

Other agreements contrary to this Part

- 23 Avoidance and revision of certain terms in agreements
 24 Agreements to which section 23 does not apply

PART 3

MEASURES TO FACILITATE GENERAL PROGRESS TOWARDS EQUALITY

Equality obligations in the public sector

- 25 Meaning of “public body”
 26 Equality duties of public bodies
 27 Implementation of equality duties

Employment equity plans and pay equity plans

- 28 Meaning of “designated employer” and other terms
 29 Workforce reviews
 30 Employment equity plans
 31 Pay equity plans
 32 Reviews and plans: procedure and implementation
 33 Reviews and plans: non-compliance and role of Central Arbitration Committee

Duties to facilitate access etc by disabled persons

- 34 Work-related matters: reasonable accommodation for disabled persons
- 35 Education matters: disabled persons not to be substantially disadvantaged
- 36 Goods, facilities and services: adjustments for disabled persons
- 37 Alterations to premises under leases

PART 4

THE EQUALITY COMMISSION

The Commission

- 38 The Equality Commission
- 39 The Commission's general duty
- 40 Financial arrangements
- 41 Reports to Parliament

General functions

- 42 Acquisition of information etc
- 43 Provision of information etc to the public
- 44 Provision of information etc to Ministers and other public bodies
- 45 Codes of practice

Assistance to others

- 46 Questionnaires relating to acts made unlawful by Part 2
- 47 Assistance to persons in connection with certain proceedings

PART 5

ENFORCEMENT

CHAPTER 1

JURISDICTION

- 48 Matters referred to a tribunal
- 49 Education cases concerning admission to or exclusion from schools etc
- 50 Education cases brought on disability grounds
- 51 Immigration cases
- 52 Transfer to county court or sheriff's court
- 53 Proceedings involving matters of national security

CHAPTER 2

ENFORCEMENT BY COMMISSION

Obtaining information

- 54 Commission powers to gather information

- 55 Restrictions on disclosure of information

Co-operation

- 56 Obtaining undertakings

Compliance notices: contraventions of Parts 2 and 3 of this Act

- 57 Commission's power to issue compliance notices
 58 Compliance notices: procedure
 59 Compliance notices: appeals
 60 Compliance notices: enforcement

Applications to tribunal: contraventions of Part 2 of this Act

- 61 Commission's power to make tribunal applications
 62 Time limit for making tribunal applications
 63 Tribunal applications: burden of proof
 64 Tribunal applications: determination
 65 Amount of awards
 66 Persistent contraventions

CHAPTER 3

ENFORCEMENT BY INDIVIDUAL AND OTHERS

Complaints to tribunal: contraventions of Part 2

- 67 Complaints under section 7: conciliation
 68 Complaints under section 7: interim relief
 69 Complaints under section 7: burden of proof
 70 Complaints under section 7: determination
 71 Amount of awards

Tribunal references relating to equality clause

- 72 Equality clause: cases in which a tribunal reference may be made
 73 Equality clause: time limits for bringing proceedings
 74 Equality clause: determination
 75 Limits on amount of awards

CHAPTER 4

PERSONS IN DEFAULT

Enforcement of recommendations and orders

- 76 Enforcement of recommendations
 77 Enforcement of tribunal orders

Disqualification

- 78 Meaning of persons in default and linked persons
- 79 Power to disqualify from government contracts
- 80 Restriction on execution of works
- 81 Denial of financial assistance

Disqualification: supplementary provisions

- 82 Disqualification notices: procedure
- 83 Disqualification notices: cancellation
- 84 Disqualification notices: appeals
- 85 Disqualification notices: enforcement
- 86 Actions for breach of statutory duty

CHAPTER 5

SUPPLEMENTAL

- 87 Tribunal references made out of time

PART 6

MISCELLANEOUS AND SUPPLEMENTAL

- 88 Interpretation
- 89 Application to the Crown
- 90 Application to Parliament
- 91 Payments out of the police fund
- 92 Repeals and consequential and transitional provision
- 93 Regulations and orders
- 94 Short title, commencement and extent

-
- Schedule 1 — Definitions relating to meaning of disability
 - Schedule 2 — Protected areas of activity
 - Part 1 — General
 - Part 2 — Public authority functions
 - Part 3 — Acts in the employment field
 - Part 4 — Acts in the education field
 - Part 5 — Provision of goods, facilities and services
 - Part 6 — Disposal and management of premises
 - Part 7 — Management of members clubs
 - Part 8 — Exclusions applying to two or more areas of activity
 - Schedule 3 — Duty to facilitate access by disabled persons
 - Part 1 — Work-related matters: responsible bodies and qualifying persons
 - Part 2 — Work-related matters: other provisions
 - Part 3 — Education matters
 - Part 4 — Goods, facilities and services

- Schedule 4 — The Equality Commission
- Schedule 5 — Procedure for making codes of practice
- Schedule 6 — Procedure of the Special Educational Needs and Disability Tribunal
- Schedule 7 — Investigations
- Schedule 8 — Repeals

A

B I L L

TO

Make provision making it unlawful to discriminate on the grounds of age, gender reassignment, religion or belief or sexual orientation; to make new provision with respect to discrimination on the grounds of disability, race or sex; to make provision making it unlawful to harass or victimise another person on any of those grounds; to make provision facilitating progress towards the achievement of equality as between persons of certain descriptions; to establish and provide for the functions of the Equality Commission for Great Britain; and for connected purposes.

BE 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

5

INTRODUCTORY

1 Purpose of Act

10

- (1) The purpose of this Act is to facilitate both the promotion of equality and the elimination of unfair discrimination so as to ensure that persons do not suffer detriment or are not denied opportunities or benefits for reasons related to one or more of the following grounds—

15

- (a) age;
- (b) colour, race, nationality or ethnic or national origins;
- (c) disability;
- (d) family status;
- (e) gender reassignment;
- (f) marital status;

- (g) pregnancy;
 - (h) religion or belief;
 - (i) sex;
 - (j) sexual orientation.
- (2) Accordingly— 5
- (a) Part 2 of this Act makes it unlawful for any person to engage in certain kinds of behaviour towards others (in particular discrimination, harassment or victimisation);
 - (b) Part 3 of this Act imposes requirements on public bodies, employers and other persons to take measures with a view to making progress towards achieving the goals of the promotion of equality of opportunity, the elimination of discrimination and the promotion of good relations between members of different racial groups; 10
 - (c) Part 4 of this Act establishes the Equality Commission for Great Britain and confers on it functions relating to the implementation and enforcement of the provisions of this Act; and 15
 - (d) Part 5 of this Act provides for conciliation, references to a tribunal and other measures to secure that the provisions of this Act are observed.

2 General principles

- (1) Any provision of this Act must be given effect to in accordance with the following general principles— 20
- (a) this Act is not to be construed as permitting or requiring any step that seeks to remove or reduce inequality, or to eliminate discrimination, by levelling down;
 - (b) that, in appropriate circumstances, promoting equality may require more than treating different individuals in the same way as each other or may require the accommodation of difference; 25
 - (c) that the need to take steps to correct conditions of disadvantage which arise from discrimination on any of the prohibited grounds may require the taking of special measures of general application (for example, the adoption of practices that encourage participation in certain activities, the improvement of access to opportunities or benefits or the modification or abandonment of practices that restrict or impair such participation or access). 30
- (2) The following general principles also apply in giving effect to any provision of Part 2— 35
- (a) that any protection conferred by Part 2 which is limited by any restriction, qualification or exclusion must be applied, in any particular case, so the restriction, qualification or exclusion is not given a wider effect than is strictly necessary in all the circumstances; and 40
 - (b) that where an act is done or course of conduct is entered into for two or more reasons, and one of those reasons relates to a prohibited ground (whether or not it is the dominant or substantial reason for the act), the act or conduct is to be treated for the purposes of Part 2 as being done for the reason relating to the prohibited ground or, if there are two or more such grounds, both or all of them. 45

(3) Nothing in subsection (1)(a) prevents the taking of any step for which provision is made in Part 3 of this Act or in an exclusion from a protected area of activity in Schedule 6.

(4) “Levelling down” includes—

- 5
- (a) reducing the level of opportunities or benefits enjoyed by any person or by any description of persons; and
 - (b) subjecting any person or persons to a detriment to which another person, or description of persons, is already subject.

3 Exclusivity of remedies under this Act

10 (1) Any contravention of a provision of this Act is to be dealt with in the manner described in it.

(2) No other proceedings, whether civil or criminal, lie against any person by reason of any such contravention.

15 (3) But nothing in this section prevents the making of an application for judicial review.

4 Interpretation

(1) In this Act—

20 “Commission” means the Equality Commission for Great Britain established by Part 4;

“disabled person” means a person who has a disability or who has had a disability;

“man” includes a male of any age;

“prohibited grounds” means the grounds specified in section 1(1)(a) to (j);

25 “racial group” means any group of persons identified by reference to their colour, race, nationality or ethnic or national origins;

“religion or belief” means any religion, religious belief or similar philosophical belief (including agnosticism, atheism and humanism);

“sexual orientation” means an orientation towards—

- 30
- (a) persons of the same sex;
 - (b) persons of the opposite sex; or
 - (c) persons of the same sex or the opposite sex; and
- “woman” includes a female of any age.

35 (2) For the purposes of this Act, references to an act done by a person (“A”) for a reason related to a prohibited ground (however expressed) include any case where the reason in question—

(a) is based on a belief of A’s that is misconceived; or

(b) arises in connection with one person (“B”) but the act is done in relation to another (“C”) on account of C’s association with B.

40 (3) For the purposes of this Act, a person has a disability if he has a physical or mental impairment which has substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

- (4) Schedule 1 contains further provision as to when a person has, or is to be taken as having, a disability.
- (5) The Secretary of State may by order—
- (a) amend Schedule 1 by varying, or removing, any provision or by adding further provision; and
 - (b) make provision for the modification of any provisions of this Act as they apply to persons who have had a disability.
- (6) For the purposes of this Act, a person who is a member of any Roma, gypsy or Irish traveller community is to be treated as a member of a group defined by reference to colour, race, nationality or ethnic or national origins.

PART 2

MEASURES TO TARGET PARTICULAR BEHAVIOUR OR ARRANGEMENTS

CHAPTER 1

UNLAWFUL ACTS

General 15

5 Unlawful acts, remedies and interpretation of Chapter 1

- (1) This Chapter—
- (a) defines discrimination, harassment and victimisation;
 - (b) specifies them as acts made unlawful when done in a protected area of activity; and
 - (c) specifies certain other connected acts as being unlawful.
- (2) An allegation that a person has done an unlawful act may be the subject of—
- (a) a complaint to a tribunal made by or on behalf of an individual in accordance with section 7; or
 - (b) an application to a tribunal made by the Commission in accordance with section 61.
- (3) In this Chapter—
- “act” includes a deliberate omission;
 - “discrimination” means any act that is unlawful under section 9;
 - “harassment” means any act that is unlawful under section 12;
 - “protected area of activity” has the meaning given in section 6; and
 - “victimisation” means any act that is unlawful under section 13.

6 Protected areas of activity

- (1) The protected areas of activity in which discrimination, harassment and victimisation are made unlawful by this Chapter are—
- (a) the carrying out by a public authority of its functions;

- 5
- (b) the affording of opportunities, or the making of decisions or arrangements, in the employment field by any person concerned with the provision of work;
- (c) the affording of opportunities, or the making of decisions or arrangements, in the education field—
- (i) by the body responsible for an educational establishment; or
- (ii) by any person providing facilities or services in connection with the operation of an educational establishment;
- 10
- (d) the provision (whether on payment or without payment) by any person of goods, facilities or services which he provides, or is prepared to provide, to members of the public or a section of the public;
- (e) the disposal or management of any premises by a person who has power to dispose of, or manage, them;
- (f) the management by any person of a members club.
- 15
- (2) Schedule 2 makes provision supplementing this section.
- (3) For the purposes of this Chapter—
- (a) if an act would (apart from this subsection) otherwise fall within paragraph (a) of subsection (1), it is to be treated as not doing so if it also falls within any of paragraphs (b) to (f) of that subsection;
- 20
- (b) if an act would (apart from this subsection) otherwise fall within paragraph (d) of subsection (1), it is to be treated as not doing so if it also falls within paragraph (c) of that subsection.

7 Power to make complaints concerning contraventions of this Part

- 25
- (1) A person to whom subsection (2) applies may present to a tribunal a complaint alleging that a person has done—
- (a) an act that amounts to discrimination, harassment or victimisation; or
- (b) an act that is made unlawful by section 15, 16 or 17.
- (2) This subsection applies—
- 30
- (a) to any individual who claims that he is the victim of the act complained of;
- (b) to the parent of the alleged victim (as well as to the alleged victim); and
- (c) to any person or body (whether or not incorporated) which acts on behalf of the alleged victim of the act complained of and which falls within subsection (3) or (4).
- 35
- (3) A person or body falls within this subsection if it is an independent trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)).
- (4) A person or body falls within this subsection if—
- 40
- (a) it has as one of its purposes the protection of the collective interests of persons (such as employees, consumers, transport users, patients or parents of school-age children) whose interests in any protected area of activity are protected by the provisions of this Part; and
- (b) it is designated by order made by the Secretary of State for the purposes of this section.

- (5) A complaint under this section may be made against—
- (a) the person alleged to have done the act complained of; or
 - (b) any person who, by virtue of section 17 or 19, is to be treated as having done the act complained of.
- (6) No complaint may be made under this section if it concerns a matter in respect of which a complaint may be made under section 72. 5
- (7) Any person or body considering whether to make a complaint under this section may, for that purpose, make use of questionnaires drawn up by the Commission under section 46 and may apply to the Commission for assistance under section 47. 10
- (8) A complaint under this section is to be determined in accordance with Part 5 of this Act.

8 Time limits for bringing complaints

- (1) A complaint under section 7 must be made before the end of the period of six months beginning with— 15
- (a) the date on which the act complained of was done; or
 - (b) in a case in which subsection (2) applies, the date on which the individual who is alleged to have been the victim of the act complained of discovered the concealment or could with reasonable diligence have discovered it. 20
- (2) This subsection applies where—
- (a) any fact relevant to the alleged victim was deliberately concealed from him by the person alleged to have done the unlawful act; and
 - (b) the alleged victim did not discover the concealment (or could not with reasonable diligence have discovered it) until after the act was done. 25
- (3) For the purposes of subsection (1)—
- (a) where the act complained of is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
 - (b) any act extending over a period is to be treated as done at the end of that period; and 30
 - (c) a deliberate omission is to be treated as done when the person in question decided upon it.
- (4) For the purposes of subsection (3)(c), a person is (in the absence of evidence establishing the contrary) to be taken to decide upon an omission— 35
- (a) when he carries out an act inconsistent with the omitted act; or
 - (b) if he has carried out no such inconsistent act, when the period expires within which he might reasonably have expected to carry out the omitted act if it was to be carried out.

Discrimination

9 Discrimination

5 It is unlawful in a protected area of activity for a person to act in a way that directly or indirectly discriminates against another person.

10 Meaning of direct discrimination

- 10 (1) A person (“P”) directly discriminates against another person (“B”) if, for a reason related to one or more of the prohibited grounds—
- (a) P treats B less favourably than another person (“C”) is, has been or would be treated by him in a comparable situation; or
 - (b) P subjects B to a detriment.
- (2) A comparison of the situations of B and C must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.
- 15 (3) For the purposes of subsection (1), segregating B from other persons on racial grounds is to be treated as an act that directly discriminates against him.
- (4) But nothing in subsection (3) prevents a court or tribunal from taking the view in any particular case that segregating B from other persons on any other prohibited ground is an act of direct discrimination.
- 20 (5) The reference in subsection (3) to a person doing an act on racial grounds is a reference to his doing it for reason or reasons related to a person’s colour, race, nationality or ethnic or national origins.

11 Meaning of indirect discrimination

- 25 (1) A person (“P”) indirectly discriminates against another person (“B”) in any of the following cases:

CASE 1

30 Where B has any of the characteristics specified in subsection (2) and P applies to B a provision, criterion or practice which he applies or would apply equally to persons who do not have that characteristic but—

- (a) which puts, or would put, persons with that characteristic at a particular disadvantage when compared with other persons; and
- (b) which puts B at a disadvantage.

35 CASE 2

Where B is of any given age and P applies to B a provision, criterion or practice which he applies or would apply equally to persons without regard to their age but which—

- 40 (a) puts, or would put, persons of B’s age (or of a similar age), at a particular disadvantage when compared with other persons; and
- (b) puts B at a disadvantage.

CASE 3

Where B is a disabled person and P fails to comply with any duty imposed on him in relation to disabled persons by any of sections 34 to 36.

- | | |
|---|----|
| (2) For the purposes of Case 1, the specified characteristics are— | 5 |
| (a) his colour, race, nationality or ethnic or national origins; | |
| (b) any disability B has or has had; | |
| (c) his family status; | |
| (d) that he has undergone a gender reassignment; | |
| (e) his marital status; | 10 |
| (f) in the case of a woman, that she is pregnant; | |
| (g) any religion or belief he has; | |
| (h) his sex; | |
| (i) his sexual orientation. | |
| (3) Case 1 or 2 does not apply if P shows that— | 15 |
| (a) the application by him of any provision, criterion or practice is objectively justified by a legitimate aim; and | |
| (b) the means of achieving that aim are proportionate to it. | |
| (4) Where B has more than one specified characteristic, Case 1 is to be applied by considering the specified characteristics in question together, as well as separately. | 20 |

Harassment

12 Harassment

- | | |
|--|----|
| (1) It is unlawful in a protected area of activity for a person (“P”) to subject another person (“B”) to harassment for a reason related to one or more of the prohibited grounds. | 25 |
| (2) P harasses B where he subjects him to unwanted conduct that has the purpose or effect of— | |
| (a) violating B’s dignity; or | |
| (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. | 30 |
| (3) Conduct is to be regarded as having the effect specified in subsection (2)(a) or (b) if (but only if) it may reasonably be considered to have that effect. | |
| (4) For the purposes of subsection (3), regard is to be had to all the circumstances, including in particular B’s perception of the conduct in question. | 35 |
| (5) This section does not affect the law relating to harassment in circumstances apart from those specified in it. | |

Victimisation

13 Victimisation

- 5 (1) It is unlawful in a protected area of activity for a person to subject another person (“B”) to adverse treatment where there would be no such treatment but for B—
- (a) taking, having taken or intending to take a protected step; or
 - (b) being under suspicion of taking, or intending to take, a protected step.
- 10 (2) “Protected step” means—
- (a) making a complaint under section 7 against any person;
 - (b) giving evidence or information in connection with any proceedings under this Act;
 - (c) making an allegation that a person has behaved in a particular manner which, if the allegation were true, would constitute a contravention of this Chapter;
 - 15 (d) taking any other step under or by reference to this Act (such as by commencing any proceedings before a court or tribunal otherwise than as specified in paragraph (a), including proceedings brought otherwise than under this Act).
- 20 (3) Subsection (1) does not apply to treatment of B by reason of any allegation made by him if the allegation was false and not made in good faith.

Other unlawful acts

14 Publishing discriminatory advertisements

- 25 (1) It is unlawful for a person to publish or cause to be published an advertisement which indicates, or which might reasonably be understood as indicating, an intention by any other person to carry out an act that amounts to discrimination (or that would do so apart from any provision of Schedule 6).
- (2) A person who publishes an advertisement made unlawful by subsection (1) is not subject to any liability in respect of the publication of the advertisement if he shows that—
- 30 (a) the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that the intended act to which the advertisement relates would not be unlawful; and
 - (b) it is reasonable for him to rely on the statement.
- 35 (3) Where—
- (a) a responsible person knowingly or recklessly makes a statement of a kind mentioned in subsection (2)(a); and
 - (b) the statement is false or misleading in a material respect;
- 40 that person commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (4) “Advertisement” includes every form of advertisement or notice, whether to the public or not.

15 Giving instructions to discriminate

It is unlawful for a person (“A”) to instruct another person (“B”) to carry out an act that amounts to discrimination, harassment or victimisation if—

5

- (a) A has authority over B; or
- (b) B is accustomed to acting in accordance with A’s wishes.

16 Imposing pressure on another to discriminate

- (1) It is unlawful for a person to induce or attempt to induce another person to carry out an act that amounts to discrimination, harassment or victimisation.
- (2) An inducement that is not communicated directly to another person may be unlawful if it is communicated in such a way that the other person is likely to hear of it.

10

17 Aiding unlawful acts

- (1) A person who knowingly aids another person to carry out an act that amounts to discrimination, harassment or victimisation is to be treated as also carrying out that act.
- (2) Where a person (“A”)—
- (a) is liable under section 19 for the act of another person (“B”); or
 - (b) would be so liable but for section 19(5);
- B is deemed to aid the carrying out of the act by A.
- (3) A person is not to be taken as knowingly aiding another person to carry out an unlawful act if—
- (a) he acts in reliance on a statement made to him by that other person to the effect that, by reason of any provision of this Chapter, the act which he aids would not be unlawful; and
 - (b) it is reasonable for him to rely on the statement.
- (4) Where—
- (a) a person knowingly or recklessly makes a statement of a kind mentioned in subsection (3)(a); and
 - (b) the statement is false or misleading in a material respect;
- that person commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

15

20

25

30

Miscellaneous and supplemental

18 Relationships in the employment field that have come to an end

35

- (1) This section applies where there has been a work relationship and the relationship has come to an end.

(2) “Work relationship” is a relationship in the protected area of activity specified in section 6(1)(b) during the course of which it would have been unlawful for one party to the relationship (“P”) to do an act that amounts to discrimination, harassment or victimisation in relation to another party.

5 (3) It is unlawful for P to do an act that amounts to discrimination, harassment or victimisation in relation to another party where the discrimination, harassment or victimisation arises out of, or is closely connected with, the work relationship.

19 Persons liable for the acts of others

10 (1) Except in a case falling within subsection (2), anything done by a person in the course of his employment is to be treated for the purposes of this Chapter as also done by his employer, whether or not it was done with the employer’s knowledge or approval.

15 (2) Where any person (“A”) makes work (“contract work”) available for doing by individuals who are employed by another person (“B”) who supplies them under a contract made with A, anything done by a person in the course of the contract work is to be treated for the purposes of this Chapter as also done by A (and not by B), whether or not it was done with A’s knowledge or approval.

20 (3) Anything done by a person as agent for another person (“principal”) with the authority of the principal is to be treated for the purposes of this Chapter as also done by the principal.

(4) Subsection (3) applies whether the authority was—
(a) express or implied; or
(b) given before or after the act in question was done.

25 (5) In proceedings under this Act against any person (“A”) in respect of an act alleged to have been done by an employee of his or by a person doing contract work for him, it is a defence for A to show that he took such steps as were reasonably practicable to prevent the employee or person in question from—
30 (a) doing that act; or
(b) doing, in the course of his employment or in the course of contract work done for that person, acts of that description.

(6) Nothing in this section applies to the offences created by section 14(3) or 17(4).

35 (7) In this section “employment” means employment under a contract of service or apprenticeship or a contract personally to do any work (whether the contract is express or implied and, if express, whether oral or in writing); and references to employer and employee are to be construed accordingly.

20 Application of section 19 to the police etc.

40 (1) The holding of a relevant police office is to be treated for the purposes of section 19 as employment by the chief officer of police (and as not being employment by any other person); and anything done by a person holding a relevant police office in the performance (or purported performance) of his functions is to be treated as done in the course of that employment.

- (2) Subsection (1) applies in relation to the National Crime Intelligence Service (“NCIS”) and the National Crime Squad (“the NCS”), as it applies in relation to the police force but as if any reference to the chief officer of police were to the Director General of NCIS or of the NCS (as the case may be).
- (3) Subsection (1) also applies in relation to any other body of constables or police cadets as it applies in relation to the police force, but as if any reference to the chief officer of police were to the officer or other person who has the direction or control of the body in question. 5
- (4) In relation to a member of a police force or a special constable who is not under the direction and control of the chief officer of police for that police force or, as the case may be, for the police area to which he is appointed, references in subsection (1) to the chief officer of police are references to the chief officer under whose direction and control he is. 10
- (5) “Relevant police office” means— 15
- (a) the office of constable held—
 - (i) as a member of a police force; or
 - (ii) on appointment as a special constable for a police area;
 - (b) an appointment as a probationer constable; or
 - (c) an appointment as police cadet to undergo training with a view to becoming a member of a police force. 20

CHAPTER 2

DIRECT MODIFICATION OF AGREEMENTS CONTRARY TO THIS ACT

*Equal pay etc***21 Equality clause in contract of employment**

- (1) If the terms of a contract on which a woman is employed do not include an equality clause (either directly or by reference to a collective or workforce agreement), they are to be deemed to include one. 25
- (2) An equality clause is a provision which relates to the terms of a contract (whether the terms are concerned with pay or not) under which a woman is employed and which is to be taken to modify the contract in the manner set out in subsection (3) in any of the following cases: 30

CASE 1

Where a woman is employed on like work with a man in the same employment.

CASE 2

Where a woman (“A”) is employed on like work with a man (“B”) who is employed by another employer, and the terms on which A and B are employed derive from a common source. 35

CASE 3

Where a woman is employed on work of equal value to that of a man in the same employment.

CASE 4

5 Where a woman (“A”) is employed on work of equal value to that of a man (“B”) who is employed by another employer, and the terms on which A and B are employed derive from a common source.

(3) An equality clause is to be taken to modify the contract as follows—

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

15 (b) if (apart from the equality clause) at any time the woman’s contract does not include a term corresponding to a term benefiting a man which is included in the contract under which he is, has been or would be employed, the woman’s contract is to be treated as including such a term.

20 (4) The requirements of subsection (3) are to be treated as met by an equality clause that is incorporated in, or operates by reference to, such of the following that satisfy the conditions in subsection (5)—

- (a) a collective agreement;
- (b) a workforce agreement; or
- (c) an award of the Central Arbitration Committee made under section 33.

25 (5) The conditions are that—

(a) the agreement or award contains provision giving effect to subsection (3) but provides for the full implementation of that provision to be phased in over a stated period;

30 (b) that period does not exceed five years (beginning with the date on which the agreement was signed or the award made);

(c) where the agreement or award provides for payment of a sum of money to be made over that period, it also includes a requirement that a proportion of the total payment is to be made annually; and

(d) the employer shows—

35 (i) that it is necessary for the full implementation of subsection (3) be phased-in in order to avoid placing a disproportionate burden on him; and

(ii) that the terms in the agreement or award are a genuine, determining and proportionate means of achieving that aim.

40 (6) Any question relating to the effect of an equality clause is to be determined in accordance with Part 5.

22 Equality clause in contract of employment: interpretation

- (1) Provisions of section 21, and of this section, which are framed with reference to women and their treatment relative to men are to be taken to apply equally in the converse case to men and their treatment relative to women.
- (2) For the purposes of section 21(3)— 5
- (a) men are to be treated as in the same employment with a woman if they are men who are, or have been, employed by her employer or by an associated employer (and for these purposes two employers are to be treated as associated if—
- (i) one is a company of which the other has control (whether directly or indirectly); or 10
- (ii) both are companies of which a third person (directly or indirectly) has control);
- (b) in relation to Case 1 and Case 2, a woman is to be regarded as employed on like work with men if (but only if)— 15
- (i) her work and theirs is of the same or a broadly similar nature; and
- (ii) the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; 20
- and, in comparing her work with theirs, regard is to be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences; and
- (c) in relation to Case 3 or Case 4, a woman is to be regarded as employed on work of equal value with that of any men if (but only if)— 25
- (i) her job and their job are of equal value, in terms of the demand made on a worker under various headings (such as effort, skill or decision); or
- (ii) her job and their job would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand in respect of any aspect of the job. 30
- (3) In section 21—
- “collective agreement” has the meaning given in section 178(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52); 35
- “pay” means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or kind, which the worker receives directly or indirectly, in respect of his employment, from his employer; and
- “workforce agreement” means an agreement between an employer and the appropriate representatives of his workforce which— 40
- (a) is in writing;
- (b) is signed;
- (c) has effect for a period specified in the agreement (which may not exceed a period of five years beginning with the date of signing); and
- (d) applies to all members of the workforce or of a particular group of it (being a group undertaking a particular function, working at a particular workplace or belonging to a particular department or unit within their employer’s business). 45

- (4) In the definition of “workforce agreement” in subsection (3), “appropriate representatives”, in relation to the workforce of an employer, means—
- 5 (a) if the members of the workforce are of a description in respect of which an independent trade union is recognised by the employer, any representatives of the trade union;
- (b) in any other case, any representatives of the workforce who have been duly elected in accordance with the requirements of subsection (5) to represent the workforce or a particular group of it.
- (5) The requirements of this subsection are that—
- 10 (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of the workforce are members of the workforce and the candidates for election as representatives of a particular group of the work force are members of
- 15 the group in question;
- (c) no worker who is eligible to be a candidate is unreasonably excluded from standing for election;
- (d) all members of the workforce are entitled to vote for representatives of the workforce and all members of a particular group are entitled to vote
- 20 for representatives of that group;
- (e) the workers entitled to vote may vote for as many candidates as there are representatives to be elected; and
- (f) the election is conducted so as to secure that—
- 25 (i) as far as reasonably practicable, those voting do so in secret; and
- (ii) the votes given at the election are fairly and accurately counted.

Other agreements contrary to this Part

23 Avoidance and revision of certain terms in agreements

- (1) Any term in a contract or in any other agreement is void so far as it purports
- 30 to—
- (a) require a person to do anything which would contravene any provision of, or made under, this Part;
- (b) exclude or limit the operation of any provision of, or made under, this
- 35 Part; or
- (c) prevent any person or body from instituting (by virtue of section 7) proceedings against another person under Part 5.
- (2) Any person interested in an agreement to which subsection (1) applies may apply to a tribunal for an order modifying the agreement to take account of the
- 40 effect of subsection (1) and the tribunal may make such order as it thinks just and equitable in the circumstances of the case.
- (3) An order under subsection (2) may include provision as respects any period before the making of the order.
- (4) No order may be made under subsection (2) unless all affected persons have been—

- (a) given notice of the application; and
 - (b) afforded an opportunity to make representations to the court.
- (5) Subsection (4) applies subject to any tribunal rules or rules of court providing for notice to be dispensed with.

24 Agreements to which section 23 does not apply

5

- (1) Section 23(1)(b) and (c) do not apply to—
- (a) an agreement settling a claim against any person that is, or may be, instituted by virtue of section 7; or
 - (b) an agreement falling within subsection (2).
- (2) An agreement falls within this subsection if— 10
- (a) it is an agreement not to institute proceedings under Part 5 or not to continue such proceedings; or
 - (b) it satisfies the conditions mentioned in subsection (3).
- (3) The conditions are—
- (a) that the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement (and in particular his ability to pursue his complaint before a tribunal); 15
 - (b) that when the adviser gave the advice there must have been in force a contract of insurance or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice; and 20
 - (c) that the agreement must be in writing, relate to the particular complaint, identify the adviser and state that the conditions are satisfied.
- (4) A person is a relevant independent adviser for the purposes of subsection (3)(a) if— 25
- (a) he is a qualified lawyer;
 - (b) he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and authorised to do so on behalf of the trade union; 30
 - (c) he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and authorised to do so on behalf of the centre; or
 - (d) he is a person of a description specified in an order made by the Secretary of State. 35
- (5) But a person is not, in relation to a complainant, a relevant independent adviser for the purposes of subsection (3)(a) if—
- (a) he is, is employed by or is acting in the matter for, the other party or a person connected with the other party;
 - (b) in the case of a person falling within subsection (4)(b) or (c), the trade union or advice centre is the other party or a person connected with the other party; 40
 - (c) in the case of a person falling within subsection (4)(c), the complainant makes a payment for the advice received by him; or

- (d) in the case of a person of a description specified in an order made under subsection (4)(d), any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- 5 (6) For the purposes of subsection (5), two employers are to be treated as connected if—
- (a) one is a company of which the other (directly or indirectly) has control; or
- (b) both are companies of which a third person (directly or indirectly) has control.
- 10 (7) For the purposes of subsection (2)(a), an agreement under which the parties agree to submit a dispute to arbitration—
- 15 (a) is to be regarded as being an agreement not to institute, or an agreement not to continue, proceedings if the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) and the agreement is to submit it to arbitration in accordance with the scheme; but
- (b) is to be regarded as neither being nor including such an agreement in any other case.
- 20 (8) In this section—
- “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate or a person other than a barrister or a solicitor who is an authorised advocate or authorised litigator (within the Courts and Legal Services Act 1990 (c. 41)); and
- 25 (b) as respects proceedings in Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate; and
- 30 “independent trade union” has the same meaning as it has in the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).

PART 3

MEASURES TO FACILITATE GENERAL PROGRESS TOWARDS EQUALITY

Equality obligations in the public sector

35 25 **Meaning of “public body”**

- (1) In sections 26 and 27, “public body” means any person (or any description of persons) specified by order made by the Secretary of State.
- (2) An order under this section may specify only such persons as appear to the Secretary of State to exercise functions of a public nature.

- (3) An order under this section may, in relation to any body, specify a particular capacity in which the body acts or particular functions it carries out.
- (4) For the purposes of the Scotland Act 1998 (c. 46), this section and sections 26 and 27 are to be taken to be pre-commencement enactments within the meaning of that Act. 5
- (5) Before making an order under this section, the Secretary of State must consult the Commission and such other persons as he considers appropriate.
- (6) Before making an order under this section in relation to functions exercisable in relation to Wales by a person who is not a Welsh public authority, the Secretary of State must also consult the National Assembly for Wales. 10
- (7) The Secretary of State must not make an order under this section in relation to functions of a Welsh public authority except with the consent of the National Assembly for Wales.
- (8) In this section “Welsh public authority” means any person whose functions are exercisable only in relation to Wales. 15

26 Equality duties of public bodies

- (1) Every public body must, in carrying out its functions, have regard to the need—
- (a) to eliminate unlawful discrimination on any of the prohibited grounds;
 - (b) to promote equality of opportunity as between those persons in each of the different groupings specified in subsection (2); and 20
 - (c) to promote good relations between members of different racial groups.
- (2) The different groupings are—
- (a) persons generally without regard to their age;
 - (b) persons of different racial groups;
 - (c) persons generally without regard to any disability they have or have had; 25
 - (d) persons of different family status;
 - (e) persons who have undergone a gender reassignment and other persons generally;
 - (f) persons of different marital status; 30
 - (g) women who are pregnant and other persons generally;
 - (h) persons of different religions or beliefs;
 - (i) men and women generally;
 - (j) persons of different sexual orientation.
- (3) In relation to the carrying out of immigration functions, the duty imposed by subsection (1)(b) has effect as if the particular racial ground of nationality were omitted. 35
- (4) Where, in respect of a public body an order under section 25 specifies—
- (a) a particular capacity in which the body acts, subsection (1) does not apply to that body in any other capacity; or 40
 - (b) particular functions of that body, subsection (1) does not apply to that body in relation to any other functions.

- 5
- (5) A failure on the part of a public body to observe the duties imposed by subsection (1) may be taken into account by the Commission in exercising its functions under Parts 4 and 5 of this Act and may, if it appears relevant, be taken into account in any proceedings before a tribunal or court under Part 5 of this Act.
- (6) “Immigration functions” means functions exercisable by virtue of—
- 10
- (a) the Immigration Acts (within the meaning of the Nationality, Immigration and Asylum Act 2002 (c. 41) but excluding sections 28A to K of the Immigration Act 1971 (c. 77) so far as they relate to offences under Part 3 of that Act);
- (b) the Special Immigration Appeals Commission Act 1997 (c. 68);
- (c) any provision made under section 2(2) of the European Communities Act 1972 (c. 68) which relates to immigration or asylum; or
- 15
- (d) any provision of Community law which relates to immigration or asylum.

27 Implementation of equality duties

- (1) The Secretary of State may by order impose, on specified public bodies, specified duties for the purposes of ensuring the better performance by the body of their duties under section 26.
- 20
- (2) An order under subsection (1) may, in particular, make provision—
- (a) for assessing compliance by a public body with the duties imposed by section 26.
- (b) for assessing the likely impact on any of the purposes specified in section 26(1)(a) to (c) of policies or practices adopted, or proposed to be adopted, by a public body in the carrying out by it of its functions;
- 25
- (c) requiring a public body to consult persons appearing to it to be interested in, or affected by, such policies or practices;
- (d) for monitoring the effects of such policies and practices;
- (e) as to the training of the staff of a public body.
- 30
- (3) An order under subsection (1) may be made in relation to a particular public body, any description of public body or all public bodies.
- (4) Before making an order under subsection (1), the Secretary of State must consult the Commission and such other persons as he considers appropriate.
- 35
- (5) Before making an order under this section in relation to functions exercisable in relation to Wales by a person who is not a Welsh public authority, the Secretary of State must also consult the National Assembly for Wales.
- (6) The Secretary of State must not make an order under this section in relation to functions of a Welsh public authority except with the consent of the National Assembly for Wales.
- 40
- (7) In this section “Welsh public authority” means any person whose functions are exercisable only in relation to Wales.
- (8) “Specified” means specified in an order under subsection (1).

*Employment equity plans and pay equity plans***28 Meaning of “designated employer” and other terms**

- (1) This section applies for the purpose of defining terms and expressions used in sections 29 to 33.
- (2) “Designated employer” means any employer (or employers of any description) designated by order made by the Secretary of State as being an employer (or description of employer) to whom sections 29 to 33 apply. 5
- (3) An order under subsection (2) may only designate employers who have ten or more workers.
- (4) Before making an order under this section, the Secretary of State must consult the Commission and such other persons as he considers appropriate. 10
- (5) In sections 29 to 33—
“appropriate representatives”, in relation to the workforce of any employer, has the meaning given in section 22(4);
“employment”— 15
(a) means employment under a contract of service or apprenticeship or a contract personally to do any work (whether the contract is express or implied and, if express, whether oral or in writing); and
(b) includes performance by an individual of contract work;
“employment equity plan” has the meaning given in section 30(2); 20
“pay equity plan” has the meaning given in section 31(2);
“worker” means an individual who is in employment (or, where employment has ceased, was in employment); and
“workforce review” has the meaning given in section 29(3).
- (6) In the definition of “employment” in subsection (5), the reference to contract work is to work made available by any person (“A”) for doing by individuals who are employed by another person (“B”) who supplies them under a contract made with A. 25

29 Workforce reviews

- (1) A designated employer must from time to time conduct a review of his workforce for the purpose of determining whether section 30 or 31 applies to him. 30
- (2) A workforce review must be conducted at least once every three years and, for these purposes, the initial period of three years commences on the coming into force of this section. 35
- (3) A workforce review is an evaluation of—
(a) the conditions for access to employment by the designated employer, including selection criteria, recruitment conditions, transfer, promotion and other benefit (whatever the branch of activity and at all levels of the professional or occupational hierarchy); 40

- 5
- (b) access provided by him to all types, and to all levels, of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; and
 - (c) the employment and working conditions of the workers of the designated employer, including pay, termination and other detriment.
- 10
- (4) In reviewing the pay of his workers, a designated employer must, among other things, identify—
- (a) any descriptions of activities carried out in the course of employment by any group of workers who are wholly or mainly women; and
 - (b) any descriptions of activities carried out in the course of employment by any group of workers who are wholly or mainly men;
- 15
- and, so far as reasonably practicable, he must evaluate those descriptions of activities relative to each other so as to determine which descriptions of activities falling within paragraph (a) are of equal value to those falling within paragraph (b).
- (5) A designated employer must, in relation to descriptions of activities judged by him as being of equal value to each other, carry out an overall comparison between the pay levels of female and male workers carrying on those activities.
- 20
- (6) For the purposes of subsections (4) and (5), a woman is to be regarded as employed on work of equal value with that of any men if (but only if)—
- (a) her job and their job are of equal value, in terms of the demand made on a worker under various headings (such as effort, skill or decision); or
 - (b) her job and their job would have been given an equal value but for the evaluation being made on a system setting different values for men and
- 25
- women on the same demand in respect of any aspect of the job.

30 Employment equity plans

- (1) An employer must draw up, adopt and implement an employment equity plan if the condition in subsection (2) is satisfied.
- 30
- (2) The condition is that, following a workforce review, there is any under-representation in any branch of activity in the workforce, or at any level in the professional or occupational hierarchy, of persons who are members of any of the following groups (“employment equity groups”)—
- (a) any group of persons identified by reference to a particular disability they have or have had;
 - 35 (b) any group of persons identified by reference to their colour, race, nationality or ethnic or national origins;
 - (c) men generally;
 - (d) women generally.
- 40
- (3) An employment equity plan is a programme of action for the purposes of—
- (a) identifying barriers to, and in, employment by a designated employer which may adversely affect persons who are members of an employment equity group;
 - (b) taking steps to remove such barriers; and
 - 45 (c) adopting or maintaining positive policies and practices (including the making of reasonable adjustments to any physical features of premises)

to ensure that members of employment equity groups achieve fair participation in any branch of activity in the workforce of a designated employer or at any level in the professional or occupational hierarchy.

- (4) An employment equity plan must extend to each employment equity group in respect of which there is under-representation. 5
- (5) An employment equity plan must include (amongst other things) provision as to—
- (a) the duration of the plan (which may not last less than one year nor more than five years);
 - (b) the objectives to be achieved for the period of the plan; 10
 - (c) for each year of the plan, the proposed timetable for the achievement of such objectives;
 - (d) the procedures that will be used to monitor and evaluate the implementation of the plan and the degree of any progress made in achieving the purposes mentioned in subsection (3); 15
 - (e) the internal procedures to resolve any dispute about the interpretation or implementation of the plan.
- (6) Nothing in this section requires an employer—
- (a) to take a particular measure if to do so would place a disproportionate burden on him; 20
 - (b) to hire or promote persons to carry on particular activities if they are not qualified to do so;
 - (c) to hire or promote persons without regard to merit; or
 - (d) to create new positions in the workforce.
- (7) For the purposes of subsection (6)(b), a person is to be regarded as being qualified to carry on particular activities by virtue of formal qualifications, prior learning, relevant experience or capacity to acquire (within a reasonable time) the ability to do the job. 25
- 31 Pay equity plans**
- (1) If, as a result of making the pay comparison required by section 29(4), it appears to a designated employer that there is a significant disparity between— 30
- (a) the pay levels of female workers; and
 - (b) the pay levels of male workers;
- the employer must draw up, adopt and implement a pay equity plan.
- (2) A pay equity plan is a programme of action for the purpose of aligning the disparate pay levels of the groups of the female and male workers in question in such a way that the workers receiving the lower pay levels receive an increase in pay. 35
- (3) In considering whether a designated employer is required by subsection (1) to draw up a pay equity plan and, if so, what changes the plan needs to make in order to align pay levels, there is to be disregarded any variations between the pay levels of female and male workers— 40

- 5
- (a) to the extent that the employer is able to show that such variations (or any part of them) are due to any genuine material factor which is not the difference of sex; or
- (b) in any case where such variations are due to the application of an apparently neutral provision, criterion or practice, to the extent that the employer is able to show that—
- 10
- (i) the provision, criterion or practice is objectively justified by a legitimate aim; and
- (ii) the means of achieving that aim are genuine, determining and proportionate.

32 Reviews and plans: procedure and implementation

- 15
- (1) Before commencing a workforce review, a designated employer must take reasonable steps to consult with the appropriate representatives of his workforce.
- 20
- (2) In drawing up or changing an employment equity plan or a pay equity plan—
- (a) a designated employer must attempt to reach agreement with the appropriate representatives of his workforce as to the content of the plan and its implementation; and
- (b) in attempting to reach such an agreement, both the employer and the representatives must have due regard to the need to promote—
- 25
- (i) equality of opportunity between persons who have, or have had, a disability and persons who do not, between persons of different racial groups and between men and women generally; and
- (ii) equal pay for men and women doing work of equal value.
- (3) A designated employer must, on request, make available to appropriate representatives of his workforce—
- 30
- (a) information as to the outcome of any workforce review in the form of a summary or collection of information so framed that it is not possible to ascertain information relating to any particular person; and
- (b) information as to the effects of implementing any employment equity plan or any pay equity plan adopted by him.
- (4) The information mentioned in subsection (3)(b) must be regularly updated.
- 35
- (5) The Secretary of State may by regulations impose such additional requirements relating to workforce reviews, employment equity plans and pay equity plans as he considers appropriate.
- (6) Regulations under subsection (5) may (amongst other things) make provision as to—
- 40
- (a) the form, content and extent of workforce reviews;
- (b) the manner of carrying out the pay comparisons required by section 29(4) and the factors to be taken into account;
- (c) the form and content of employment equity plans and the procedures to be followed in making or changing them;
- 45
- (d) the form and content of pay equity plans and the procedures to be followed in making or changing them;

- (e) the making, and effect, of agreements between employers and workforce representatives so as to facilitate the gradual introduction (over a period of time of such length as is reasonable in all the circumstances) of any increases in pay resulting from the implementation of a pay equity plan. 5
- (7) Before making regulations under subsection (6) the Secretary of State must consult the Commission and such other persons as he considers appropriate.
- 33 Reviews and plans: non-compliance and role of Central Arbitration Committee**
- (1) A failure of a kind to which subsection (2) applies— 10
- (a) is not actionable as a breach of duty; but
 - (b) may be taken into account by the Commission in exercising its functions under Parts 4 and 5 of this Act; and
 - (c) may, if it appears relevant, be taken into account by a tribunal or court in any proceedings before it under Part 5 of this Act. 15
- (2) This subsection applies to any failure on the part of a designated employer—
- (a) to carry out a workforce review in accordance with section 29(1) and (2);
 - (b) to draw up, adopt or implement an employment equity plan when required to do so by section 30;
 - (c) to make available to appropriate representatives of the workforce information about an employment equity plan or a pay equity plan in accordance with section 32(3) and (4); 20
 - (d) to comply with an award made under subsection (4).
- (3) Where, in relation to a designated employer, any dispute concerning a pay equity plan exists or is anticipated (including a dispute as to whether or not the employer is required to draw up such a plan), all or any of the matters to which the dispute relates may be referred for settlement to the arbitration of the Central Arbitration Committee— 25
- (a) by the Commission; or
 - (b) by the appropriate representatives of the workforce of the employer. 30
- (4) An arbitration award made by the Central Arbitration Committee may specify the pay equity plan to be adopted by the designated employer concerned and the period within which the employer must implement it.
- (5) In reaching a determination in any proceedings relating to workforce reviews, employment equity plans or pay equity plans, the tribunal, court or Central Arbitration Committee considering the matter must have regard to whether compliance with any obligations imposed by or under this Part would place a disproportionate burden on the employer. 35

Duties to facilitate access etc by disabled persons

34 Work-related matters: reasonable accommodation for disabled persons

- (1) This section applies where—
- 5 (a) any provision, criterion or practice applied by or on behalf of a responsible person; or
- (b) any physical feature of premises occupied by a responsible person; places a particular qualifying person who is disabled at a particular disadvantage compared with persons who are not disabled.
- 10 (2) The responsible person must take such steps as it is reasonable in the circumstances of the case for him to have to take to enable the particular qualifying person to have access to, or participate in, any work, opportunity or other benefit generally offered by the responsible person.
- (3) Nothing in this section imposes any duty on a responsible person in relation to a particular qualifying person if the responsible person does not know, and could not reasonably be expected to know that that particular person—
- 15 (a) is or may be a qualifying person; or
- (b) has a disability and is likely to be affected in the way mentioned in subsection (1).
- (4) Parts 1 and 2 of Schedule 3 make further provision in relation to the duties imposed by this section (including provision as to who are to be treated as responsible persons and qualifying persons).
- 20 (5) This section imposes duties for the purpose of determining whether a responsible person has done an act which amounts to discrimination against a qualifying person on the ground of his disability and, accordingly—
- 25 (a) a breach of such a duty is not actionable as such; but
- (b) may be taken into account by the Commission in exercising its functions under Parts 4 and 5 of this Act; and
- (c) may, if it appears relevant, be taken into account by a tribunal or court in any proceedings before it under Part 5 of this Act.
- 30 (6) In this section, section 35 and section 36, “discrimination” means any act specified as unlawful in section 9.

35 Education matters: disabled persons not to be substantially disadvantaged

- (1) The body responsible for a school must take such steps as it is reasonable for it to have to take to ensure that—
- 35 (a) in relation to the arrangements it makes for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
- (b) in relation to education and associated services provided by it for, or offered by it to, pupils at the school, disabled pupils are not placed at a
- 40 substantial disadvantage in comparison with pupils who are not disabled.

- (2) The body responsible for a further or higher education establishment must take such steps as it is reasonable for it to have to take to ensure that—
- (a) in relation to the arrangements it makes for determining the admissions to the establishment, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and 5
 - (b) in relation to student services it provides or offers, disabled students are not placed at a substantial disadvantage in comparison with students who are not disabled.
- (3) Part 3 of Schedule 3 makes further provision in relation to the duties imposed by this section. 10
- (4) This section imposes duties for the purpose of determining whether a responsible body has done an act which amounts to discrimination against a disabled person on the ground of his disability and, accordingly—
- (a) a breach of such a duty is not actionable as such; but
 - (b) may be taken into account by the Commission in exercising its functions under Parts 4 and 5 of this Act; and 15
 - (c) may, if it appears relevant, be taken into account by a tribunal or court in any proceedings before it under Part 5 of this Act.
- (5) References to—
- (a) a body responsible for a school are to be construed in accordance with— 20
 - (i) paragraph 20 of Schedule 2 (in the case of a school in England and Wales); and
 - (ii) paragraph 21 of that Schedule (in the case of a school in Scotland); and
 - (b) a body responsible for a further or higher education establishment are to be construed in accordance with— 25
 - (i) paragraph 22 of Schedule 2 (in the case of an establishment in England and Wales); and
 - (ii) paragraph 23 of that Schedule (in the case of a institution in Scotland). 30

36 Goods, facilities and services: adjustments for disabled persons

- (1) This section applies to any person (“the provider”) who provides, in the United Kingdom, any goods, facilities or services which he provides, or is prepared to provide, to members of the public or a section of the public.
- (2) Where the provider has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of any goods, facilities or services which he provides he must take such steps as it is reasonable in all the circumstances of the case for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect. 35
- (3) Where a physical feature (such as one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of any goods, facilities or services, the provider must take such steps as it is reasonable in all the circumstances of the case for him to have to take in order to— 40

- 5
- (a) remove the feature;
 - (b) alter it so that it no longer has that effect;
 - (c) provide a reasonable means of avoiding the feature; or
 - (d) provide a reasonable alternative method of making the goods, facilities or services in question available to disabled persons.
- 10
- (4) Where an auxiliary aid or service (such as the provision of information on audio tape or of a sign language interpreter) would enable disabled persons to make use of any goods, facilities or services or would facilitate their use by such persons, the provider must take such steps as it is reasonable in all the circumstances of the case for him to have to take in order to provide that auxiliary aid or service.
- 15
- (5) This section—
- (a) does not apply to such goods, facilities or services, or to such providers of goods, facilities or services, as may be prescribed; and
 - (b) applies whether the goods, facilities or services are provided on payment or without payment.
- 20
- (6) Nothing in this section requires a provider of services to take any steps that would—
- (a) fundamentally alter the nature of the goods, facilities or services in question or the nature of his profession or occupation; or
 - (b) cause him to incur expenditure exceeding the prescribed maximum.
- 25
- (7) Part 4 of Schedule 3 makes further provision in relation to the duties imposed by this section.
- 30
- (8) This section imposes duties for the purpose of determining whether a provider has done an act which amounts to discrimination against another person on the ground of his disability and, accordingly—
- (a) a breach of such a duty is not actionable as such; but
 - (b) may be taken into account by the Commission in exercising its functions under Parts 4 and 5 of this Act; and
 - (c) may, if it appears relevant, be taken into account by a tribunal or court in any proceedings before it under Part 5 of this Act.

37 Alterations to premises under leases

- 35
- (1) This section applies if—
- (a) premises are occupied by any person under a lease;
 - (b) but for this section, the occupier would not be entitled to make a particular alteration to the premises; and
 - (c) the alteration is one that the occupier proposes to make in order to comply with a duty imposed by section 34, 35 or 36.
- 40
- (2) If the terms and conditions of a lease—
- (a) impose conditions which are to apply if the occupier alters the premises; or
 - (b) entitle the lessor to impose conditions when consenting to the occupier's altering the premises;

the occupier is to be treated for the purposes of subsection (1)(b) as not being entitled to make the alteration.

- (3) The lease has effect, as a result of this subsection, as if it provided—
- (a) for the occupier to be entitled to make the alteration with the written consent of the lessor; 5
 - (b) for the occupier to have to make a written application to the lessor for consent if it wishes to make the alteration;
 - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
 - (d) for the lessor to be entitled to make his consent subject to reasonable conditions. 10
- (4) But subsection (3) does not apply to the extent that the lease expressly excludes it.
- (5) Regulations may make provision supplementing the provisions of this section (including provision for the reference of any matter to a tribunal). 15
- (6) Regulations under subsection (5) may include provision—
- (a) as to the circumstances in which any constraint attributable to the fact that premises are occupied under a lease may be ignored in proceedings against any person under Part 5;
 - (b) as to the circumstances in which a lessor may be joined or sisted as a party in any such proceedings; 20
 - (c) as to the powers of the court or tribunal in relation to any matter arising under this section (including any order it may make and effect of such an order);
 - (d) as to the circumstances in which a lessor is to be taken to have withheld his consent unreasonably or acted unreasonably in withholding his consent; 25
 - (e) as to the circumstances in which a condition subject to which a lessor has given his consent is to be taken to be reasonable;
 - (f) as to the circumstances in which a condition subject to which a lessor has given his consent is to be taken to be unreasonable; 30
 - (g) supplementing or modifying this section in its application to sub-leases and sub-tenancies.
- (7) In this section—
- “lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and
 - “sub-lease” and “sub-tenancy” have such meaning as may be prescribed. 35

PART 4

THE EQUALITY COMMISSION

The Commission

38 The Equality Commission

- 5 (1) There shall be a body corporate to be known as “the Equality Commission for Great Britain”.
- (2) In this Act, the Equality Commission for Great Britain is referred to as “the Commission”.
- 10 (3) The Commission is to have the functions conferred on it by or under any provision of this Act.
- (4) Schedule 4 makes provision about the Commission’s constitution and status.
- (5) The following bodies are to cease to exist on the coming into force of this section—
- 15 (a) Equal Opportunities Commission; and
- (b) Commission for Racial Equality.
- (6) The Secretary of State may by order make provision—
- 20 (a) for any functions which this Act confers on the Commission to be exercisable by the Disability Rights Commission (“DRC”);
- (b) modifying provisions of this Act in their application to any functions exercisable by the DRC; and
- (c) modifying provisions of this Act in their application to the functions of the Commission (in particular, functions which would otherwise have been exercisable by it in relation to persons who have or have had a disability).
- 25 (7) Any functions which, by virtue of subsection (6)(a), are exercisable by the DRC are in addition to any other functions which it has.
- (8) The Secretary of State may by order —
- 30 (a) provide for the DRC to cease to exist on such date as he may appoint; and
- (b) in consequence, provide for the functions of the DRC to become exercisable by the Commission (in particular, the functions conferred by or under the Disability Discrimination Act 1995 (c. 50) and the Disability Rights Commission Act 1999 (c. 17) and any functions conferred by or under this Act).
- 35 (9) But no order may be made by virtue of subsection (8) before the end of the period of three years commencing with the coming into force of this section.

39 The Commission’s general duty

- (1) In discharging its functions under this Act, the Commission must act in a way which it considers most appropriate with a view to—

- (a) eliminating unlawful discrimination on any of the prohibited grounds; and
 - (b) promoting equality of opportunity (both in general terms and in relation to particular cases) as between persons in each of the different groupings specified in subsection (3). 5
- (2) For the purposes of subsection (1), the Commission must, in particular, have regard to—
- (a) the international obligations of the United Kingdom in the field of human rights;
 - (b) the need to conduct its affairs in the public interest and with an appropriate degree of independence; 10
 - (c) the need to secure effective remedies for acts made unlawful by this Act or for breach of duties imposed by it;
 - (d) the need to seek to secure good relations between persons of different racial groups. 15
- (3) The different groupings are—
- (a) persons generally without regard to their age;
 - (b) persons of different racial groups;
 - (c) persons generally without regard to any disability they have or have had; 20
 - (d) persons of different family status;
 - (e) persons who have undergone a gender reassignment and other persons generally;
 - (f) persons of different marital status;
 - (g) women who are pregnant and other persons generally; 25
 - (h) persons of different religions or beliefs;
 - (i) men and women generally;
 - (j) persons of different sexual orientation.
- (4) The reference to the international obligations of the United Kingdom in the field of human rights includes— 30
- (a) the European Convention of Human Rights;
 - (b) the International Covenant on Civil and Political Rights;
 - (c) the International Covenant on Economic, Social and Cultural Rights;
 - (d) the Convention on the Rights of the Child;
 - (e) The Convention on the Elimination of all Forms of Racial Discrimination; 35
 - (f) the Convention on the Elimination of All Forms of Discrimination Against Women;
 - (g) the Convention concerning Discrimination in respect of Employment and Occupation; and 40
 - (h) the Charter of Fundamental Rights of the European Union.

40 Financial arrangements

- (1) The Secretary of State must pay to the Commission such sums as he thinks fit to enable it to meet its expenses.

- (2) The Commission may make charges for facilities or services made available by it for any purpose.
- (3) In discharging its functions under this Act, the Commission must aim to secure an appropriate allocation of its resources—
- 5 (a) between eliminating unlawful discrimination and promoting equality of opportunity; and
- (b) between such of its activities in pursuit of either of those goals as are carried on with reference to each of the different grounds mentioned in subsection (4).
- 10 (4) The different grounds are—
- (a) age;
- (b) colour, race, nationality or ethnic or national origins;
- (c) disability;
- 15 (d) gender reassignment;
- (e) religion or belief;
- (f) sex, pregnancy, marital or family status;
- (g) sexual orientation.
- (5) In determining what allocation of resources is appropriate for the purposes of subsection (3), the Commission must have regard to (among other things)—
- 20 (a) the need to use its resources in the most efficient and economic way;
- (b) the effect that its activities may reasonably be expected to have in relation to each ground separately, taking due account of such of its activities as affect more than one ground;
- 25 (c) the need to ensure that sufficient resources are allocated annually in respect of each of the different grounds;
- (d) the principle that strategic allocation of more resources to general issues, or to issues which affect only one or more (but not all) of the grounds, may be the most effective means of achieving steady progress towards either or both of the goals mentioned in subsection (3)(a) or (b);
- 30 (e) the differing natures of the different grounds;
- (f) the degree of recent progress made in respect of any particular ground towards achieving equality of opportunity.
- (6) The Commission must review the allocation of its resources at least once a year.

41 Reports to Parliament

- 35 (1) At least once a year the Commission must—
- (a) lay before each House of Parliament, the Scottish Parliament and the National Assembly for Wales a general report on the exercise of its functions under this Act; and
- (b) arrange for the report to be published.
- 40 (2) The report under subsection (1) must in particular—
- (a) give details of how the Commission's resources have been divided up in complying with section 40;
- (b) contain a statement of its main objectives and priorities for the year ahead;

- (c) such other matters as the Secretary of State may from time to time direct.
- (3) The Commission may from time to time lay before each House of Parliament, the Scottish Parliament and the National Assembly for Wales such other reports with respect to those functions as it considers appropriate.

General functions 5

42 Acquisition of information etc

- (1) The Commission has the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of its functions.
- (2) That function is to be carried out with a view to ensuring (among other things) that the Commission has sufficient information to take informed decisions and to carry out its other functions effectively. 10
- (3) In carrying out that function the Commission may carry out, commission or support (financially or otherwise) research or surveys and publish reports.

43 Provision of information etc to the public

- (1) The Commission has the function of— 15
- (a) promoting awareness of the ways in which eliminating discrimination and removing obstacles to equality may improve efficiency and competitiveness and benefit the economy of United Kingdom;
 - (b) promoting good practice;
 - (c) promoting awareness of the requirements of this Act and the remedies for which it makes provision; 20
 - (d) promoting awareness of the effect of article 14 (prohibition of discrimination) of the European Convention on Human Rights;
 - (e) giving information or advice to the public in respect of matters relating to any of the Commission's functions. 25
- (2) In carrying out those functions, the Commission may—
- (a) publish educational materials or carry out other educational activities; or
 - (b) support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice. 30

44 Provision of information etc to Ministers and other public bodies

- (1) The Commission has the function of making proposals, or giving other information or advice, to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or proposed change in the law). 35

(2) In discharging its function under subsection (1), the Commission must, at least once every five years, review and report on the working of this Act generally, including a review of the effect of the exclusions in Schedule 2 and of whether there is a need for new exclusions.

5 (3) A Minister of the Crown may request the Commission to make proposals or give other information or advice on any matter relating to the discharge of its functions and the Commission must, so far as is reasonably practicable, comply with the request.

10 (4) If the Commission makes or gives any proposal, report, information or advice it must make a copy available for inspection by members of the public in a legible form and may publish it.

(5) “The law” includes Community law and the international obligations of the United Kingdom in the field of human rights (within the meaning of section 39(4)).

15 **45 Codes of practice**

(1) The Commission has the function of preparing and issuing codes of practice giving practical guidance on any matter for which this Act makes provision.

20 (2) A failure on the part of any person to observe any provision of a code of practice made under this Act may be taken into account by the Commission in exercising its functions under this Part and under Part 5 and, if it appears relevant, shall be taken into account in any proceedings before a court or tribunal under Part 5.

(3) A code of practice issued under this section may, in particular—

25 (a) seek to encourage good practice and good relations in any of the protected areas of activity in which acts are made unlawful by Part 2;

(b) give guidance identifying the acts made unlawful by any provision of Part 2;

(c) give practical guidance to any person on how to avoid doing any such unlawful act;

30 (d) give practical guidance on the circumstances in which the requirements of any exclusion contained in Schedule 2 are, or are not, likely to be met;

(e) give practical guidance as to the circumstances in which a person may present to a tribunal a complaint under Part 2;

(f) seek to encourage the use of conciliation services;

35 (g) give practical guidance to any person as to the effect of, and on compliance with, any duties imposed on him by or under Part 3;

(h) seek to encourage good practice regarding the treatment of any relevant group.

40 (4) Schedule 5 makes provision with respect to the procedure for issuing codes of practice.

(5) The Secretary of State, the Scottish Ministers and the National Assembly for Wales may request the Commission to prepare a code of practice on any matter specified in the request and the Commission must comply with the request.

- (6) “Relevant group” means—
- (a) any group of persons identified by reference to a particular age group into which they fall;
 - (b) any group of persons identified by reference to their colour, race, nationality or ethnic or national origins; 5
 - (c) any group of persons identified by reference to a particular disability they have or have had;
 - (d) any group of persons identified by reference to their family status;
 - (e) persons generally who have undergone a gender reassignment;
 - (f) any group of persons identified by reference to their marital status; 10
 - (g) pregnant women generally;
 - (h) any group of persons identified by reference to their religion or belief;
 - (i) men generally or women generally;
 - (j) any group of persons identified by reference to their sexual orientation.

Assistance to others 15

46 Questionnaires relating to acts made unlawful by Part 2

- (1) This section has effect for the purposes of—
- (a) helping a person (“A”) to decide whether to make a complaint under section 7 alleging that another person (“B”) has done an act made unlawful under Part 2; and 20
 - (b) if A decides to make a complaint, helping him to formulate and present his case in the most effective manner.
- (2) The Commission must draw up—
- (a) forms by which A may question B on any matter which is or may be relevant; and 25
 - (b) forms on which B may, if he so wishes, reply to any questions.
- (3) Where A questions B (whether use is made of any form drawn up under subsection (2) or not), the question and any reply by B is to be admissible in evidence in any proceedings under Part 5.
- (4) If in any proceedings under Part 5 it appears to a tribunal or court that A questioned B (whether use is made of any form drawn up under subsection (2) or not) and that— 30
- (a) B deliberately and without reasonable excuse omitted to reply within a reasonable period; or
 - (b) that his reply is evasive or equivocal; 35
- the tribunal or court may draw any inference which it considers is just and equitable to draw, including an inference that B did the unlawful act complained of.
- (5) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a tribunal or court, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings. 40

47 Assistance to persons in connection with certain proceedings

- (1) In this section “relevant proceedings” means—
- (a) proceedings which a person or body has brought or proposes to bring under section 7 of this Act;
 - 5 (b) proceedings which a person has brought or proposes to bring under section 7 of the Human Rights Act 1998 (c. 42) which concern the matters for which this Act makes provision;
 - 10 (c) proceedings which a person has brought or proposes to bring before the European Court of Human Rights against the United Kingdom which concern the application of article 14 of the European Convention on Human Rights; and
 - 15 (d) any other proceedings which are prescribed for the purposes of this paragraph, being proceedings in which a person who is a member of a relevant group (within the meaning of section 45(6)) relies, or proposes to rely, on the fact that he belongs to that group.
- (2) Where the person concerned applies to the Commission for assistance in relation to any relevant proceedings, the Commission must consider the application and may, if it thinks fit, grant the application on any of the following grounds—
- 20 (a) that the case raises a question of principle;
 - (b) that it is unreasonable to expect the applicant to deal with the case unaided (because of its complexity, because of the applicant’s position in relation to another party or for some other reason);
 - 25 (c) that there is some other special consideration which makes it appropriate for the Commission to provide assistance.
- (3) If the Commission grants an application it may—
- 30 (a) provide or arrange for the provision of legal advice;
 - (b) arrange for legal or other representation (which may include any assistance usually given by a solicitor or counsel);
 - (c) seek to procure the settlement of the dispute;
 - (d) provide or arrange for the provision of any other assistance which it thinks appropriate.
- (4) Subsection (3)(b) does not affect the law and practice as to who may represent a person in relation to any proceedings.

PART 5

ENFORCEMENT

CHAPTER 1

JURISDICTION

- 48 Matters referred to a tribunal** 5
- (1) Where a provision of this Act provides for any matter to be referred to a tribunal, the matter is to be referred to an employment tribunal if the matter falls within section 49, 50 or 51.
- (2) Where the matter referred to a tribunal falls outside the employment field, the tribunal hearing the matter is to operate under the name “equality tribunal”. 10
- (3) In this Part—
- (a) references to the respondent to a complaint or application are to the person against whom the complaint or application is made; and
- (b) where the respondent is a person who, by virtue section 19, is to be treated as having done a particular act, references to a person doing any act made unlawful by any provision of this Act are to be construed as references to the person whose act is the subject of the complaint. 15
- 49 Education cases concerning admission to or exclusion from schools etc**
- (1) This section applies where—
- (a) a complaint under section 7 alleges that an act made unlawful by any provision of Part 2 has been done in the protected area of activity specified in section 6(1)(c); 20
- (b) the allegation relates to an admissions decision or an exclusion decision; and
- (c) appeal arrangements enabling any person to make an appeal against such a decision have been made under— 25
- (i) section 94 of the School Standards and Framework Act 1998 (c. 31);
- (ii) section 52(3)(c) of the Education Act 2002 (c. 32); or
- (iii) an agreement entered into between the body responsible for an Academy and the Secretary of State under section 482 of the Education Act 1996 (c. 56). 30
- (2) The complaint under section 7 is to be made under the appeal arrangements specified in subsection (1)(c).
- (3) The body hearing the claim must exercise the powers that it has under those arrangements. 35
- (4) “Admissions decision” means—
- (a) a decision of a kind mentioned in section 94(1) or (2) of the School Standards and Framework Act 1998 (c. 31); or

(b) a decision as to the admission of a person to an Academy which is taken by the body responsible for the Academy or on its behalf.

(5) “Exclusions decision” means—

(a) a decision of a kind mentioned in section 52(3)(c) of the Education Act 2002 (c. 32); or

(b) a decision not to reinstate a pupil who has been permanently excluded from an Academy by its head teacher which is taken by the body responsible for the Academy or on its behalf.

50 Education cases brought on disability grounds

(1) This section applies to any complaint under section 7, or application under section 61, which alleges that a body responsible for a school has, in relation to any person, acted on disability grounds in a way made unlawful by any provision of Part 2.

(2) The complaint or application is to be made to the Special Educational Needs and Disability Tribunal.

(3) A complaint or application must be made before the end of the period of six months beginning with—

(a) the date on which the act complained of was done; or

(b) in a case in which subsection (4) applies, the date on which the alleged victim of the act discovered the concealment or could with reasonable diligence have discovered it.

(4) This subsection applies where—

(a) any fact relevant to the complaint or application was deliberately concealed from the alleged victim by the person alleged to have done the unlawful act; and

(b) the alleged victim did not discover the concealment (or could not with reasonable diligence have discovered it) until afterwards.

(5) If it is satisfied that the allegation is well founded, the Special Educational Needs and Disability Tribunal may make such order as it considers reasonable in all the circumstances of the case.

(6) The power conferred by subsection (5)—

(a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned and on any other person of any matter to which the complaint or application relates; but

(b) does not include power to order the payment of any sum by way of compensation.

(7) Schedule 6 makes provision as to the jurisdiction and procedure of the Special Educational Needs and Disability Tribunal.

(8) In this section—

(a) “disability grounds”, in relation to any person, means a reason or reasons related to any disability that person has or had; and

(b) the reference to a body responsible for a school is to be construed in accordance with—

- (i) paragraph 20 of Schedule 2 (in the case of a school in England and Wales); and
- (ii) paragraph 21 of that Schedule (in the case of a school in Scotland).

51 Immigration cases

5

- (1) This section applies where a complaint under section 7, or application under section 61, alleges that—
 - (a) in taking any decision under the Immigration Acts relating to the entitlement of the relevant person to enter or remain in the United Kingdom, an immigration authority has done an act made unlawful by any provision of Part 2; or 10
 - (b) by virtue of section 17 or 19, another person is to be treated as having done that act.
- (2) No complaint or application may be made if—
 - (a) the question whether the act complained of was unlawful has been, or could have been, raised in proceedings on an appeal which is pending, or could be brought, under the 1997 Act or Part 5 of the 2002 Act (and for these purposes, any power to grant leave to appeal out of time is to be disregarded); or 15
 - (b) in proceedings on an appeal under the 1997 Act or Part 5 of the 2002 Act, it has been decided that the act in question was not unlawful. 20
- (3) Where, in proceedings on an appeal under the 1997 Act or Part 5 of the 2002 Act, it has been decided that an act to which a complaint or application relates was unlawful, any tribunal or court hearing a complaint or application made under this Act must treat that act as an act which is unlawful for the purposes of the proceedings before it. 25
- (4) The following decisions are not to be subject to challenge or otherwise affected by virtue of a decision of a tribunal or court made under this Act—
 - (a) any decision under the Immigration Acts which is made by an immigration authority and which relates to the entitlement of a relevant person to enter or remain in the United Kingdom; and 30
 - (b) any decision in proceedings on an appeal under the 1997 Act or Part 5 of the 2002 Act which—
 - (i) relates to a decision falling within paragraph (a); and
 - (ii) is made by an adjudicator appointed for the purposes of Part 5 of the 2002 Act, the Immigration Appeal Tribunal, the Special Immigration Appeals Commission, the Court of Appeal, the Court of Session or the House of Lords. 35
- (5) In this section—
 - “the 1997 Act” means the Special Immigration Appeals Commission Act 1997 (c. 68);
 - “the 2002 Act” means the Nationality, Immigration and Asylum Act 2002 (c. 41);
 - “the Immigration Acts” has the meaning given by section 158 of the 2002 Act;40

“immigration authority” means the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971 (c. 77); “pending” has the same meaning as in the 1997 Act or Part 5 of the 2002 Act; and “relevant person” means the individual who is alleged to have been the victim of the unlawful act complained of.

52 Transfer to county court or sheriff’s court

- (1) This section applies to any reference made to the tribunal which—
 - (a) is a complaint made under section 7 or an application made under section 61; and
 - (b) concerns a matter outside the employment field.
- (2) The President or Regional Chairman of tribunals must consider whether in all the circumstances of the case it is appropriate to transfer the matter to the county court (or in Scotland the sheriff’s court).
- (3) A determination under subsection (2) must be made no later than 28 days after receiving the respondent’s notice of appearance.
- (4) A matter must be transferred in any case if it appears to the President or Regional Chairman that the case does (or may) involve matters of national security.
- (5) In determining whether the case is appropriate for onward reference under subsection (2), regard is to be had to any submissions made by the parties and to any other matter which appears relevant.
- (6) Matters which may be relevant include—
 - (a) whether, in the interests of the parties, it would be convenient or fair to transfer the matter to a court having regard to the facts, legal issues, remedies and procedure;
 - (b) the availability of a judge specialising in this sort of matter;
 - (c) the facilities available at the tribunal and at the court (with a view to determining whether such facilities are adequate given the disabilities of a party or a potential witness);
 - (d) the nature of any question of principle to which the matter may give rise.
- (7) Any reference made to a court by virtue of this section is to be determined—
 - (a) in the case of a complaint under section 7, in accordance with the provisions of Chapter 2 of this Part; or
 - (b) in the case of an application under section 61, in accordance with the provisions of Chapter 3 of this Part.

53 Proceedings involving matters of national security

- (1) This section applies in relation to any matter that has been transferred to a county or sheriff’s court under section 52(4).
- (2) County court rules (or, in relation to Scotland, sheriff court rules) may make

- provision for enabling a court to take any of the following steps where it considers it expedient to do so in the interests of national security—
- (a) to exclude from all or part of the proceedings the person initiating the proceedings (“the claimant”) or his representatives;
 - (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 has been excluded; 5
 - (c) to take steps to keep secret all or part of the reasons for its decision in the proceedings.
- (3) 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, any proceedings from which the claimant and his representatives are excluded by virtue of subsection (2). 10
- (4) A person appointed under subsection (3)—
- (a) if appointed for the purposes of proceedings in England and Wales, must have a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)); and 15
 - (b) if appointed for the purposes of proceedings in Scotland, must be—
 - (i) an advocate; or
 - (ii) a solicitor who has, by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46), rights of audience in the Court of Session or the High Court of Justiciary. 20
- (5) A person appointed under subsection (3) is not responsible to the person whose interests he is appointed to represent.

CHAPTER 2

25

ENFORCEMENT BY THE COMMISSION

*Obtaining information***54 Commission powers to gather information**

- (1) The Commission may, by notice in writing, seek to obtain information from such persons as it thinks fit for any purpose connected with the discharge of its functions. 30
- (2) The Commission may, in addition, conduct an investigation for the purpose of assisting it in—
- (a) determining the steps required of any person to avoid doing any act made unlawful by any provision of Part 2; 35
 - (b) determining the steps required of any person to comply with any requirements imposed on him by or under Part 3 of this Act;
 - (c) considering whether to exercise against any person any of its powers under this Part;
 - (d) discharging any other of its functions. 40

- (3) An investigation under subsection (2) may (amongst other things) relate to—
- (a) any aspect of the conduct of a person identified in paragraphs (a) to (f) of section 6(1) which takes place within the protected area of activity there specified;
 - 5 (b) the carrying out by a public body of any of its functions;
 - (c) any aspect of the workforce of an employer or of his employment policies or practices (including any provisions, criteria or practices relating to the termination of employment);
 - 10 (d) any aspect of the arrangements or services provided by a body responsible for an educational establishment;
 - (e) any aspect of the goods, facilities or services provided by any person to members of the public or a section of the public.
- (4) Schedule 7 contains provision as to the powers of the Commission on an investigation and the applicable procedure.

15 **55 Restrictions on disclosure of information**

- (1) This section applies to information given to the Commission in connection with the exercise of any of its functions under this Act.
- (2) Such information must not be disclosed unless the disclosure is permitted under subsections (3) to (6).
- 20 (3) Subsection (2) does not prohibit the disclosure of any information if the information—
- (a) has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section;
 - 25 (b) is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.
- (4) Subsection (2) does not prohibit the disclosure by the Commission (or any person authorised by it to act on its behalf) of information held by it if it obtains the consent of—
- 30 (a) the person from whom the Commission obtained the information; and
- (b) if different, the person to whom it relates.
- (5) The Commission may disclose information to which this section applies for the purpose of facilitating the exercise by the Commission of any function it has under or by virtue of this Act.
- 35 (6) The Commission may disclose information to which this section applies to the Equality Commission for Northern Ireland for the purpose of facilitating the exercise by that Commission of any function it has under or by virtue of Part 7 of the Northern Ireland Act (c. 47) (human rights and equal opportunities).
- 40 (7) Any person who discloses information to which this section applies in contravention of subsection (2) commits an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both.

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (8) Nothing in this section authorises a disclosure of information which contravenes the Data Protection Act 1998 (c. 29).

Co-operation

5

56 Obtaining undertakings

- (1) Any person may give to the Commission a written undertaking that he will take such action as is specified in the undertaking.
- (2) An undertaking under subsection (1) may be given—
 - (a) as a result of informal discussions between the person concerned and the Commission; or
 - (b) in response to a request made under subsection (3).
- (3) A request for an undertaking—
 - (a) may be made if the Commission has formed the opinion (whether before or after an investigation under section 54(2)) that a person ought to take particular action in order to comply with any one or more of the requirements of Part 2 or 3 of this Act that apply to him; and
 - (b) must specify the requirement or requirements in question.
- (4) An undertaking under subsection (2) must be in such terms as appear satisfactory to the Commission with a view to ensuring that the person who gives the undertaking takes such action to comply with the requirements concerned as it is reasonable and appropriate for him to take in the circumstances of the case.

Compliance notices: contraventions of Parts 2 and 3 of this Act

57 Commission’s power to issue compliance notices

25

- (1) The Commission may give a compliance notice to any person (“A”) where it appears to the Commission that any of the circumstances mentioned in subsection (2) have arisen.
- (2) The circumstances are that A has failed—
 - (a) to comply with an undertaking given under section 56(1);
 - (b) to give any undertaking in response to a request under section 56(3);
 - (c) to give an undertaking that complies with section 56(4);
 - (d) to comply with any duty imposed on him under Part 3.
- (3) A compliance notice must—
 - (a) indicate the reasons for giving it;
 - (b) identify any requirement of this Act which, in the opinion of the Commission, has not been complied with by the recipient;

- (c) contain such directions as the Commission considers to be reasonable and appropriate to secure compliance with the requirement concerned; and
 - (d) state the period within which those directions must be complied with.
- 5 (4) Directions under subsection (3)(c) may, in particular, include—
- (a) directions for the abandonment of any practice;
 - (b) directions for the modification, in accordance with any instructions given in the directions, of any practice;
 - 10 (c) directions for the substitution or adoption of any new practices specified by the Commission;
 - (d) such directions as the Commission considers necessary to ensure that other directions are duly carried out.
- (5) The Commission may at any time after giving a compliance notice (and whether on request or otherwise)—
- 15 (a) revoke all the directions; or
 - (b) modify the directions by revoking any of them or by substituting new directions for all or any of them.
- (6) The Commission may accept from the applicant an undertaking under section 56 in substitution for any directions revoked by it under subsection (5)(a).
- 20 (7) Directions given in a compliance notice are—
- (a) binding on the person concerned (except to the extent that they are quashed or other directions are substituted for them under section 59); and
 - (b) enforceable only in accordance with section 60.

25 **58 Compliance notices: procedure**

- (1) If the Commission proposes to give any person a compliance notice, it must give that person—
- 30 (a) a draft copy of the compliance notice; and
 - (b) a written statement giving reasons for the notice and specifying a reasonable period within which that person may make representations to the Commission.
- (2) The period mentioned in subsection (1)(b) may not be less than 28 days and not more than 56 days.
- (3) The Commission—
- 35 (a) must consider any written or oral representations made to it by the person to whom it gives the statement required by subsection (1)(b);
 - (b) must consider any written representations made to it by any other person who appears to the Commission to have a direct interest in the matter; and
 - 40 (c) may invite any person to make written or oral representations to it.
- (4) If the Commission decides to give to any person a compliance notice (whether in its original form or with amendments), it must give that person written notice of its decision.

- (5) Where, under section 57(5), the Commission revokes or modifies any directions contained in a compliance notice, the Commission must give written notice of the revocation or modification to the person concerned.

59 Compliance notices: appeals

- (1) A person to whom a compliance notice is given may appeal to the tribunal. 5
- (2) A compliance notice must inform the person to whom it is given of that right and must include an indication of the procedure on such an appeal.
- (3) An appeal under this section must be made before the end of the period of 21 days beginning with the date on which the compliance notice is given.
- (4) On an appeal, the tribunal— 10
- (a) may make an order under subsection (5) if it is satisfied in the circumstances of the case—
- (i) that it is unreasonable to expect the person to whom a compliance notice was given to comply with the directions contained in it; or 15
- (ii) that the directions are not appropriate; or
- (b) may dismiss the matter.
- (5) An order under this subsection is such of the following orders as appears to the tribunal to be just and equitable in the circumstances of the case— 20
- (a) an order to quash the directions contained in the compliance notice or any of them; or
- (b) an order to substitute for the directions or any of them such other directions (of a kind that the Commission could have given) as the tribunal considers reasonable and appropriate in the circumstances of the case. 25
- (6) Directions under subsection (5)(b) are binding on the appellant and are enforceable only in accordance with section 60.

60 Compliance notices: enforcement

- (1) The Commission may apply to the tribunal for an order enforcing a compliance notice. 30
- (2) An application under this section may not be made—
- (a) before the end of the period of 28 days commencing with the date on which the notice was given; or
- (b) if an appeal under section 59 is made, before the end of the period of 28 days commencing with the date on which the appeal is determined or abandoned. 35
- (3) On an application under this section, the tribunal may—
- (a) make such order as it thinks fit in the circumstances of the case for the purpose of giving effect to the compliance notice; and
- (b) whether or not it makes such an order, order that the whole or part of the compliance notice is to cease to have effect. 40

- (4) An order under subsection (3)(a)—
- (a) must specify the steps to be taken by the person to whom the notice was given;
 - (b) may specify the time within which each step is to be taken; and
 - (c) may require a specified person to attend before the tribunal to report to the tribunal on the extent to which those steps have been taken.
- (5) The tribunal may revoke or vary the terms of any order under subsection (3)(a) either—
- (a) on an application made by the Commission or by the person in relation to whom the order was made; or
 - (b) where a person attends before the tribunal in pursuance of a requirement imposed by virtue of subsection (4)(c).
- (6) The Commission is entitled to be heard on any occasion when, in pursuance of a requirement imposed by virtue of subsection (4)(c), a person attends before the tribunal.

Applications to tribunal: contraventions of Part 2 of this Act

61 Commission’s power to make tribunal applications

- (1) the Commission may make an application to a tribunal alleging that a person has acted in a way made unlawful by any provision of Part 2.
- (2) An application under subsection (1) may be made against—
- (a) the person alleged to have done the act complained of;
 - (b) any person who, by virtue of section 17 or 19, is to be treated as having done the act complained of.
- (3) No application may be made under this section if it concerns a matter in respect of which a complaint may be made under section 72(2).
- (4) An application under this section may be made either in the Commission’s own name or jointly with one or more persons who appear to the Commission to have been adversely affected by the unlawful act that is the subject of the application.
- (5) An application made under this section is to be determined in accordance with the following provisions of this Part.

62 Time limit for making tribunal applications

- (1) An application under section 61 must be made before the end of the period of six months beginning with—
- (a) the date on which the act complained of was done; or
 - (b) in a case in which subsection (2) applies, the date on which the individual who is alleged to have been the victim of the unlawful act complained of discovered the concealment or could with reasonable diligence have discovered it.

- (2) This subsection applies where—
 - (a) any fact relevant to the application was deliberately concealed from the alleged victim by the person alleged to have done the unlawful act; and
 - (b) the alleged victim did not discover the concealment (or could not with reasonable diligence have discovered it) until after the act was done. 5
- (3) For the purposes of subsection (1)—
 - (a) where the act complained of is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
 - (b) any act extending over a period is to be treated as done at the end of that period; and 10
 - (c) a deliberate omission is to be treated as done when the person in question decided upon it.
- (4) For the purposes of subsection (3)(c), a person is (in the absence of evidence establishing the contrary) to be taken to decide upon an omission—
 - (a) when he carries out an act inconsistent with the omitted act; or 15
 - (b) if he has carried out no such inconsistent act, when the period expires within which he might reasonably have expected to carry out the omitted act if it was to be carried out.

63 Tribunal applications: burden of proof

- (1) This section applies to proceedings brought under section 61. 20
- (2) Unless subsection (3) applies, the tribunal or court hearing the matter must uphold the application if the Commission shows facts from which the tribunal or court could (apart from this section) conclude in the absence of an adequate explanation that the respondent to the application has done the unlawful act complained of. 25
- (3) This subsection applies if the respondent satisfies the tribunal or court that he did not act in such a way.

64 Tribunal applications: determination

- (1) In this section and section 65, “relevant person” means—
 - (a) any person making the application jointly with the Commission under section 61(4); 30
 - (b) any other person who appears to the tribunal or court hearing the matter to have been adversely affected by the unlawful act to which the application relates and who, before any application in respect of that act is heard, registers his interest with the Commission; 35
 and, for the purposes of paragraph (b), the Secretary of State may by regulations make provision as to the identification and registration of persons claiming that their interests have been adversely affected by any unlawful act.

- (2) On an application under section 61, a tribunal or court hearing the matter may, if it is satisfied that the respondent to the complaint has done the unlawful act complained of—
- 5 (a) recommend that the respondent take such action as appears to the tribunal or court to be reasonable in the circumstances of the case for the purpose of obviating or reducing the adverse effect on the relevant person and on any other person of any act to which the complaint relates; and
- (b) make an order under this section.
- 10 (3) An order under this section is such of the following orders as appears to the tribunal or court to be just and equitable in the circumstances of the case—
- (a) an order requiring the respondent to pay to any relevant person such sum as the tribunal or court may determine;
- 15 (b) where the unlawful act concerned an application by a relevant person for employment with the respondent, an order that that person be engaged by the respondent in employment comparable to that to which his application related or in other suitable employment;
- (c) where a relevant person was formerly employed by the respondent, any order that an employment tribunal may make under section 113 of the Employment Rights Act 1996 (c. 18) (orders for reinstatement or re-engagement);
- 20 (d) such order as the tribunal or court considers reasonable in all the circumstances of the case with a view to obviating or reducing the adverse effect on the relevant person and on any other person of any matter to which the complaint or application relates;
- 25 (e) if it appears to the tribunal or court that an unlawful act has occurred and that there is a reasonable likelihood that it will continue or be repeated, an order restraining (or in Scotland an interdict prohibiting) the act in question;
- 30 (f) if it appears to the tribunal or court that an unlawful act has occurred and that there are steps which could be taken for remedying it, an order requiring any person who has carried out the unlawful act to take such steps as the court may direct to remedy it.
- (4) Any action recommended under subsection (2)(a) must be taken within such period as the tribunal or court may specify.
- 35 (5) In determining whether to make an order under subsection (3)(b), the tribunal or court must have regard to all the circumstances and, in particular—
- (a) whether the person in whose favour the order would be made wishes to be engaged by the respondent; and
- 40 (b) whether it is practicable for the respondent to comply with an order to engage that person.

65 Amount of awards

- (1) In determining the sum to be paid to a relevant person as a result of an order made under section 64(3)(a), the tribunal or court must apply the principles applicable to the calculation of damages in claims in tort or (in Scotland) in reparation for breach of statutory duty.
- 45

- (2) If the tribunal or court considers that it is appropriate in the circumstances of the case to do so, it may include in the sum an amount by way of damages for injury to feelings to compensate any relevant person for any harm suffered (whether or not it includes compensation under any other head).
- (3) If (but only if) the tribunal or court considers— 5
- (a) that the respondent to the application acted in a way that deliberately and outrageously disregarded the right of the relevant person to respect and common decency; and
- (b) that any other order it has power to make would otherwise be inadequate to punish the respondent; 10
- it may award an additional amount by way of punitive damages.
- (4) For the purposes of subsection (3), the tribunal or court may regard deterring the respondent and others from similar conduct as being an object of any punishment.
- (5) In considering whether to award punitive damages under subsection (3), the tribunal or court must have regard to all the circumstances and, in particular— 15
- (a) the need to ensure that any sum awarded does not exceed the minimum required to punish the respondent for his conduct;
- (b) the state of mind of the respondent at the time of the unlawful act;
- (c) whether or not the respondent has behaved in an oppressive manner; 20
- (d) the number of persons affected by the respondent's act;
- (e) the nature and extent of any benefit the respondent derived from the unlawful act;
- (f) the nature of the harm caused to any relevant person;
- (g) any other matter which the tribunal or court considers relevant. 25

66 Persistent contraventions

- (1) The Commission may also make an application to a tribunal if it appears to it that, unless restrained, a person is likely to do any act which, if it were done, would—
- (a) be an act made unlawful by any provision of Part 2; and 30
- (b) qualify as a persistent contravention.
- (2) An act qualifies as a persistent contravention if—
- (a) it is an act made unlawful by any provision of Part 2; and
- (b) it is done by any person before the end of the relevant period.
- (3) The relevant period, in relation to any person, is the period of five years beginning with the date on which an earlier finding of a tribunal or court became final and the finding was that the person in question had done an act made unlawful by any provision of Part 2. 35
- (4) For the purposes of subsection (3) a finding becomes final when—
- (a) an appeal against the finding is determined or abandoned; or 40
- (b) the time for appealing expires without an appeal having been made.

- (5) On an application under this section, a tribunal or court may, if it is satisfied that there is a reasonable likelihood that the proposed unlawful act will occur, make an order restraining (or in Scotland an interdict prohibiting) the act in question.

5

CHAPTER 3

ENFORCEMENT BY INDIVIDUALS AND OTHERS

Complaints to tribunal: contraventions of Part 2

67 Complaints under section 7: conciliation

- 10 (1) The Commission may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in relation to disputes arising under section 7.
- 15 (2) The period for making a complaint allowed by section 8(1) is to be extended by two months if, before the end of that period, the matter to which the complaint relates is referred for conciliation in pursuance of arrangements made under this section.
- (3) In deciding what arrangements (if any) to make, the Commission must have regard to the desirability of securing, so far as reasonably practicable, that conciliation services are available for all disputes arising under section 7 which the parties may wish to refer to conciliation.
- 20 (4) Neither a commissioner nor an employee of the Commission may provide conciliation services in relation to disputes arising under section 7.
- 25 (5) The Commission must ensure that arrangements under subsection (1) include appropriate safeguards to prevent the disclosure to commissioners or employees of the Commission of information obtained by a person in connection with the provision of conciliation services in pursuance of the arrangements.
- (6) Subsection (5) does not apply to—
- 30 (a) information relating to a dispute which is disclosed with the consent of the parties to the dispute; or
- (b) information which is not identifiable with a particular dispute or a particular person and which is reasonably required by the Commission for the purpose of monitoring the operation of the arrangements concerned.
- 35 (7) Anything communicated to a person while providing conciliation services in pursuance of arrangements under subsection (1) is not admissible in any proceedings except with the consent of the person who communicated it to that person.
- 40 (8) “Conciliation services” means advice and assistance provided by a conciliator to the parties to a dispute with a view to promoting its settlement otherwise than on a complaint to a tribunal.

68 Complaints under section 7: interim relief

- (1) Any person who makes a complaint under section 7 may apply to the tribunal (or to any court to which the matter has been transferred) for interim relief.
- (2) The tribunal or court must determine the application for interim relief as soon as practicable after receiving the application. 5
- (3) The tribunal or court may make an order granting on an interim basis any remedy that the tribunal would have the power to grant in its final decision.
- (4) Any order under this section is subject to the further order, or final decision, of the tribunal or court.
- (5) If, after hearing an application for interim relief, it appears to the tribunal or court that on determining the complaint to which the application relates it is likely that the tribunal will find that the employer has done an act made unlawful by any provision of Part 2 of this Act, section 129(2) to (10) of the Employment Rights Act 1996 (c. 18) has effect to determine the procedure to be followed by the tribunal and the orders it may make. 10
15
- (6) At any time between—
 - (a) the making of an order by virtue of subsection (5); and
 - (b) the determination or settlement of the complaint;the employer or the employee may apply to the tribunal or court hearing the matter for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order (and section 129(2) to (10) of the Employment Rights Act 1996 applies in relation to such an application as in relation to an original application for interim relief). 20
- (7) Sections 130 and 132 of the Employment Rights Act 1996 apply in relation to any order made by virtue of subsection (5) or (6) as in relation to an order under section 129 of that Act, with references in those sections to an employment tribunal being read as reference to the tribunal or court hearing the matter under this Act. 25

69 Complaints under section 7: burden of proof

- (1) This section applies to proceedings brought under section 7. 30
- (2) Unless subsection (3) applies, the tribunal or court hearing the matter must uphold the complaint if the complainant shows facts from which the tribunal or court could (apart from this section) conclude in the absence of an adequate explanation that the respondent to the complaint has done the unlawful act complained of. 35
- (3) This subsection applies if the respondent satisfies the tribunal or court that he did not act in such a way.

70 Complaints under section 7: determination

- (1) In this section and section 71, “relevant person” means the complainant or, if different, the victim of the unlawful act. 40

- (2) On a complaint under section 7, a tribunal or court hearing the matter may if it is satisfied that the respondent to the complaint has done the unlawful act complained of—
- 5 (a) recommend that the respondent take such action as appears to the tribunal or court to be reasonable in the circumstances of the case for the purpose of obviating or reducing the adverse effect on the relevant person and on any other person of any act to which the complaint relates; and
- (b) make an order under this section.
- 10 (3) An order under this section is such of the following orders as appears to the tribunal or court to be just and equitable in the circumstances of the case—
- (a) an order requiring the respondent to pay to the relevant person such sum as the tribunal or court may determine;
- 15 (b) where the complaint relates to an application for employment with the respondent, an order that the relevant person be engaged by the respondent in employment comparable to that to which his application related or in other suitable employment;
- (c) where the relevant person was formerly employed by the respondent, any order that an employment tribunal may make under section 113 of the Employment Rights Act 1996 (c. 18) (orders for reinstatement or re-engagement);
- 20 (d) such order as the tribunal or court considers reasonable in all the circumstances of the case with a view to obviating or reducing the adverse effect on the relevant person and on any other person of any act to which the complaint relates.
- 25 (4) Any action recommended under subsection (2)(a) must be taken within such period as the tribunal or court may specify.
- (5) In determining whether to make an order under subsection (3)(b), the tribunal must have regard to—
- 30 (a) whether the relevant person wishes to be engaged by the respondent; and
- (b) whether it is practicable for the respondent to comply with an order to engage that person.

71 Amount of awards

- 35 (1) In determining the sum to be paid to a relevant person as a result of an order made under section 70(3)(a), the tribunal or court must apply the principles applicable to the calculation of damages in claims in tort or (in Scotland) in reparation for breach of statutory duty.
- 40 (2) If the tribunal or court considers that it is appropriate in the circumstances of the case to do so, it may include in the sum an amount by way of damages for injury to feelings to compensate the relevant person for any harm suffered (whether or not it includes compensation under any other head).

- (3) If (but only if) the tribunal or court considers—
- (a) that the respondent to the complaint acted in a way that deliberately and outrageously disregarded the right of the relevant person to respect and common decency; and
 - (b) that any other order it has power to make would otherwise be inadequate to punish the respondent;
- it may award an additional amount by way of punitive damages. 5
- (4) For the purposes of subsection (3), the tribunal or court may regard deterring the respondent and others from similar conduct as being an object of any punishment. 10
- (5) In considering whether to award punitive damages under subsection (3), the tribunal or court must have regard to all the circumstances and, in particular—
- (a) the need to ensure that any sum awarded does not exceed the minimum required to punish the respondent for his conduct;
 - (b) the state of mind of the respondent at the time of the act to which the complaint relates; 15
 - (c) whether or not the respondent has behaved in an oppressive manner;
 - (d) the number of persons affected by the respondent's act;
 - (e) the nature and extent of any benefit the respondent derived from the unlawful act; 20
 - (f) the nature of the harm caused to the relevant person;
 - (g) any other matter which the tribunal or court considers relevant.

Tribunal references relating to equality clause

72 Equality clause: cases in which a tribunal reference may be made

- (1) This section and sections 73 to 75 apply in relation to any contract of employment which contains an equality clause by virtue of section 21. 25
- (2) Any claim in respect of the contravention of any term of that contract which is modified or included by virtue of the equality clause (including a claim for arrears of remuneration or damages in respect of the contravention) may be presented to a tribunal by way of complaint. 30
- (3) Where a dispute arises in relation to the effect of an equality clause, the employer may apply to a tribunal for an order declaring the rights of the employer and the employee in relation to the matter in question.
- (4) Where it appears to the Secretary of State that—
- (a) there may be a question whether the employer of any women is or has been contravening a term modified or included by virtue of their equality clauses, but 35
 - (b) it is not reasonable to expect them to take steps to have the question determined;
- the question may be referred by him as respects all or any of them to a tribunal and shall be dealt with as if the reference were of a claim by the women or woman against the employer. 40

(5) Where it appears to the court in which any proceedings are pending that a claim or counter-claim in respect of the operation of an equality clause could more conveniently be disposed of separately by a tribunal, the court may direct that the claim or counter-claim shall be struck out.

5 (6) Where in proceedings before any court a question arises as to the operation of an equality clause, the court may (on the application of any party to the proceedings or otherwise)—

(a) refer that question, or direct it to be referred by any party to the proceedings, to a tribunal for determination; and

10 (b) stay or sist the proceedings in the meantime.

(7) Any expression used in this section, or in sections 73 to 75, has the meaning given in section 22.

73 Equality clause: time limits for bringing proceedings

15 (1) No determination may be made by a tribunal in any proceedings brought before it under section 72 unless the proceedings are instituted on or before the qualifying date.

(2) Except as stated in subsection (3), the qualifying date is the date falling six months after the last date on which the woman was employed in the employment.

20 (3) The qualifying date is to be construed—

(a) in accordance with subsection (4) in any case where—

(i) the proceedings relate to a period during which there was a stable employment relationship between the woman and the employer; and

25 (ii) neither paragraph (b) nor (c) applies;

(b) in accordance with subsection (5) in any case where any fact relevant to the claim was deliberately concealed from the woman by the employer and the woman did not discover the concealment (or could not with reasonable diligence have discovered it) until after—

30 (i) the last date on which the woman was employed in the employment; or

(ii) the date on which the stable employment relationship ended (as the case may be);

35 (c) in accordance with subsection (6) in any case where, at any time during the period in which the proceedings could have been brought (apart from this paragraph), the woman was under a disability.

(4) The qualifying date, as construed in accordance with this subsection, is the date falling six months after the date on which the stable employment relationship ended.

40 (5) The qualifying date, as construed in accordance with this subsection, is the date falling six months after the date on which the woman discovered the concealment (or could with reasonable diligence have discovered it).

- (6) The qualifying date, as construed in accordance with this subsection, is the date falling six months after the date on which the woman ceased to be under a disability.
- (7) But subsection (6) does not apply in a case where the woman ceased to be under a disability on or before— 5
- (a) the last date on which the woman was employed in the employment; or
- (b) the date on which the stable employment relationship ended, (as the case may be).
- (8) For the purposes of this section, a stable employment relationship does not exist between the woman and the employer unless she has been employed by him under two or more contracts of employment in succession (whether or not there is an interval between the contracts being in force). 10
- (9) For the purposes of this section—
- (a) in England and Wales, a woman is under a disability if she is a minor or of unsound mind; 15
- (b) in Scotland, a woman is under a disability who has not attained the age of sixteen years or who is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000.

74 Equality clause: determination

- (1) On any proceedings brought before it under section 72, the tribunal hearing the matter may make an order under this section. 20
- (2) An order under this section is such of the following orders as appears to it to be just and equitable in the circumstances of the case—
- (a) an order declaring whether there has been a contravention of any term in a person's contract of employment which is modified or included by virtue of the equality clause; 25
- (b) an award of arrears of remuneration or damages in respect of the contravention;
- (c) an order declaring the rights of the employer and the employee;
- (d) such other order as the court or tribunal thinks fit. 30
- (3) But no order may be made—
- (a) to the extent that the employer shows that the variation between the man's contract and the woman's contract (or any part of it) is due to any genuine material factor which is not the difference of sex; or
- (b) in any case where such variations are due to the application of an apparently neutral provision, criterion or practice, to the extent that the employer is able to show that— 35
- (i) the provision, criterion or practice is objectively justified by a legitimate aim; and
- (ii) the means of achieving that aim are genuine, determining and proportionate. 40

75 Limit on amount of awards

- (1) In determining the sum to be paid as a result of an order made under section 74(2)(b), a woman is not entitled to be awarded any payment by way of arrears of remuneration or damages in respect of—
- 5 (a) in England and Wales, any time earlier than the arrears date determined in accordance with subsections (2) to (4); and
- (b) in Scotland, any time before the relevant period determined in accordance with subsections (5) to (7).
- (2) Except as stated in subsections (3) and (4), the arrears date is the date falling six
- 10 years before the date on which the proceedings were instituted.
- (3) The arrears date is the date of the contravention where—
- (a) the employer deliberately concealed from the woman any fact relevant to the contravention of a term modified or included by virtue of an equality clause to which the proceedings relate, and
- 15 (b) the proceedings were instituted within six years of the date on which the woman discovered the concealment (or could with reasonable diligence have discovered it).
- (4) The arrears date is the date of the contravention where—
- (a) the woman was under a disability at the time of the contravention of a
- 20 term modified or included by virtue of an equality clause to which the proceedings relate; and
- (b) the proceedings were instituted within six years of the date on which the woman ceased to be under a disability.
- (5) In Scotland, the relevant period is the period of five years which ends on the
- 25 date on which proceedings were instituted.
- (6) That period of five years is not to be regarded as running during—
- (a) any time when the woman was induced, by reason of fraud on the part of, or error induced by the words or conduct of, the employer or any
- 30 person acting on his behalf, to refrain from commencing proceedings (not being a time after she could with reasonable diligence have discovered the fraud or error); or
- (b) any time when she was under a disability.
- (7) If, after regard is had to subsection (6)(a) and (b), the relevant period would
- 35 include any time more than twenty years before the date on which proceedings were instituted, the relevant period is instead the period of twenty years which ends on that date.
- (8) For the purposes of this section—
- (a) in England and Wales, a woman is under a disability if she is a minor or of unsound mind;
- 40 (b) in Scotland, a woman is under a disability who has not attained the age of sixteen years or who is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000.

CHAPTER 4

PERSONS IN DEFAULT

*Enforcement of recommendations and orders***76 Enforcement of recommendations**

- (1) Where a tribunal or court makes a recommendation under section 64(2)(a) or 70(2)(a), an application for an order enforcing it may be made to the tribunal or court which made the recommendation— 5
- (a) by the Commission;
 - (b) by the relevant person (within the meaning of section 64(1) or 70(1), as the case may be); or 10
 - (c) if different, by the person who initiated the proceedings which resulted in the recommendation.
- (2) An application under this section may not be made—
- (a) before the end of such period as may be specified in the recommendation; or 15
 - (b) if no period is specified, before the end of a period of 56 days commencing with the date on which the recommendation was made.
- (3) Where an application is made, the tribunal or court hearing it may take either of the steps specified in subsection (4) if— 20
- (a) it considers that a person has failed without reasonable justification to comply with the recommendation; and
 - (b) it appears to the tribunal to be just and equitable in the circumstances of the case to do so.
- (4) The steps specified in this subsection are—
- (a) to increase the amount of the sum payable under any order made under section 64(3)(a) or 70(3)(a) (as the case may be) which may have accompanied the recommendation; or 25
 - (b) if no such order was made, to make such an order.
- (5) A tribunal making an increase under subsection (4)(a) may order the payment of such additional amount as it thinks fit, having regard to the loss suffered by the person in whose favour the order was made in consequence of the failure of the respondent to complain to comply (or to comply fully) with the recommendation. 30

77 Enforcement of tribunal orders

- (1) This section applies where a tribunal makes an order under any of the preceding provisions of this Part. 35
- (2) An application to the tribunal for a further order may be made—
- (a) by the Commission;
 - (b) by the relevant person (within the meaning of section 64(1) or 70(1), as the case may be); or 40

- (c) if different, by the person who initiated the proceedings which resulted in the order.
- (3) An application under this section may not be made—
- 5 (a) before the end of such period as may be specified in the order; or
(b) if no period is specified, before the end of a period of 56 days commencing with the date on which the order was made.
- (4) If the tribunal determines that any person—
- 10 (a) has failed to comply, to the satisfaction of the tribunal, with any term included in an order; or
(b) has failed to comply with a requirement to attend before the tribunal which was included in an order under section 60;
the President or Regional Chairman of the tribunal may certify the failure in question in writing to the High Court or the Court of Session.
- (5) Where a failure has been certified under subsection (4)—
- 15 (a) the High Court has, in relation to the enforcement of the tribunal’s order, the same power as if the order had originally been made in the High Court;
(b) the Court of Session has, in relation to the enforcement of the tribunal’s order, the same power as if the order had originally been made in the Court of Session.
- 20

Disqualification

78 Meaning of persons in default and linked persons

- (1) For the purposes of this Chapter, a person is in default if—
- 25 (a) he has failed to comply with any terms of a relevant order;
(b) that order contains on its face—
- 30 (i) an indication that it was made in relation to any act of the person in default which amounts to a persistent contravention; or
(ii) an indication that, in making the order, the tribunal was of the view that the act or acts to which the order relates constituted grave misconduct (whether that indication is an award of punitive damages under section 65(3) or 71(3) or takes some other form); and
- (c) in respect of the failure to comply with an order of a tribunal, the High Court or the Court of Session has exercised the jurisdiction conferred on it by virtue of section 77(5).
- 35
- (2) In subsection (1)—
- “persistent contravention” has the meaning given in section 66(2); and
“relevant order” means an order made by a tribunal or court (as the case may be)—
- 40 (a) on a complaint made under section 7;
(b) on an application made under section 60;
(c) on an application made under section 61; or
(d) on an application under section 72.

- (3) References in this Chapter to a person linked to a person (“A”) who is in default are references to—
- (a) any body corporate controlled by A;
 - (b) if A is a body corporate, any associated body corporate (within the meaning of subsection (4)); and 5
 - (c) any person connected with A (within the meaning of subsection (5)).
- (4) Two bodies corporate are associated if one of them is the parent undertaking of the other or if both of them are subsidiary undertakings of another body corporate.
- (5) A person is connected with A if— 10
- (a) where A is a body corporate, that person is a director or officer of A;
 - (b) where A is an individual, that person is— 15
 - (i) A’s spouse;
 - (ii) a person (whether or not of the opposite sex) whose relationship with A is that of an unmarried partner in a stable relationship;
 - (iii) A’s parent, brother, sister, child, grandparent or grandchild;
 - (iv) the spouse of a person falling within sub-paragraph (iii), or
 - (v) a person (whether or not of the opposite sex) whose relationship with a person falling within sub-paragraph (iii) is that of an unmarried partner in a stable relationship. 20
- (6) In subsection (4) “parent undertaking” and “subsidiary undertaking” have the same meaning as in Part 7 of the Companies Act 1985 (c. 6).

79 Power to disqualify from government contracts

- (1) Where a person is in default, the Commission may give a notice (“disqualification notice”) to a person who is in default stating that that person is not qualified for the purposes of sections 80 and 81. 25
- (2) Where a disqualification notice (which has not been cancelled) has been given under subsection (1), the Commission may also give notice to a person linked to the person in default stating that the linked person is not qualified for the purposes of sections 80 and 81. 30
- (3) Any person to whom a disqualification notice (which has not been cancelled) has been given under this section is referred to in this Chapter as an unqualified person.
- (4) No disqualification notice may be given to a linked person if it appears to the Commission— 35
- (a) that it is unlikely that the linked person will execute any work or supply any goods or services for the purposes of any contract specified in section 80(2)(a) or (b); or
 - (b) that, if the linked person executes any work or supplies any goods or services for the purposes of any such contract, it is unlikely that the person in default will benefit (whether directly or indirectly). 40
- (5) No action lies in respect of any loss or damage that may be suffered in consequence of a disqualification notice, a purported disqualification notice or any failure to give such a notice.

- (6) In this section, section 80 and section 85 “public body” means any person specified by order under section 25.

80 Restriction on execution of works

- 5 (1) A public body must not enter into any contract to which subsection (3) or (4) applies.
- (2) Where a public body enters into any contract—
- 10 (a) which is made by the public body accepting an offer made by any person (being an offer made in response to an invitation by the public body to submit offers); or
- (b) which falls within a class or a description for the time being specified in an order made under subsection (4);
- the authority must take all reasonable steps to secure that no work is executed or goods or services supplied for the purposes of the contract by an unqualified person.
- 15 (3) This subsection applies to a contract made by a public body accepting an offer to execute any work or supply any goods or services, where the offer—
- (a) is made by an unqualified person; and
- (b) is made in response to an invitation by the public body to submit offers.
- 20 (4) This subsection applies to a contract falling within a class or a description for the time being specified in an order made by the Secretary of State, where work is to be executed or goods or services supplied by any unqualified person.
- (5) An order under subsection (4) may frame any class or description of contract by reference to—
- 25 (a) any work to be executed or goods or services to be supplied under the contract;
- (b) any amounts to be paid under or in connection with the contract;
- (c) any terms of the contract;
- (d) any surrounding circumstances; or
- (e) such other factors as the Secretary of State considers appropriate.
- 30 (6) Nothing in this section affects the validity of any contract.
- (7) If the Secretary of State certifies in writing that it is necessary or desirable for the purpose of safeguarding national security or protecting public safety or public order, this section does not apply—
- 35 (a) to the execution of any work by any person; or
- (b) in the provision of any goods or services by any person.

81 Denial of financial assistance

- (1) Any person responsible for giving financial assistance to which subsection (2) applies—
- 40 (a) may refuse to give such assistance to any unqualified person; or
- (b) may, where such assistance has been given to any unqualified person, or an agreement has been made to give it, refuse or cease to make any payments to him by way of assistance.

- (2) This subsection applies to any financial assistance (by way of grant or otherwise) which may be given at the discretion of the person responsible for giving it, if the moneys required for giving the assistance are payable out of the Consolidated Fund.

Disqualification: supplementary provisions 5

82 Disqualification notices: procedure

- (1) If the Commission proposes to give any person a disqualification notice, it must give that person—
- (a) a draft copy of the disqualification notice; and
 - (b) a written statement giving reasons for the notice and specifying a reasonable period within which that person may make representations to the Commission. 10
- (2) The period mentioned in subsection (1)(b) may not be less than 28 days and not more than 56 days.
- (3) The Commission— 15
- (a) must consider any written or oral representations made to it by the person to whom it gives a statement under subsection (1)(b);
 - (b) must consider any written representations made to it by any other person who appears to the Commission to have a direct interest by the matter; and 20
 - (c) may invite any person to make written or oral representations to it.
- (4) If the Commission decides to give any person a disqualification notice (whether in its original form or with amendments), it must give that person written notice of its decision.
- (5) The Commission must take all such steps as it considers reasonable to bring to the attention of public authorities and other interested persons the fact that a disqualification notice has been given to any person. 25

83 Disqualification notices: cancellation

- (1) The Commission must cancel— 30
- (a) a disqualification notice given to a person in default; and
 - (b) any disqualification notice given to a person linked to him;
- if it is satisfied that the person in default is complying, or has fully complied, with the original tribunal order to which the default relates and in respect of which the disqualification notice was given.
- (2) Where a disqualification notice was given to a linked person, the Commission is also under an obligation to give a cancellation notice if it appears to it that section 79(4)(a) or (b) is satisfied (and for the purposes of making this assessment, the effect of section 80(1) is to be disregarded). 35
- (3) Where it decides to cancel a disqualification notice it must give to any original recipient of it notice of the cancellation. 40

- (4) A person to whom a disqualification notice was given may apply at any time to have that notice cancelled.
- (5) But no such application may be made—
- 5 (a) in the case of the person in default, before the end of the period of six months beginning with the date of the notice or, if he has previously applied under this subsection, the latest date on which he did so;
- (b) in the case of a linked person who has previously applied under this subsection, before the end of the period of six months beginning with the latest date on which he did so.
- 10 (6) Where, on an application under subsection (4), the Commission refuses to cancel a disqualification notice it must give the applicant notice of its refusal.

84 Disqualification notices: appeals

- (1) A person to whom a disqualification notice is given may appeal to the tribunal.
- 15 (2) A person to whom notice of a refusal to cancel is given under section 83(6) may appeal to the tribunal.
- (3) A notice falling within subsection (1) or (2) must inform the person to whom it is given of his right to appeal and must include an indication of the procedure on such an appeal.
- 20 (4) An appeal under this section must be made before the end of the period of 21 days beginning with the date on which the notice in question is given.
- (5) On an appeal under this section, the tribunal must direct that the notice in question be cancelled if it is satisfied that the requirements of section 83(1) or (2) are satisfied.

85 Disqualification notices: enforcement

- 25 (1) The Commission may make an application for an order under subsection (2) if it appears to it—
- 30 (a) that any public body has taken any action in contravention of section 80 or, in neglecting to take any action, has failed to comply with that section; and
- (b) that, unless an order is granted, the authority is likely again to contravene or fail to comply with that section.
- (2) An order under this subsection is an order restraining (or in Scotland an interdict prohibiting) the authority from contravening section 80 or, as the case may be, requiring it to comply with that section.
- 35 (3) If it appears to the Commission that any public body proposes to take any action in contravention of section 80, the Commission may apply to the court for an order restraining (or in Scotland an interdict prohibiting) the contravention.
- 40 (4) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

86 Actions for breach of statutory duty

- (1) Any contravention of section 80 is actionable by any person who, in consequence, suffers loss or damage.
- (2) The amount recoverable in any such action is not to exceed any expenditure reasonably incurred by that person before the date of the contravention in question. 5

CHAPTER 5

SUPPLEMENTAL

87 Tribunal references made out of time

- (1) Any tribunal or court to which a reference may be made under this Act may consider a reference which is out of time if it is satisfied that it is just and equitable in the circumstances of the case to do so. 10
- (2) But subsection (1) does not permit a tribunal or court to decide to consider a claim if a decision not to consider that claim has previously been taken under that subsection. 15

PART 6

MISCELLANEOUS AND SUPPLEMENTAL

88 Interpretation

- (1) In this Act—
 - “Central Arbitration Committee” has the same meaning as it has in the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52); 20
 - “Commission” has the meaning given in section 4;
 - “Community law” means—
 - (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and 25
 - (b) all the remedies and procedures from time to time provided for by or under the community Treaties;
 - “disabled person” has the meaning given in section 4;
 - “employment field” has the meaning given in paragraph 10 of Schedule 2;
 - “the European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom; 30
 - “man” has the meaning given in section 4;
 - “Minister of the Crown” has the same meaning as it has in the Ministers of the Crown Act 1975 (c. 26); 35
 - “occupation” includes any trade or business;
 - “parent”—
 - (a) in relation to England and Wales, has the meaning given in section 576 of the Education Act 1996 (c. 56); 40

(b) in relation to Scotland, has the meaning given in section 135(1) of the Education Act 1980 (c. 44);

“police cadet” means any person appointed to undergo training with a view to becoming a constable;

“premises” includes land of any description;

“prescribed” means prescribed in regulations made by the Secretary of State;

“prohibited grounds” has the meaning given in section 4;

“racial group” has the meaning given in section 4;

“regulations” means regulations made by the Secretary of State;

“religion or belief” has the meaning given in section 4;

“sexual orientation” has the meaning given in section 4;

“training” includes any form of education or instruction; and

“tribunal” (except in relation to the Special Educational Needs and Disability Tribunal) has the meaning given in section 48;

“women” has the meaning given in section 4.

(2) For the purposes of this Act, a body corporate (“BC”) is to be taken to be controlled by a person (“A”) if A has—

(a) by means of the holding of shares or the possession of voting power in (or in relation to) BC or any other body corporate; or

(b) by virtue of any powers conferred by the articles of association or other document regulating BC or any other body corporate;

the power to secure that the affairs of BC are conducted in accordance with the wishes of A.

89 Application to Crown

(1) This Act binds the Crown.

(2) In the application of Part 2 to—

(a) service for purposes of a Minister of the Crown or government department, other than a person holding statutory office; or

(b) service on behalf of the Crown for purposes of a person holding statutory office or purposes of a statutory body; or

(c) service in the armed forces;

references a contract of employment are to be taken to include references to the terms of service.

(3) Parts 2 to 4 of the Crown Proceedings Act 1947 apply to proceedings against the Crown under this Act as they apply to proceedings in England and Wales which, by virtue of section 23 of that Act, are treated for the purposes of Part 2 of that Act as civil proceedings by or against the Crown; except that in their application to proceedings under this Act, section 20 of that Act (removal of proceedings from county court to High Court) does not apply.

- (4) The provisions of Part 5 of the Crown Proceedings Act 1947 apply to proceedings against the Crown under this Act as they apply to proceedings in Scotland which by virtue of that Part of that Act are treated as civil proceedings by or against the Crown; except that in their application to proceedings under this Act, the proviso to section 44 of that Act (removal of proceedings from the sheriff court to the Court of Session) does not apply. 5
- (5) Nothing in this Act is to be taken as in any way affecting Her Majesty in her private capacity.
- (6) In this section—
- (a) “statutory body” means a body set up by or in pursuance of an enactment, and “statutory office” means an office so set up; 10
 - (b) service “for purposes” of a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial Offices) to the House of Commons Disqualification Act 1975 as for the time being in force; 15
 - (c) subsection (5) is to be construed as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (meaning of Her Majesty in her private capacity) were contained in this Act.
- 90 Application to Parliament**
- (1) This Act applies to an act done by or for the purposes of the House of Lords or the House of Commons as it applies to an act done by a private person. 20
- (2) In the application of Parts 2 and 3 in relation to the House of Commons, the Corporate Officer of that House is to be treated as the employer of a person who is or would be a relevant member of the House of Commons staff for the purpose of section 195 of the Employment Rights Act 1996 (c. 18). 25
- (3) Except as provided in subsection (4), the provider of services for the purposes of section 6(1)(d) is—
- (a) as respects the House of Lords, the Corporate Officer of that House;
 - (b) as respects the House of Commons, the Corporate Officer of that House.
- (4) Where the service in question is access to and use of any place in the Palace of Westminster which members of the public are permitted to enter, the Corporate Officers of both Houses jointly are the provider of that service. 30
- (5) Nothing in any rule of law or the law or practice of Parliament prevents proceedings being instituted before a tribunal in accordance with the provisions of this Act. 35
- 91 Payments out of the police fund**
- (1) The following payments are to be made out of the police fund—
- (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings under Part 5 and any costs or expenses incurred by him in any such proceedings so far as not covered by him in the proceedings; 40

- (b) any sum required by a chief officer of police for the settlement of any claim made against him under section 7, 61 or 72 if the settlement is approved by the police authority.
- 5 (2) Any proceedings under Part 5 which, by virtue of section 19, would lie against the chief officer of police are to be brought against—
- (a) the chief officer of police for the time being; or
- (b) in the case of a vacancy in that office, against the person for the time being performing the functions of that office;
- 10 and references in subsection (1) to the chief officer of police are to be construed accordingly.
- (3) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—
- 15 (a) any damages or costs awarded in proceedings under Part 5 against a person under the direction and control of the chief officer of police;
- (b) any costs incurred and not recovered by such a person in such proceedings; and
- (c) any sum required in connection with the settlement of a claim that has (or might have) given rise to such proceedings.
- 20 (4) Subsections (1) to (3) apply in relation to the National Criminal Intelligence Service (“NCIS”) and the National Crime Squad (“the NCS”) as they apply in relation to a police force but as if any reference—
- (a) to the chief officer of police were to the Director General of NCIS or the NCS (as the case may be);
- 25 (b) to the police authority were to the Service Authority for the National Criminal Intelligence Service or the Service Authority for the National Criminal Squad (as the case may be);
- (c) to the police fund were to the service fund established under section 16 of the Police Act 1997 (c. 50) (NCIS service fund) or section 61 of that Act (the NCS service fund) (as the case may be).
- 30 (5) Subsections (1) to (3) also apply in relation to any other body of constables or police cadets as it applies in relation to a police force, but as if any reference—
- (a) to the chief officer of police were to the officer or other person who has the direction or control of the body in question;
- 35 (b) to the police authority were to the authority by whom the members of the body are paid;
- (c) to the police fund were to money provided by that authority.
- (6) If a payment falls to be made out of the police fund in connection with a claim relating to the protected area of activity specified in section 6(1)(b), “police fund”—
- 40 (a) in relation to a chief officer of police, has the same meaning as it has as in—
- (i) for England and Wales, the Police Act 1996 (c. 16);
- (ii) for Scotland, the Police Scotland Act 1967 (c. 77); and
- (b) in any other case, means money provided by the police authority.

- (7) In this section—
- “chief officer of police”—
- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as it has in the Police Act;
- (b) in relation to any other person or appointment, means the officer who has the direction and control of the body of constables or cadets in question; 5
- “police authority”—
- (a) means in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as it has in the Police Act; 10
- (b) in relation to any other person or appointment, means the authority by whom the person in question is (or on appointment would be) paid; and
- “the Police Act” means, for England and Wales, the Police Act 1996 or, for Scotland, the Police (Scotland) Act 1967. 15

92 Repeals and consequential and transitional provision

- (1) The enactments set out in Schedule 8 are repealed.
- (2) The Secretary of State may by order make such incidental, consequential, or supplemental provision as he considers necessary for the purposes of this Act.
- (3) The Secretary of State may by order make such transitional provision as he considers necessary for the purposes of this Act. 20
- (4) An order under subsection (3) may, in particular—
- (a) make savings from the effect of any repeal made by this Act;
- (b) make provision for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with any body (“relevant body”) which ceases to exist by virtue of section 38 or an order made under it; 25
- (c) for the carrying on and completion by or under the authority of the Commission of any proceedings, investigations or other matters commenced, before the date on which a relevant body ceased to exist, by or under the authority of the body in question; 30
- (d) amending any enactment which makes provision with respect to a relevant body;
- (e) for the substitution of the Commission in any instrument, contract or legal proceedings made or begun before the relevant body ceased to exist. 35

93 Regulations and orders

- (1) Any power to make an order, regulations or rules which is exercisable by virtue of this Act is exercisable by statutory instrument.
- (2) Any statutory instrument made under this Act— 40
- (a) may make in any enactment such adaptations, amendments or repeals as the person making it considers appropriate in consequence of this Act or any provision made under it;

- (b) may make different provision for different cases or classes of case (including different provision for different areas or localities);
 - (c) may make different provision for different purposes.
- 5 (3) No order may be made under section 25 or 28 unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (4) Any other statutory instrument made under this Act, other than one made under section 94(4), is subject to annulment in pursuance of a resolution of either House of Parliament.

94 Short title, commencement and extent

- 10 (1) This Act may be cited as the Equality Act 2003.
- (2) This Act does not extend to Northern Ireland.
- (3) This section and section 93 come into force on the day this Act is passed.
- 15 (4) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different purposes.

SCHEDULE 1

Section 4

DEFINITIONS RELATING TO MEANING OF DISABILITY

Impairment

- 1 (1) “Mental impairment” includes an impairment resulting from or consisting of a mental illness only if the illness is a clinically well-recognised illness. 5
- (2) Regulations may make provision, for the purposes of this Act—
- (a) conditions of a prescribed description to be treated as amounting to impairments;
- (b) for conditions of a prescribed description to be treated as not amounting to impairments. 10
- (3) Regulations under sub-paragraph (2) may make provision as to the meaning of “condition” for the purposes of those regulations.

Long-term effects

- 2 (1) The effect of an impairment is a long-term effect if—
- (a) it has lasted at least 12 months; 15
- (b) the period for which it lasts is likely to be at least 12 months; or
- (c) it is likely to last for the rest of the life of the person affected.
- (2) Where an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur. 20
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in prescribed circumstances.
- (4) Regulations may prescribe circumstances in which, for the purposes of this Act—
- (a) an effect which would not otherwise be a long-term effect is to be treated as such; 25
- (b) an effect which would otherwise be a long-term effect is to be treated as not being such an effect.

Severe disfigurement

- 3 (1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities. 30
- (2) Regulations may provide that in prescribed circumstances a severe disfigurement is not to be treated as having that effect.
- (3) Regulations under sub-paragraph (2) may, in particular, make provision with respect to deliberately acquired disfigurements. 35

Normal day-to-day activities

- 4 (1) An impairment is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following—

- (a) mobility;
 - (b) manual dexterity;
 - (c) physical co-ordination;
 - (d) continence;
 - 5 (e) ability to lift, carry or otherwise move everyday objects;
 - (f) speech, hearing or eyesight;
 - (g) memory or ability to concentrate, learn or understand; or
 - (h) perception of the risk of physical danger.
- (2) Regulations may prescribe—
- 10 (a) circumstances in which an impairment which does not have an effect falling within sub-paragraph (1) is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities;
 - (b) circumstances in which an impairment which has an effect falling
15 within sub-paragraph (1) is to be taken not to affect the ability of the person concerned to carry out normal day-to-day activities.

Substantial adverse effects

- 5 Regulations may make provision for the purposes of this Act—
- (a) for an effect of a prescribed kind on the ability of a person to carry
20 out normal day-to-day activities to be treated as a substantial adverse effect;
 - (b) for an effect of a prescribed kind on the ability of a person to carry out normal day-to-day activities to be treated as not being a substantial adverse effect.

Effect of medical treatment

- 25 6 (1) An impairment which would be likely to have a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities, but for the fact that measures are being taken to treat or correct it, is to be treated as having that effect.
- (2) In sub-paragraph (1) “measures” includes, in particular, medical treatment
30 and the use of a prosthesis or other aid.
- (3) Sub-paragraph (1) does not apply—
- (a) in relation to the impairment of a person’s sight, to the extent that the
impairment is, in his case, correctable by spectacles or contact lenses
or in such other ways as may be prescribed;
 - 35 (b) in relation to such other impairments as may be prescribed, in such circumstances as may be prescribed.

Persons to be deemed to be disabled

- 7 (1) Sub-paragraph (2) applies to any person whose name is, both on 12th
40 January 1995 and on the date when paragraph 7 of Schedule 1 to the Disability Discrimination Act 1995 (c. 50) came into force, in the register of disabled persons maintained under section 6 of the Disabled Persons (Employment) Act 1994.

- (2) That person is to be deemed to have had a disability and hence to have been a disabled person during that period.
- (3) A certificate of registration is conclusive evidence, in relation to the person with respect to whom it was issued, of the matters certified.
- (4) Unless the contrary is shown, any document purporting to be a certificate of registration is to be taken to be such a certificate and to have been validly issued. 5
- 8 Persons who are certified by a consultant ophthalmologist as blind or partially sighted are to be deemed to be disabled and so to be disabled persons.
- 9 (1) Regulations may provide for prescribed descriptions of persons to be deemed to have disabilities, and hence to be disabled persons, for the purposes of this Act. 10
- (2) Regulations may prescribe circumstances in which a person who has been deemed to be a disabled person by virtue of sub-paragraph (1), or of regulations made under sub-paragraph (5), is to be treated as no longer being deemed to be such a person. 15
- (3) “Certificate of registration” means a certificate issued under regulations made under section 6 of the Disabled Persons (Employment) Act 1994.
- 10 (1) A person in whom there is the presence of the human immuno-deficiency virus (“HIV”) is to be deemed to have a disability and hence to be a disabled person from the point of diagnosis of HIV. 20
- (2) A person with cancer which is likely to require substantial treatment is to be deemed to have a disability and hence to be a disabled person from the point at which the cancer is diagnosed as being likely to require substantial treatment. 25

Progressive conditions

- 11 (1) Where—
- (a) a person has a progressive condition (such as cancer, multiple sclerosis or muscular dystrophy or infection by the human immuno-deficiency virus); and 30
- (b) as a result of that condition, he has an impairment which has (or had) an effect on his ability to carry out normal day-to-day activities; but
- (c) that effect is not (or was not) a substantial adverse effect;
- he is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in his having such an impairment. 35
- (2) Regulations may make provision, for the purposes of this paragraph—
- (a) for conditions of a prescribed description to be treated as being progressive;
- (b) for conditions of a prescribed description to be treated as not being progressive. 40

SCHEDULE 2

Section 6(2)

PROTECTED AREAS OF ACTIVITY

PART 1

GENERAL

- 5 1 (1) The scope of each of the protected areas of activity specified in paragraphs
 (a) to (f) of section 6(1) is to be determined in accordance with the following
 provisions of this Schedule.
- (2) Parts 2 to 7 of this Schedule separately set out the scope (with exclusions) of
10 each area of activity and Part 8 of this Schedule contains a number of
 additional exclusions relevant to some or all of the protected areas of activity.

PART 2

PUBLIC AUTHORITY FUNCTIONS

Meaning of public authority

- 15 2 (1) In determining the scope of the protected area of activity specified in section
 6(1)(a), the reference in that provision to a public authority includes—
 (a) any person certain of whose functions are functions of a public
 nature; but
 (b) does not include any person specified in sub-paragraph (2).
- 20 (2) The persons specified in this sub-paragraph are—
 (a) the Security Service;
 (b) the Secret Intelligence Service;
 (c) the Government Communications Headquarters;
 (d) any unit or part of a unit of any of the naval, military or air forces of
25 the Crown which is for the time being required by the Secretary of
 State to assist the Government Communications Headquarters in
 carrying out its functions.
- (3) In relation to a particular act, a person is not a public authority by virtue only
 of sub-paragraph (1)(a) if the nature of the act is private.

Exclusion for judicial and legislative acts etc

- 30 3 There is excluded from the protected area of activity specified in section
 6(1)(a)—
 (a) any judicial act; and
 (b) any act done on the instructions, or on behalf of, a person acting in a
 judicial capacity.
- 35 4 There is excluded from the protected area of activity specified in section
 6(1)(a) any act of, or relating to, making, confirming or approving any

enactment or Order in Council or any instrument made by a Minister of the Crown under an enactment.

- 5 There is excluded from the protected area of a activity specified in section 6(1)(a) any act of, or relating to—
- (a) imposing a requirement of a kind mentioned in paragraph 6(3) of this Schedule; or 5
 - (b) giving an express authorisation of a kind mentioned in that paragraph;
- in relation to the carrying out of immigration functions (within the meaning of paragraph 6(4) of this Schedule). 10

Exclusion for certain acts in immigration cases

- 6 (1) There is excluded from the protected area of activity specified in section 6(1)(a) any act done by a relevant person on grounds of nationality in carrying out immigration functions.
- (2) “Relevant person” means— 15
- (a) a Minister of the Crown acting personally; or
 - (b) any other person acting in accordance with a requirement or authorisation to which sub-paragraph (3) applies.
- (3) This sub-paragraph applies to a requirement imposed or express authorisation given— 20
- (a) with respect to a particular case or class of case, by a Minister of the Crown acting personally;
 - (b) with respect to a particular class of case— 25
 - (i) by any of the enactments listed in sub-paragraph (5);
 - (ii) by any instrument made under or by virtue of any of those enactments; or
 - (iii) by virtue of any provision of Community law which relates to immigration or asylum.
- (4) “Immigration functions” means functions exercisable by virtue of any of the enactments listed in sub-paragraph (5) or by virtue of any provision of Community law which relates to immigration or asylum. 30
- (5) The enactments listed in this sub-paragraph are— 35
- (a) the Immigration Acts (within the meaning of the Nationality, Immigration and Asylum Act 2002 (c. 41) but excluding sections 28A to K of the Immigration Act 1971 (c. 77) so far as they relate to offences under part 3 of that Act);
 - (b) the Special Immigration Appeals Commission Act 1997 (c. 68);
 - (c) any provision made under section 2(2) of the European Communities Act 1972 (c. 68) which relates to immigration or asylum.

Exclusion for decisions not to prosecute etc 40

- 7 There is excluded from the protected area of activity specified in section 6(1)(a) a decision not to institute criminal proceedings and, where such a

decision has been made, to any act done for the purpose of enabling the decision whether to institute criminal proceedings to be made.

- 8 (1) Where criminal proceedings are not continued as a result of a decision not
5 to continue them, there is excluded from the protected area of activity
specified in section 6(1)(a) the decision not to continue.
- (2) Where such a decision has been made, there is excluded from the protected
area of activity specified in section 6(1)(a)—
- (a) any act done for the purpose of enabling the decision whether to
continue the proceedings to be made; and
- 10 (b) any act done for the purpose of securing that the proceedings are not
continued.

Exclusion for unlawful acts other than discrimination, harassment or victimisation

- 9 There is excluded from the protected area of activity specified in section
15 6(1)(a) anything done by a public authority which is made unlawful by any
provision of Part 2 of this Act apart from section 9, 12 or 13.

PART 3

ACTS IN THE EMPLOYMENT FIELD

Scope of protected area of activity and interpretation

- 10 (1) In determining the scope of the protected area of activity specified in section
20 6(1)(b), the reference in that provision to the affording of opportunities, or
the making of decisions or arrangements, in the employment field is to the
affording of opportunities, or the making of decisions or arrangements,
which relate to—
- (a) conditions for access to employment, to self-employment or to
25 occupation, including selection criteria, recruitment conditions and
arrangements, transfer, promotion and other advancement
(whatever the branch of activity and at all levels of the professional
or occupational hierarchy);
- (b) access to all types, and to all levels, of vocational guidance, vocational
30 training, advanced vocational training and retraining, including
practical work experience;
- (c) employment and working conditions, including pay and other
benefits, termination and other detriment, and
- 35 (d) membership of, and involvement in, an organisation of workers or
employers, or any organisation whose members carry on a particular
profession or occupation, including the benefits provided for by such
organisations.
- (2) Nothing in this paragraph is to be taken to extend to employment at an
establishment outside the European Community.
- 40 (3) The Secretary of State may by regulations prescribe circumstances in which
employment is to be taken as being at an establishment outside the European

Community and circumstances in which employment is to be taken as not being at such an establishment.

- (4) In the following provisions of this Part of this Schedule—
- (a) references to employment include—
 - (i) employment under a contract of service or apprenticeship or a contract personally to do any work (whether the contract is express or implied and, if express, whether oral or in writing); 5
 - (ii) performance by an individual of contract work;
 - (iii) performance of the functions associated with any well-recognised office (such as public office or the office of a minister of religion or company director); 10
 - (iv) engagement under a contract for services;
 - (v) engagement without reward or compensation;
 - (vi) a work placement;
 - (vii) participation in arrangements for training (otherwise than in any case falling within any of sub-paragraphs (i) to (vi)); 15
 - (b) references to employer are to be construed accordingly; and
 - (c) references to worker are to an individual in employment.
- 11 (1) The following are examples of persons who are concerned with the provision of work and who, in affording opportunities, or making decisions or arrangements, in the employment field, fall within the protected area of activity specified in section 6(1)(b)— 20
- (a) any person falling within column 1 of the Table in Schedule 3;
 - (b) any employment agency;
 - (c) any vocational organisation; 25
 - (d) any person who provides services in connection with training for employment in any capacity or for a particular employment (not being services provided by the employer of a person who is seeking to obtain or is receiving those services);
 - (e) any person who provides services in connection with training for a particular occupation. 30
- (2) Any term used in this paragraph which is defined in Schedule 3 has the same meaning in this paragraph as in that Schedule.
- 12 (1) The scope of the protected area of activity specified in section 6(1)(b) includes the affording of opportunities, or the making of decisions or arrangements, which relate to— 35
- (a) access to, and benefits payable under, occupational pension schemes entered into by an employer;
 - (b) access by workers to insurance services entered into as a result of arrangements between an employer and a provider of insurance. 40
- (2) The Secretary of State may by order make provision modifying Part 2 of this Act as it applies to—
- (a) trustees or managers of occupational pension schemes; and
 - (b) employers.

(3) An order under sub-paragraph (2) may, in particular, make provision with respect to trustees or managers of occupational pension schemes which differs from that made with respect to employers.

5 (4) “Occupational pension scheme” has the same meaning as it has in the Pension Schemes Act 1993 (c. 48).

Exclusion for genuine occupational qualifications

13 There is excluded from the protected area of activity specified in section 6(1)(b) any requirement imposed by a person (“A”) concerning the employment by him of a person in a particular capacity if A shows—

10 (a) that the essential nature of the activities to be carried out by a person in that capacity, or the context in which the activities are to be carried out, requires that the activities be carried out by a person with specific characteristics that are related to one or more of the prohibited grounds; and

15 (b) that the requirement that a person acting in that capacity must have such characteristics is a genuine and determining requirement that is proportionate to a legitimate objective.

Exclusion for charitable bodies

20 14 (1) There is excluded from the protected area of activity specified in section 6(1)(b) any requirement imposed by a charitable body concerning the employment by it of a person holding a particular religion or belief if the body shows that requiring that a person in that employment holds that religion or belief is a genuine and determining requirement and one that is proportionate having regard to—

25 (a) the ethos of the charitable body based on the religion or belief it promotes;

(b) the essential nature of the activities carried out by a person in the employment in question; and

(c) the context in which those activities are carried out.

30 (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than religion or belief.

35 (3) “Charitable body” means a body with charitable purposes (within the meaning of the Charities Act 1993 (c. 10)), which has as its principal purpose the promotion of a particular religion or belief.

Exclusion for schools with a religious character

15 There is excluded from the protected area of activity specified in section 6(1)(b) any act done in connection with the appointment, remuneration or promotion, or termination of the employment, of a teacher if that act is expressly permitted by—

40 (a) section 60 of the School Standards and Framework Act 1998 (c. 31) (staff at foundation or voluntary school with religious character); or

(b) section 21 of the Education (Scotland) Act 1980 (c. 44).

Exclusion for justifiable age-based discrimination

- 16 (1) There is excluded from the protected area of activity specified in section 6(1)(b) any requirement imposed by a person (“A”) concerning the employment by him of a person who has, or of a person who has not, attained a certain age (however described) if A shows— 5
- (a) that imposing a requirement relating to the age of a person in relation to that particular employment is objectively justified by a legitimate objective; and
 - (b) that the requirement is genuine and determining and one that is proportionate to a legitimate objective. 10
- (2) The following are examples of circumstances in which A may be able to show that the requirements of sub-paragraph (1) are met—
- (a) the act is permitted by any existing statutory provision that has effect for the purpose of protecting children and young persons;
 - (b) the act is permitted by or under the National Minimum Wage Act 1998 (c. 39); 15
 - (c) the act relates to the calculation of benefits payable under any occupational pension scheme or public sector pension scheme; or
 - (d) the act relates to employment in the armed forces.
- (3) But the exclusion in sub-paragraph (1) does not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than age. 20
- (4) In this paragraph—
- “existing statutory provision” means any provision of primary or subordinate legislation passed before this Act. 25
 - “public sector pension scheme” has the same meaning as it has in the Pension Schemes Act 1993; and
 - “subordinate legislation” has the same meaning as it has in the Human Rights Act 1998 (c. 42).

Exclusion for compulsory retirement 30

- 17 (1) There is excluded from the protected area of activity specified in section 6(1)(b) any arrangements made by a person (“A”) (and any act done in connection with such arrangements) under which A’s workers are required to retire on or after attaining a prescribed age if A shows that—
- (a) he maintains arrangements for an occupational pension scheme that is open to all workers who are required to retire and that makes provision for payment of benefits on retirement; 35
 - (b) no worker is required to retire unless he has agreed in writing to do so on a standard form supplied by A;
 - (c) he operates proper systems to ensure that standard forms returned to him are generally not accepted by him before the end of a minimum period (which may not be less than 28 days after the supply of the form to any particular worker or proposed worker); and 40

- (d) the standard form states clearly, and in a prominent manner, that the worker should—
- (i) consider carefully what his income is likely to be after retirement; and
 - (ii) if appropriate, take advice from a qualified person who may lawfully give advice in respect of such matters.
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than age.
- (3) “Occupational pension scheme” has the same meaning as it has in the Pension Schemes Act 1993 (c. 48).

Exclusion for arrangements benefiting a disabled person

- (1) There is excluded from the protected area of activity specified in section 6(1)(b) any arrangements made by any person—
- (a) which make provision for a disabled person (or disabled persons of a particular description) to receive a particular rate of remuneration or special treatment or facilities; and
 - (b) which are, or may be, more advantageous to disabled persons than to persons who do not have a disability.
- (2) There is also excluded from the protected area of activity specified in section 6(1)(b) any act done in connection with, or in pursuance of, such arrangements.
- (3) But the exclusions in sub-paragraph (1) and (2) do not apply in any circumstances where the arrangements or acts are less advantageous to disabled persons than arrangements made or acts done in relation to persons who do not have a disability.

PART 4

ACTS IN THE EDUCATION FIELD

Scope of protected area of activity and interpretation

- (1) In determining the scope of the protected area of activity specified in section 6(1)(c), the reference in that provision to the affording of opportunities, or the making of decisions or arrangements, in the education field is to the affording of opportunities, or the making of decisions or arrangements, which relate to—
- (a) admission to, or exclusion from, an educational establishment;
 - (b) any benefits, facilities or services which are available at such an establishment or in connection with its operation;
 - (c) subjecting any person attending the establishment to a detriment.
- (2) In this Part, “educational establishment” means any establishment listed in column 1 of any of Tables 1 to 4 in paragraphs 20 to 23.

- (3) Any reference in this part of this Schedule to the body responsible for an educational establishment is to be construed in accordance with subparagraph (1) of each of paragraphs 20 to 23.

Schools in England and Wales

- 20 (1) In relation to England and Wales, the body responsible for an institution of a description listed in column 1 of an entry in Table 1 is the body listed in column 2 of the same entry. 5
- (2) In Table 1—
- “governing body”, in relation to a maintained school, means the body corporate constituted in accordance with section 19 of the Education Act 2002 (c. 32); 10
 - “independent school” has the meaning given in section 463 of the Education Act 1996 (c. 56);
 - “local education authority” has the meaning given in section 22(8) of the School Standards and Framework Act 1998 (c. 31); 15
 - “maintained school” has the meaning given in section 20(7) of the School Standards and Framework Act 1998 (c. 31);
 - “maintained nursery school” has the meaning given in section 22(9) of the School Standard and Framework Act 1998 (c. 31);
 - “proprietor” has the meaning given in section 579 of the Education Act 1996 (c. 56); and 20
 - “pupil referral unit” has the meaning given in section 19(2) of the Education Act 1996 (c. 56).

TABLE 1

ENGLAND AND WALES: SCHOOLS

<i>Educational establishment</i>	<i>Responsible body</i>	
Maintained school or maintained nursery school	The local education authority or the governing body, according to which of them has the function (in any particular case) of making the decisions or arrangements mentioned in paragraph 19(1) of this Part of this Schedule	30
Pupil referral unit	The local education authority	
Independent school	The proprietor	
Special school that is not maintained by a local education authority but that is approved by the Secretary of State, or by the National Assembly for Wales, under section 342 of the Education Act 1996	The proprietor	35
		40

Schools in Scotland

- 21 (1) In relation to Scotland, the body responsible for an institution of a description listed in column 1 of an entry in Table 2 is the body listed in column 2 of the same entry.
- 5 (2) In Table 2, “board of management”, “education authority”, “independent school”, “managers”, “proprietor”, “self governing school” and “school” have the meaning given in section 135(1) of the Education (Scotland) Act 1980 (c. 44).

TABLE 2

10 SCOTLAND: SCHOOLS

<i>Educational establishment</i>	<i>Responsible body</i>
School managed by an education authority	The education authority
Independent school	The proprietor
15 Self-governing school	The board of management
School in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980	The managers of the school
20	

Further and higher education institutions in England and Wales

- 22 (1) In relation to England and Wales, the body responsible for an institution of a description listed in column 1 of an entry in Table 3 is the body listed in column 2 of the same entry.
- 25 (2) This paragraph is to be read in with section 91 of the Further and Higher Education Act 1992 (c. 37).
- (3) In Table 3, “governing body” has the meaning given in section 90 of the Further and Higher Education Act 1992 (c. 13).
- 30 (4) The Secretary of State may not make an order designating an institution of a kind referred to in column 1 of the final entry in Table 3 unless he is satisfied that the institution is wholly or partly funded from public funds.

TABLE 3

ENGLAND AND WALES: FURTHER AND HIGHER EDUCATION INSTITUTIONS

<i>Educational establishment</i>	<i>Responsible body</i>	
Institution within the further education sector	The governing body	5
University	The governing body	
Institution, other than a university, within the higher education sector	The governing body	
Institution designated in an order made by the Secretary of State	The body specified in the order as the responsible body	10

Further and higher education institutions in Scotland

- 23 (1) In relation to Scotland, the body responsible for an institution of a description listed in column 1 of an entry in Table 4 is the body listed in column 2 of the same entry. 15
- (2) In Table 4—
“board of management” has the meaning given in section 36(1) of the Further and Higher Education (Scotland) Act 1992 (c. 37);
“central institution”, “education authority” and “managers” have the meaning given in section 135(1) of the Education (Scotland) Act 1980 (c. 44);
“governing body” has the meaning given in section 56(1) of the Further and Higher Education (Scotland) Act 1992 (c. 37). 20
- (3) Scottish Ministers may not make an order designating an institution of a kind referred to in column 1 of the final entry in Table 4 unless satisfied that the institution is wholly or partly funded from public funds. 25

TABLE 4

SCOTLAND: FURTHER AND HIGHER EDUCATION INSTITUTIONS

<i>Educational establishment</i>	<i>Responsible body</i>	
Designated institution within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992	The governing body	30
University	The governing body	35
College of Further Education with a board of management	The board of management	

<i>Educational establishment</i>	<i>Responsible body</i>
5 College of Further Education maintained by an education authority in the exercise of their further education functions in providing courses of further education (within the meaning of section 1(5)(b)(ii) of the Education (Scotland) Act 1980)	The education authority
10 Central institution	The governing body
15 School in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980	The managers of the school
Institution designated in an order made by Scottish Ministers	The body specified in the order as the responsible body

Exclusion for selection by schools in connection with their admission arrangements

- 20 24 (1) There is excluded from the protected area of activity specified in section 6(1)(c) any arrangements restricting the admission of pupils to a school where those arrangements constitute a genuine, determining and proportionate means of achieving the objective of a permitted form of selection.
- 25 (2) In relation to England, “permitted form of selection” means—
- 30 (a) if the school is a maintained school that is not designated as a grammar school under section 104 of the School Standards and Framework Act 1998 (c. 31), any form of selection by ability or aptitude mentioned in section 99(2) or (4) of that Act;
- (b) if the school is a maintained school which is so designated, any of its selective admission arrangements;
- 35 (c) if the school is an independent school, any arrangements which make provision for all or any of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (3) In relation to Scotland, “permitted form of selection” means—
- 40 (a) if the school is managed by an education authority, such arrangements as have been approved by Scottish Ministers for the selection of pupils for admission;
- (b) if the school is an independent school or a self-governing school—
- (i) any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude;

- (ii) any arrangements for pupils to be selected by reference to age which is permitted under the Education (Scotland) Act 1980 (c. 44);
 - (iii) any other selective admission arrangements of a description approved by Scottish Ministers. 5
- (4) “Pupil”—
- (a) in relation to England and Wales, has the meaning given in section 3 of the Education Act 1996 (c. 56);
 - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980 (c. 44). 10
- (5) Any term which is used in sub-paragraph (2) or (3) and which is defined in (respectively) paragraph 20 or 21, has the same meaning in this paragraph as it has in that paragraph.

Exclusion for selection by further or higher education institutions

- 25 There is excluded from the protected area of activity specified in section 6(1)(c) any arrangements restricting the admission of persons attending an educational establishment of a kind listed in Table 3 or 4 in paragraph 22 or 23 where those arrangements constitute a genuine, determining and proportionate means of achieving the objective of maintaining— 15
- (a) academic standards in such an establishment; or 20
 - (b) standards of any other prescribed kind in such an establishment.

Exclusion for single-sex establishments

- 26 (1) There is excluded from the protected area of activity specified in section 6(1)(c) any arrangements restricting the admission of pupils to an educational establishment where the establishment— 25
- (a) admits pupils of one sex only; or
 - (b) would be taken to admit pupils of one sex only, if there were disregarded pupils of the opposite sex—
 - (i) whose admission is exceptional; or
 - (ii) whose numbers are comparatively small and whose admission is confined to particular courses of instruction or teaching classes. 30
- (2) There is also excluded from the protected area of activity specified in section 6(1)(c) any arrangements restricting the admission of boarders or the provision of boarding facilities at a school falling within sub-paragraph (3). 35
- (3) A school falls within this sub-paragraph if—
- (a) it is not an establishment to which sub-paragraph (1) applies;
 - (b) it has some pupils as boarders and others as non-boarders; and
 - (c) it admits as boarders pupils of one sex only (or would be taken to admit as boarders pupils of one sex only, if there were disregarded boarders of the opposite sex whose numbers are comparatively small). 40

- (4) Where sub-paragraph (1)(b) applies, the fact that pupils of one sex are confined to particular courses of instruction or teaching classes is not to be taken to amount to discrimination.
- 5 (5) But the exclusions in sub-paragraph (1) and (2) do not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than sex.
- (6) “Pupil”, in relation to an establishment in England and Wales, includes any person who receives education at that establishment.

Exclusion for single-sex establishments turning co-educational

- 10 27 (1) There is excluded from the protected area of activity specified in section 6(1)(c) any refusal or deliberate omission to accept an application for the admission of a pupil to—
- 15 (a) an educational establishment which has determined to alter its admissions arrangements so that it will cease to fall within paragraph 26(1)(a) or (b); or
- (b) a school which has determined to alter its admissions arrangements so that it will cease to fall within paragraph 26(3).
- (2) But the exclusion in sub-paragraph (1) does not apply—
- 20 (a) unless, in accordance with such requirements as may be prescribed, the educational establishment or school has made an application for a transitional exemption order to such person as may be prescribed and the application has not been determined; or
- (b) unless the prescribed person has granted such an application and made an order which has neither expired nor been revoked and
- 25 unless all conditions specified in the order have been complied with.
- (3) “Pupil”, in relation to an establishment in England and Wales, includes any person who receives education at that establishment.

Exclusion for physical training

- 30 28 (1) There is excluded from the protected area of activity specified in section 6(1)(c) any arrangements restricting access to any course in physical education which is a further education course or, in England and Wales, a higher education course within the meaning of the Education Reform Act 1988 (c. 40).
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything
- 35 done for a reason or reasons relating to any prohibited ground other than sex.
- (3) “Further education”—
- (a) in England and Wales, has the meaning given in section 2 of the Education Act 1996 (c. 56); and
- 40 (b) in Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act (c. 44).

Exclusion for religious education or worship

- 29 (1) There is excluded from the protected area of activity specified in section 6(1)(c) any arrangements for acts of worship, or for the provision of religious education, which are expressly required or permitted under—
- (a) section 44 or 45 of the Further and Higher Education Act 1992 (c. 13) 5
(religious education or worship);
 - (b) section 69 or 70 of the School Standards and Framework Act 1998 (c. 31) (religious education or worship);
 - (c) any equivalent arrangements having effect in Scotland.
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything 10
done for a reason or reasons to any prohibited ground other than religion.

PART 5

PROVISION OF GOODS, FACILITIES AND SERVICES

Scope of protected area of activity

- 30 (1) In determining the scope of the protected area of activity specified in section 6(1)(d), the reference in that provision to the provision of goods, facilities or services includes the determination of terms on which goods, facilities or services are to be provided. 15
- (2) The following are examples of services and facilities falling within section 6(1)(d)— 20
- (a) access to and use of any place which members of the public or a section of the public are permitted to enter;
 - (b) access to and use of means of communication;
 - (c) access to and use of information services;
 - (d) accommodation in a hotel, boarding house or other similar 25
establishment;
 - (e) facilities by way of banking or insurance;
 - (f) facilities for grants, loans, credit or finance;
 - (g) facilities for education which are offered by a person other than a 30
body responsible for an educational establishment (within the meaning of paragraph 19(3));
 - (h) facilities for entertainment, recreation, training or refreshment;
 - (i) facilities for transport and travel;
 - (j) facilities for social, cultural or recreation activities;
 - (k) the services of any profession or occupation; 35
 - (l) the services of any agency providing health care services or social care services;
 - (m) the services of any local or other public authority.
- (3) Nothing in this paragraph is to be taken to extend to the provision of goods, facilities or services outside the European Community. 40

Exclusion for carers etc

- 31 There is excluded from the protected area of activity specified in section
6(1)(d) any act done by a person as a participant in arrangements under
5 which he (whether for reward or not) takes into his home, and treats as if they
were members of his family, children, elderly persons or persons requiring
a special degree of care and attention.

Exclusion for hospitals etc restricted to persons of the same sex

- 32 (1) There is excluded from the protected area of activity specified in section
6(1)(d) the provision at any place of facilities or services restricted to persons
10 of the same sex if the place is, or is part of, a hospital or other establishment
for persons requiring special care, supervision or attention.
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything
done for a reason or reasons relating to any prohibited ground other than sex.

Exclusion for places used for purposes of organised religion

- 15 33 (1) There is excluded from the protected area of activity specified in section
6(1)(d) the provision at any place of facilities or services restricted to persons
of the same sex if—
- 20 (a) the place is occupied or used for the purposes of an organised
religion (whether or not the occupation or use is permanent); and
- (b) the facilities or services are restricted to persons of that sex so as to
comply with the doctrines of that religion or to avoid offending the
religious susceptibilities of a significant number of its followers.
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything
done for a reason or reasons relating to any prohibited ground other than sex.

25 *Exclusion for restrictions avoiding invasion of personal privacy*

- 34 (1) There is excluded from the protected area of activity specified in section
6(1)(d) the provision at any place of facilities or services restricted to persons
of the same sex if the facilities or services are provided for, or are likely to be
used by, two or more persons at the same time and—
- 30 (a) the facilities or services are such, or those persons are such, that users
of one sex are likely to suffer serious embarrassment at the presence
of persons of the opposite sex; or
- (b) the facilities or services are such that a user is likely to be in a state of
undress and might reasonably object to the presence of persons of the
35 other sex.
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything
done for a reason or reasons relating to any prohibited ground other than
sex.

Exclusion for insurance

- 35 (1) There is excluded from the protected area of activity specified in section 6(1)(d) any act by any person in the provision of an annuity, life assurance policy, accident insurance policy or similar matter involving assessment of risk if the act is— 5
- (a) carried out by reference to actuarial or other data from a source on which it was reasonable to rely; and
 - (b) reasonable, having regard to the data and any other relevant factors.
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than sex or age. 10

Exclusion for transactions with persons without capacity to act

- 36 (1) There is excluded from the protected area of activity specified in section 6(1)(d) any act done by any person (“A”) in relation to the provision of (or failure to provide) any goods, services or facilities to another person (“B”), if A can show that at the time of the transaction it appeared to him, on reasonable grounds, that B was unable to enter into an enforceable agreement, or give his informed consent, in connection with that provision or failure. 15
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than disability or age. 20
- (3) Regulations may make provision for sub-paragraph (1) not to apply in prescribed circumstances where—
- (a) a person is acting for B under a power of attorney; 25
 - (b) functions conferred by or under Part 7 of the Mental Health Act 1983 are exercisable in relation to B’s property or affairs; or
 - (c) functions conferred by or under Part 4 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) are exercisable in relation to B’s property or affairs. 30

Exclusion for transactions affecting disabled persons

- 37 (1) There is excluded from the protected area of activity specified in section 6(1)(d)—
- (a) any refusal by any person to provide any goods, facilities or services to a disabled person (or any deliberate omission by him to do so), where that person shows, on reasonable grounds, that he would otherwise be unable to provide the goods, facilities or services to members of the public; or 35
 - (b) any terms applying to the provision to a disabled person of any goods, facilities or services which the provider shows, on reasonable grounds, reflects the greater costs to him in providing the goods, facilities or services to a disabled person. 40

- (2) There is also excluded from the protected area of activity specified in section 6(1)(d) any variation in—
- (a) the standard of the service in providing any goods, facilities or services to a disabled person;
 - (b) the manner of their provision;
 - (c) any applicable terms; or
 - (d) which the provider shows, on reasonable grounds, is necessary in order for him to provide the goods, facilities or services to the disabled person or to other members of the public.
- (3) But the exclusions in sub-paragraphs (1) and (2) do not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than disability.

PART 6

DISPOSAL AND MANAGEMENT OF PREMISES

15 *Scope of protected area of activity and interpretation*

- 38 (1) In determining the scope of the protected area of activity specified in section 6(1)(e), the reference in that provision to a person who has power to dispose of premises includes—
- (a) in the case of premises which are comprised in (or, in Scotland, the subject of) a tenancy, a person whose licence or consent is required for the disposal;
 - (b) a person who, for the purposes of allocating premises, operates any list of persons in need of premises.
- (2) The scope of the protected area of activity specified in section 6(1)(e) also includes tenancies created before as well as tenancies created after the passing of this Act.
- (3) In this Part of this Schedule—
- “dispose”, in relation to premises, includes—
- (a) determining the terms on which premises are to be disposed of;
 - (b) granting or refusing to grant a right to occupy the premises or terminating such a right; and
 - (c) where premises are comprised in (or, in Scotland, the subject of) a tenancy—
 - (i) assigning the tenancy;
 - (ii) sub-letting or parting with possession of the premises or any part of the premises; and
 - (iii) terminating the tenancy;
- and references to disposal are to be construed accordingly; and
- “management”, in relation to premises, includes subjecting any person occupying the premises to any detriment; and

“tenancy” means a tenancy created—

- (a) by a lease or sub-lease;
- (b) by an agreement for a lease or sub-lease;
- (c) by a tenancy agreement; or
- (d) in pursuance of any enactment.

5

Exclusion for owner-occupiers

39 (1) There is excluded from the protected area of activity specified in section 6(1)(e) the disposal by any person of premises in which he owns estate or interest and which he wholly occupies unless, for the purpose of disposing of the premises, he—

10

- (a) uses the services of an estate agent; or
- (b) publishes an advertisement or causes an advertisement to be published.

(2) “Estate agent” means any person engaged in estate agency work within the meaning of section 1(1) of the Estate Agents Act 1979.

15

Exclusion for small dwellings

40 (1) There is excluded from the protected area of activity specified in section 6(1)(e) the disposal or management of any premises where—

- (a) the person with power to dispose of the premises, or a related person, resides on the premises and intends to continue to reside there; and
- (b) the conditions specified in sub-paragraph (2) are satisfied.

20

(2) The conditions are that—

- (a) the person who is resident shares accommodation on the premises with persons who reside on the premises and are not members of the household;
- (b) the shared accommodation is not storage accommodation or a means of access; and
- (c) the premises fall within sub-paragraph (3) or (4).

25

(3) Premises fall within this sub-paragraph if—

- (a) only the person who is resident and members of his household reside in the accommodation occupied by him;
- (b) the premises comprise, in addition to such accommodation, residential accommodation for at least one other household;
- (c) the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and
- (d) there are not normally more than two such other households.

30

35

(4) Premises fall within this sub-paragraph if there is not normally residential accommodation on the premises for more than six persons in addition to the person referred to in sub-paragraph (2)(a) and any members of his household.

40

(5) “Related person”, in relation to the person with power to dispose of the premises, means—

- (a) that person’s spouse;

- (b) a person (whether or not of the opposite sex) whose relationship with that person is that of an unmarried partner in a stable relationship;
- (c) that person’s parent, brother, sister, child, grandparent or grandchild.

5

PART 7

MANAGEMENT OF MEMBERS CLUBS

Scope of protected area of activity and interpretation

- 41 (1) In determining the scope of the protected area of activity specified in section
6(1)(f), the reference in that provision to the management of a members club
10 is to the affording of opportunities, or the making of any decisions or
arrangements, which relate to—
- (a) admission or exclusion as a member or associate of the club;
 - (b) rights of participation by members or associates in the governance of
the club;
 - 15 (c) access by any person (including persons who are not members or
associates) to any benefits, facilities or services provided by the club;
 - (d) termination of any benefit referred to in any of paragraphs (a) to
(c); or
 - 20 (e) subjecting any person referred to in any of those paragraphs to a
detriment.
- (2) For the purposes of sub-paragraph (1), no regard is to be had as to how the
members club is described, whether it is a body corporate or an
unincorporated association or body, or whether its activities are carried on
for profit.
- 25 (3) In this Part of this Schedule “members club” means any association of 25 or
more persons which—
- (a) regulates admission to membership through its constitution; and
 - (b) is not an association of a kind described in paragraph 10(1)(d).
- (4) In this section—
- 30 “member”, in relation to a members club, means any person who belongs
to the club by virtue of his admission to any kind of membership
provided by its constitution;
- 35 “associate”, in relation to a members club, means any person (other than
a member) who has under the constitution of the club some or all of the
rights enjoyed by members or who would have such rights apart from
any provision in its constitution authorising the refusal of those rights
in particular cases.

Exclusion for members clubs for racial and religious groups

- 40 42 (1) There is excluded from the protected area of activity specified in section
6(1)(f) the management of any members club that is carried on otherwise
than for profit, if the principal purpose of the club is to enable the benefits of

- membership to be enjoyed by persons of a particular group defined by reference to race, nationality or ethnic or national origins (but not colour).
- (2) There is also excluded from the protected area of activity specified in section 6(1)(f) the management of any members club carried on otherwise than for profit, the principal purpose of which is to enable the benefits of membership to be enjoyed by persons of a particular group defined by reference to religion or belief. 5
- (3) In determining the principal purpose of a members club, regard is to be had to—
- (a) the extent to which the affairs of the club are conducted in such a way that the persons primarily enjoying the benefits of membership are persons of the particular group concerned; 10
 - (b) the essential character of the club;
 - (c) any other relevant circumstances.
- (4) But the exclusions in sub-paragraphs (1) and (2) do not apply to exclude anything done for a reason or reasons relating to— 15
- (a) in the case of sub-paragraph (1), any prohibited ground other than race, nationality or ethnic or national origins (but not colour);
 - (b) in the case of sub-paragraph (2), any prohibited ground other than religion or belief. 20

Exclusion for single-sex members clubs

- 43 (1) There is excluded from the protected area of activity specified in section 6(1)(f) the management of any members club the principal purpose of which is to enable the benefits of membership to be enjoyed either wholly by men or wholly by women. 25
- (2) There is also excluded from the protected area of activity specified in section 6(1)(f) the management of any members club carried on otherwise than for profit, the principal purpose of which is to enable the benefits of membership to be enjoyed by persons of one sex.
- (3) In determining the principal purpose of a members club, regard is to be had to— 30
- (a) in a case falling within sub-paragraph (1), the extent to which the affairs of the club are conducted in such a way that the persons enjoying the benefits of membership are wholly men or wholly women; 35
 - (b) in a case falling within sub-paragraph (2), the extent to which the affairs of the club are conducted in such a way that the persons primarily enjoying the benefits of membership are of the sex in question;
 - (c) the essential character of the club; and 40
 - (d) any other relevant circumstances.
- (4) But the exclusions in sub-paragraphs (1) and (2) do not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than sex.

Exclusion for single-sex sporting events or competitions

- 44 (1) There is excluded from the protected area of activity specified in section 6(1)(f) the organisation by any members club of any sporting event or competition—
- 5 (a) which is solely for the benefit of persons of one sex, provided that—
- (i) an event or competition of like quality is organised or promoted solely for the benefit of persons of the opposite sex; or
- 10 (ii) the club determines on reasonable grounds that there is no demand from persons of the opposite sex who are members of the club for such an event or competition;
- (b) which is solely for the benefit of persons of one sex but is of lesser quality than one organised solely for the benefit of persons of the opposite sex, provided that the club has determined on reasonable grounds that the likely demand from the persons for whose benefit the lesser event or competition is arranged is such that a lesser event or competition will satisfy it; or
- 15 (c) where, in relation to two like events or competitions organised for men and women respectively, the club offers different levels of prize money or other reward according to whether the recipients are men or women, provided that prize money or other reward is of a value in excess of £1,000.
- 20
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than sex.

25

PART 8

EXCLUSIONS APPLYING TO TWO OR MORE AREAS OF ACTIVITY

Exclusion for acts safeguarding national security

- 45 (1) There is excluded from the protected areas of activity specified in section 6(1) any act done for the purpose of safeguarding national security if the doing of the act is justified by that purpose.
- 30

Exclusion for positive action

- 46 (1) There is excluded from the protected areas of activity specified in section 6(1) any positive action which is taken for the benefit of one or more relevant groups.
- 35 (2) “Relevant group” means—
- (a) any group of persons identified by reference to a particular age group into which they fall;
- (b) any group of persons identified by reference to their colour, race, nationality or ethnic or national origins;
- 40 (c) any group of persons identified by reference to a particular disability they have or have had;
- (d) any group of persons identified by reference to their family status;

- (e) persons generally who have undergone a gender reassignment;
 - (f) any group of persons identified by reference to their marital status;
 - (g) pregnant women generally;
 - (h) any group of persons identified by reference to their religion or belief; 5
 - (i) men generally or women generally;
 - (j) any group of persons identified by reference to their sexual orientation.
- (3) Positive action in any protected area of activity is—
- (a) any step concerning the adoption or maintenance of measures providing specific advantages to underrepresented members of a relevant group in order to facilitate their access to any opportunities or benefits generally available in the protected area of activity in question; and 10
 - (b) any step concerning the adoption or maintenance of measures providing specific advantages to members of a relevant group in order to compensate them for any disadvantage— 15
 - (i) which is caused by their membership of the group in question; and
 - (ii) which has, or may have, an adverse effect on their health, welfare, or education or on their social or economic opportunities. 20
- (4) Examples of positive action in the protected area of activity specified in section 6(1)(b) are—
- (a) any step concerning the adoption or maintenance of practices that encourage equitable participation in employment by underrepresented members of any relevant group; 25
 - (b) any step concerning the modification or abandonment of practices that discourage, or may discourage, participation in employment by underrepresented members of a relevant group; 30
 - (c) any step concerning the adoption or maintenance of measures providing specific advantages to underrepresented members of a relevant group in order to make it easier for them to take up or pursue a profession or occupation;
 - (d) any step concerning the adoption or maintenance of measures providing specific advantages to underrepresented members of a relevant group in order to compensate them for any disadvantage that is caused by their membership of the group and which has, or may have, an adverse effect on their capacity to take up or pursue a profession or occupation; 35 40
 - (e) any step concerning the adoption or maintenance of measures to create or maintain provisions or facilities with a view to safeguarding or promoting the full integration of underrepresented members of a relevant group within the working environment.
- (5) An example of positive action in the protected area of activity specified in section 6(1)(c) is any step to secure or improve access to facilities or services by underrepresented members of a relevant group with a view to meeting the special needs of members of that group with regard to their education, training or welfare or any ancillary benefits. 45

Exclusion for positive action required or permitted by Part 3

- 47 There is excluded from the protected areas of activity specified in section 6(1)
any act which is taken in pursuance of any duty imposed by Part 3 of this Act
and which—
- 5 (a) is, or may be, more advantageous to persons to whom that duty is
owed than to those to whom it is not; but
- (b) is specifically required or permitted by any provision in or made
under Part 3 of this Act.

Exclusion for positive action for equal opportunities required under devolved powers

- 10 48 There is excluded from the protected areas of activity specified in section 6(1)
any act which is taken in pursuance of any duty imposed for purposes
specified in the exception specified in Head L.2 of Schedule 5 (equal
opportunities) to the Scotland Act (c. 46).

Exclusion for acts avoiding risks to health and safety

- 15 49 (1) There is excluded from the protected areas of activity specified in section 6(1)
any act done in relation to a disabled person if the act is necessary in order
not to endanger the health or safety of any person (including the disabled
person).
- (2) But the exclusion in sub-paragraph (1) does not apply to exclude anything
done for a reason or reasons relating to any prohibited ground other than
disability.
- 20

Exclusion for communal accommodation

- 50 (1) There is excluded from the protected area of activity specified in section 6(1)
any act in connection with the admission of persons to communal
accommodation if the accommodation is managed in a way which, given the
exigencies of the situation, comes as near as may be to fair and equitable
treatment of men and women.
- 25
- (2) There is also excluded from the protected area of activity specified in section
6(1) the provision of any benefit, facility or service if—
- 30 (a) the benefit, facility or service cannot properly and effectively be
provided except for those using communal accommodation; and
- (b) in the relevant circumstances, the women or, as the case may be, the
man could lawfully be refused the use of the accommodation by
virtue of sub-paragraph (1).
- 35 (3) But the exclusions in sub-paragraph (1) and (2) do not apply to exclude
anything done for a reason or reasons relating to any prohibited ground
other than sex.
- (4) In addition, in a case falling within the protected area of activity specified in
section 6(1)(b), the exclusions in sub-paragraph (1) and (2) do not apply
unless such arrangements as are reasonably practicable are made to
compensate for the detriment caused by the act.
- 40

- (5) In applying sub-paragraph (1) regard is to be had (among other things)—
- (a) to whether and how far it is reasonable to expect that the accommodation should be altered or extended, or that further alternative accommodation should be provided; and
 - (b) to the frequency of the demand or need for use of the accommodation by men as compared with women. 5
- (6) In considering under sub-paragraph (2)(b) whether the use of communal accommodation could lawfully be refused, it is to be assumed that the requirements of sub-paragraph (3) have been complied with.
- (7) “Communal accommodation”— 10
- (a) means residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy or decency should be used by persons of the same sex only (but which may include sleeping accommodation for persons of the opposite sex or some ordinary accommodation); and 15
 - (b) includes residential accommodation all or part of which should be used by persons of the same sex only on account of the nature of the sanitary facilities serving the accommodation.

Exclusion for participation in sport

- 51 (1) There is excluded from the protected areas of activity specified in section 6(1) 20
any act which relates to participation in any sport, game or other activity of a competitive nature where—
- (a) the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man; and
 - (b) as a result, participation as a competitor in events involving that activity is confined to competitors of one sex. 25
- (2) There is also excluded from the protected areas of activity specified in section 6(1) any act which relates to participation in any sport, game or other activity of a competitive nature where—
- (a) the act is the selection of one or more persons to represent a country, place or area (or any related association) in any sport or game on the basis of— 30
 - (i) nationality;
 - (ii) place of birth; or
 - (iii) length of time for which a person has been resident in a particular area or place; or 35
 - (b) the act is done on the basis of the matters referred to in paragraph (a)(i) to (iii) and is in pursuance of the rules of any competition so far as they relate to eligibility to compete in any sport or game.
- (3) But the exclusions in sub-paragraphs (1) and (2) do not apply to exclude anything done for a reason or reasons relating to— 40
- (a) in the case of sub-paragraph (1), any prohibited ground other than sex;
 - (b) in the case of sub-paragraph (2), any prohibited ground other than national origin. 45

Exclusion for political parties

- 52 (1) There is excluded from the protected areas of activity specified in section 6(1) any special provision for persons of one sex only in the constitution, organisation or administration of a registered political party or any act done in connection with such provision.
- 5
- (2) There is excluded from the protected areas of activity specified in section 6(1) any act done in connection with arrangements made by a registered political party which—
- 10 (a) regulate the selection of the party’s candidates at a relevant election; and
- (b) are adopted for the purpose of reducing inequality in the numbers of men and women elected as candidates of the party to be members of the body concerned.
- (3) But the exclusions in sub-paragraphs (1) and (2) do not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than sex.
- 15
- (4) “Relevant elections” means—
- (a) parliamentary elections;
- (b) elections to the European Parliament;
- 20 (c) elections to the Scottish Parliament;
- (d) elections to the National Assembly for Wales; or
- (e) local government elections within the meaning of section 61, 203, or 204 of the Representation of the People Act 1983 (c. 2) (excluding any election of the Mayor of London).
- 25
- (5) “Registered political party” means a party registered in the Great Britain register under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41).
- (6) The exclusion in sub-paragraph (2) expires at the end of 2015 unless an order is made under sub-paragraph (7).
- 30
- (7) At any time before the exclusion in sub-paragraph (2) expires, the Secretary of State may by order provide that sub-paragraph (6) is to have effect with the substitution of a later time for the time specified there (whether originally or by virtue of a previous order).

Exclusion for acts protecting women

- 35 53 (1) There is excluded from the protected areas of activity specified in section 6(1) any act done in relation to a woman which is necessary in order to comply with any provision of primary legislation or subordinate legislation which has effect for the purpose of protecting women as regards pregnancy or other circumstances giving rise to risks specifically affecting women (whether the provision relates only to such protection or to the protection of any other class of persons as well).
- 40

- (2) There is also excluded from section 6(1) any act done in relation to a woman—
- (a) which is necessary in order to comply with a relevant statutory provision (within the meaning of Part 1 of the Health and Safety at work Act 1974 (c. 37)); and 5
 - (b) which is done for the purpose of protecting a particular woman, or class of women, as regards pregnancy or other circumstances giving rise to risks specifically affecting women.
- (3) But the exclusions in sub-paragraphs (1) and (2) do not apply to exclude anything done for a reason or reasons relating to any prohibited ground other than sex or pregnancy. 10

SCHEDULE 3

Sections 34(4), 35(3) and 36(7)

DUTY TO FACILITATE ACCESS BY DISABLED PERSONS

PART 1

WORK-RELATED MATTERS: RESPONSIBLE BODIES AND QUALIFYING PERSONS 15

Interpretation

- 1 In this Schedule—
- “advocate” means a member of the Faculty of Advocates practising as such;
 - “barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; 20
 - “local authority” means—
 - (a) in relation to England, a county council, a district council, a London Borough Council, the Common Council of the City of London in its capacity as a local authority, the Council of the Isles of Scilly; 25
 - (b) in relation to Wales, a county council or a county borough council;
 - (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994 (c. 39);
 - “professional or occupation qualification” means an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for (or facilitates engagement in) a particular profession or occupation; 30
 - “pupil”—
 - (a) in relation to England and Wales, has the meaning commonly associated with its use in the context of a set of barristers’ chambers practising in independent practice; 35
 - (b) in relation to Scotland, has the meaning commonly associated with its use in the context of a person training to be an advocate;
 - “partner”, in relation to a limited partnership formed under the Limited Partnerships Act 1907, means a general partner; 40
 - “pupillage”, “tenancy” and “tenant” have the meaning commonly associated with its use in the context of a set of barristers’ chambers practising in independent practice;
 - “trade organisation” means—

- 5 (a) an organisation of workers;
 (b) an organisation of employers;
 (c) any other organisation whose members carry on a particular profession or occupation for the purposes of which the organisation exists; and
 “work placement” means practical work experience undertaken for a limited period for the purposes of a person’s vocational training.

Responsible persons subject to duty and qualifying persons benefiting from it

- 2 (1) For the purposes of the duty imposed by section 34—
 10 (a) any person who is specified in an entry in column 1 of Table 1 of this Schedule is a responsible person and, accordingly, is subject to that duty;
 (b) any person who is specified in column 2 of the same entry is a qualifying person in relation to that responsible person.
 15 (2) The Secretary of State may by order amend Table 1 by adding or removing responsible persons or qualifying persons, or by modifying any entry.

TABLE 1

<i>Responsible person</i>	<i>Qualifying person</i>
<p>20 A person who employs an individual or individuals under a contract of service or apprenticeship or a contract personally to do any work (whether the contract is express or implied and, if express, whether oral or in writing)</p> <p>25</p> <p>30 A person (“A”) who employs individuals and who, under a contract made with another person (“B”), supplies such individuals to do work (“contract work”) for B</p> <p>35 A partnership or any persons proposing to form themselves into a partnership</p>	<p>(a) An applicant for employment under such a contract</p> <p>(b) An individual who notifies the firm that he may be such an applicant</p> <p>(c) An individual who is employed under such a contract</p> <p>An individual who is supplied by A to carry out the contract work</p> <p>(a) A candidate for the position of partner</p> <p>(b) A person who notifies the firm that he may be such a candidate</p> <p>(c) A partner</p>

<i>Responsible person</i>	<i>Qualifying person</i>	
A person who is a barrister, a barrister's clerk or a person carrying out any of the functions of a barrister's clerk	(a) A pupil (b) An applicant for pupillage or tenancy (c) A tenant	
A person who is an advocate	(a) A pupil (b) A person who notifies the advocate that he may apply to be taken as a pupil (c) An advocate	5
A person who provides a work placement to a person whom he does not employ	(a) A person undertaking a work placement with a placement provider (b) An applicant for the work placement (c) A person who notifies a person providing the placement that he may be such an applicant	10
An authority or body which can confer, renew or withdraw a professional or occupational qualification	(a) A person who holds a professional or occupational qualification conferred by the authority or body (b) A person who is an applicant for the qualification (c) A person who notifies the authority or body that he may be such an applicant	15 20
A trade organiser	(a) A member of the organisation (b) An applicant for membership (c) A person who notifies the organisation that he may be such an applicant	
A local authority	Any person who is an elected councillor	25
The corporate officer of the House of Commons	(a) Any person who is a relevant member of the House of Commons Staff for the purposes of section 195 of the Employment Rights Act 1996 (c. 18) (b) An applicant to be appointed as such (c) A person who notifies the organisation that he may be such an applicant	30
A chief officer of police or a policy authority (to be construed in accordance with paragraph 3 of this Part of this Schedule)	(a) A constable (b) A police cadet (c) A probationer constable (d) An applicant for any appointment to the offices specified in paragraph (a), (b) or (c) (e) A person who notifies the Chief Officer that he may be such an applicant	35

- 3 (1) This paragraph applies for the purposes of the entry in Table 1 which, in column 1, commences "A chief officer of police". 40
- (2) The holding of office of constable is to be treated as employment—
- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;

- (b) by the police authority as respects any act done by them in relation to a constable or that office.
- (3) Sub-paragraph (2) applies to a police cadet and probationer constable (and appointment as a police cadet or probationer constable) as it applies to a constable and the office of constable.
- (4) Sub-paragraph (2) applies in relation to the National Criminal Intelligence Service (“NCIS”) and the National Crime Squad (“the NCS”) as it applies in relation to a police force but—
- (a) as if any reference to the chief officer of police were to the Director General of NCIS or the NCS (as the case may be);
- (b) as if any reference to the police authority were to the Service Authority for the National Criminal Intelligence Service or the Service Authority for the National Criminal Squad (as the case may be).
- (5) In this paragraph—
- “chief officer of police”—
- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as it has in the Police Act;
- (b) in relation to any other person or appointment, means the office who has the direction and control of the body of constable or cadets in question;
- “police authority”—
- (a) means in regulation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as it has in the Police Act;
- (b) in relation to any other person or appointment, means the authority by whom the person in question is (or on appointment would be) paid; and
- “the Police Act” means, for England and Wales, the Police Act 1996 (c. 16) or, for Scotland, the Police (Scotland) Act 1967 (c. 77).

PART 2

WORK-RELATED MATTERS: OTHER PROVISIONS

- 4 In considering whether it is reasonable for a responsible body to have to take a particular step in order to comply with its duty under section 34(2), a responsible person must have regard to any relevant provisions of a code of practice issued by the Commission.
- 5 In determining whether a step is reasonable for the purposes of section 34(2), regard is to be had to whether taking the step would place a disproportionate burden on the responsible person and, in particular, to—
- (a) the extent to which taking the step would remove the disadvantage described in section 34(1);
- (b) the extent to which it is practicable to take the step;

- (c) the financial and other costs which would be incurred in taking the step and the extent to which it would disrupt any of the responsible person's activities;
 - (d) the extent of the responsible person's financial and other resources;
 - (e) the availability to the responsible person of financial or other assistance with respect to the taking of the step; 5
 - (f) the adequacy of alternative arrangements made by the responsible person which would achieve a substantially similar outcome whilst avoiding the disadvantage described in section 34(1).
- 6 (1) For the purposes of section 34, regulations may make provision as to— 10
- (a) circumstances in which a provision, criterion or practice is to be treated as giving rise to the effect described in section 34(1);
 - (b) circumstances in which a provision, criterion or practice is to be treated as not giving rise to such an effect;
 - (c) circumstances in which it is reasonable for a person to have to take steps of a description specified in the regulations; 15
 - (d) circumstances in which it is not reasonable for a person to have to take steps of a description specified in the regulations;
 - (e) steps which it is always reasonable for a person to take;
 - (f) steps which it is never reasonable for a person to take; 20
 - (g) things which are, or are not, to be treated as physical features of premises.
- (2) Before making regulations under sub-paragraph (1) the Secretary of State must consult the Commission and such other persons as he considers appropriate. 25
- 7 The following are examples of steps that an employer may have to take in relation to a disabled worker in order to comply with section 34—
- (a) making adjustment to premises;
 - (b) allocating some of the worker's duties to another person;
 - (c) transferring him to fill an existing vacancy; 30
 - (d) altering his working hours;
 - (e) assigning him to a different place of work;
 - (f) allowing him to be absent during working hours for rehabilitation, assessment or treatment;
 - (g) giving him, or arranging for him to be given, training; 35
 - (h) acquiring or modifying equipment;
 - (i) modifying instructions or reference manuals;
 - (j) modifying procedures for testing or assessment;
 - (k) providing a reader or interpreter;
 - (l) providing supervision. 40

PART 3

EDUCATION MATTERS

- 8 In this Part of this Schedule, references to a responsible body (which do not
5 specify the nature of the educational establishment concerned) are to any of
the bodies defined in section 35(5).
- 9 In considering whether it is reasonable for a responsible body to have to take
a particular step in order to comply with its duty under section 35, a
responsible body must have regard to—
- 10 (a) any relevant provisions of a code of practice issued by the
Commission; and
- (b) any accessibility strategies and plans prepared under section 28D of
the Disability Discrimination Act 1995 (c. 50) which relate to the
educational establishment for which they are responsible.
- 10 Section 35(1) does not require the body responsible for a school to—
- 15 (a) remove or alter a physical feature (for example, one arising from the
design or construction of the school premises or the location of
resources); or
- (b) provide auxiliary aids or services.
- 20 11 (1) In determining, for the purposes of section 35, whether it is reasonable for
any responsible body to have to take a particular step in relation to a person
by (or in respect of) whom a confidentiality request has been made, regard
is to be had to the extent to which taking the step in question is consistent
with compliance with that request.
- (2) “Confidentiality request”—
- 25 (a) in relation to a school, means a request that asks for the nature, or
asks for the existence, of a disabled person’s disability to be treated as
confidential and which satisfies either of the following conditions—
- (i) it is made by that person’s parent; or
- 30 (ii) it is made by that person himself and the responsible body
reasonably believes that he has sufficient understanding of
the nature of the request and its effect;
- (b) in relation to a further or higher education institution, means a
request made by a disabled person which asks for the nature, or asks
for the existence, of his disability to be treated as confidential.
- 35 12 (1) For the purposes of section 35, regulations may make provision—
- (a) as to circumstances in which it is reasonable for a responsible body
to have to take steps of a prescribed description;
- (b) as to steps which it is reasonable for a responsible body to have to
take;
- 40 (c) as to circumstances in which it is not reasonable for a responsible
body to have to take steps of a prescribed description;
- (d) as to steps which it is never reasonable for a responsible body to have
to take.

- (2) Before making regulations under sub-paragraph (1) the Secretary of State must consult the Commission, the Scottish Ministers and such other persons as he considers appropriate.

PART 4

GOODS, FACILITIES AND SERVICES

- | | | |
|----|--|----|
| | | 5 |
| 13 | In considering whether it is reasonable for a provider to have to take a particular step in order to comply with its duty under section 36, a provider must have regard to any relevant provisions of a code of practice issued by the Commission. | |
| 14 | (1) For the purposes of section 36, regulations may make provision as to— | 10 |
| | (a) circumstances in which it is reasonable for a provider of goods, facilities or services to have to take steps of a description specified in the regulations; | |
| | (b) circumstances in which it is not reasonable for such a provider to have to take steps of a description specified in the regulations; | 15 |
| | (c) matters that are to be taken into account in determining whether any provision of a kind mentioned in section 36(3)(c) or (d) is reasonable; | |
| | (d) what is to be included within the meaning of “practice, policy or procedure”; | |
| | (e) what is not to be included within the meaning of that expression; | 20 |
| | (f) things which are to be treated as physical features; | |
| | (g) things which are not to be treated as physical features; | |
| | (h) things which are to be treated as auxiliary aids or services; | |
| | (i) things which are not to be treated as auxiliary aids or services. | |
| | (2) For the purposes of section 36(6)(b), regulations may make provision for— | 25 |
| | (a) the prescribed maximum there mentioned to be calculated by reference to— | |
| | (i) aggregate amounts of expenditure incurred in relation to different cases; | |
| | (ii) prescribed periods; | 30 |
| | (iii) goods, facilities or services of prescribed description; | |
| | (iv) premises of a prescribed description; or | |
| | (v) such other criteria as may be prescribed; | |
| | (b) expenditure incurred by one provider of goods, facilities or services to be treated as incurred by another. | 35 |
| | (3) Before making regulations under this paragraph the Secretary of State must consult— | |
| | (a) the Commission; | |
| | (b) the Scottish Ministers, if the regulations concern any matter falling within devolved competence (within the meaning of the Scotland Act 1998 (c. 46)); | 40 |

- (c) the National Assembly for Wales, if the regulations concern any matter relating to functions transferred to the Assembly by or under the Government of Wales Act 1998 (c. 38); and
- (d) such other persons as he considers appropriate.

5 15 The following are examples of goods, services and facilities to which section 36 applies—

- (a) access to and use of any place which members of the public or a section of the public are permitted to enter;
- (b) access to and use of means of communication;
- 10 (c) access to and use of information services;
- (d) accommodation in a hotel, boarding house or other similar establishment;
- (e) facilities by way of banking or insurance;
- (f) facilities for grants, loans, credit or finance;
- 15 (g) facilities for entertainment, recreation, training or refreshment;
- (h) facilities for social, cultural or recreation activities, which are offered by voluntary organisations;
- (i) the services of any profession or occupation;
- (j) the services of any local or other public authority.

20

SCHEDULE 4

Section 38(4)

THE EQUALITY COMMISSION

Commissioners

- 1 (1) The Commission is to consist of not fewer than seven and not more than nine commissioners to be appointed by the Secretary of State.
- 25 (2) Each of the commissioners is to be appointed by the Secretary of State.
- (3) One of the commissioners is to be appointed as chief commissioner to preside over the discharge of the Commission's functions.
- 2 (1) The commissioners must hold and vacate office in accordance with the terms of their appointment.
- 30 (2) It is to be a term of appointment that a commissioner must not hold any other appointment, employment or office.
- (3) The chief commissioner ceases to hold that office if he ceases to be a commissioner.
- (4) No person may be appointed as a commissioner for a term exceeding five years.
- 35 (5) But a person who ceases to be a commissioner is eligible for re-appointment.
- (6) A commissioner may resign by giving notice to the Secretary of State.

- (7) The Secretary of State may remove a commissioner from office by giving notice to him if he is satisfied—
- (a) that the commissioner has without reasonable excuse failed to discharge his functions for a continuous period of three months (beginning not earlier than six months before the day of dismissal); 5
 - (b) that he has been convicted of a criminal offence;
 - (c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or has granted a trust deed for, his creditors; or
 - (d) that he is unable or unfit to carry out his functions. 10
- 3 The Secretary of State may pay to or in respect of commissioners such remuneration, expenses and sums for the provision of pensions as he may determine.

Staff

- 4 (1) The Commission may, with the approval of the Secretary of State as to numbers and terms and conditions of service— 15
- (a) appoint such staff as it considers necessary; and
 - (b) use the services of such other persons as the Commission considers expedient for any particular purpose.
- (2) The Commission may, in the case of such staff as may be determined by it with the approval of the Secretary of State, pay such pensions, allowances or gratuities, or maintain such pension schemes, as may be so determined. 20

Procedure

- 5 (1) The Commission may regulate its own procedure.
- (2) In determining its own procedure the Commission may, in particular, make provision about— 25
- (a) the discharge of its functions by committees (which may include persons who are not commissioners);
 - (b) a quorum for meetings of the Commission or a committee.
- 6 The validity of any proceedings of the Commission is not affected by any vacancy among the commissioners or by a defect in the appointment of a commissioner. 30
- 7 (1) The application of the seal of the Commission is to be authenticated by the signature of— 35
- (a) any commissioner; or
 - (b) some other person who has been authorised for that purpose by the Commission (whether generally or specifically).
- (2) Sub-paragraph (1) does not apply in relation to any document which is, or is to be, signed in accordance with the law of Scotland.

The Commission's powers

- 8 The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

Accounts

- 5 9 (1) The Commission must—
 (a) keep proper accounts;
 (b) prepare a statement of accounts in respect of each of its financial years; and
10 (c) send copies of the statement to the Secretary of State and the Comptroller and Auditor General before the end of August following the financial year to which they relate.
- (2) The Comptroller and Auditor General must—
 (a) examine, certify and report on each statement of accounts received by him; and
15 (b) lay copies of each statement before Parliament.
- (3) “Financial year” means the period of 12 months ending with 31st March.

Disqualification for membership of House of Commons

- 10 In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (offices disqualifying for membership of the House of Commons),
20 insert at the appropriate place—
 “The Equality Commission appointed under section 38 of the Equality Act 2003”.

Disqualification for membership of Northern Ireland Assembly

- 11 In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices), insert at the appropriate place—
25 “The Equality Commission appointed under section 38 of the Equality Act 2003”.

Status

- 12 In relation to any of its functions—
30 (a) the Commission is not to be regarded as acting on behalf of the Crown; and
 (b) the commissioners, officers and staff are not to be regarded as Crown servants.

SCHEDULE 5

Section 45(4)

PROCEDURE FOR MAKING CODES OF PRACTICE

New codes of practice

- 1 (1) The Commission may not issue a code of practice under this Act unless—
- (a) a draft of it has been submitted to, and approved by, the Secretary of State and laid by him before both Houses of Parliament; and 5
 - (b) the 40 day period has elapsed without either House resolving not to approve the draft.
- (2) “The 40 day period”, in relation to any draft code of practice, means—
- (a) if the draft is laid before one House of Parliament on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days; 10
 - (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House.
- (3) For the purposes of sub-paragraph (2), no account is to be taken of any period during which Parliament is dissolved or prorogued or during which either or both Houses are adjourned for more than 4 days. 15
- 2 (1) If it proposes to submit a draft code of practice under paragraph 1, the Commission must first invite representations to be made to it about the draft code by— 20
- (a) persons appearing to it appropriate to represent the interests of persons who are members of any group in relation to which the draft code is to apply;
 - (b) persons appearing to it appropriate to represent the interests of persons (such as public authorities, employers, service providers etc) whose activities are likely to be affected by the draft code; 25
 - (c) persons appearing to it appropriate to represent persons with experience of the subject matter to which the draft code relates;
 - (d) any other persons appearing to it appropriate to consult about the draft code. 30
- (2) The Commission must have regard to any representations made to it in accordance with sub-paragraph (1).
- 3 (1) If the Commission determine to proceed with a draft code of practice, they shall transmit the draft to the Secretary of State.
- (2) The Secretary of State shall— 35
- (a) if he approves of the draft code, lay it before both Houses of Parliament;
 - (b) if he does not approve a draft code of practice, he must publish a written statement of his reasons.
- (3) If no such resolution is passed as is referred to in paragraph 1, the Commission shall issue the code in the form of the draft and the code shall come into effect on such day as the Secretary of State may by order appoint. 40

- (4) But, before taking any step specified in the sub-paragraph (2) or (3), the Secretary of State must consult—
- 5 (a) the Scottish Ministers, if the code concerns any matter falling within devolved competence (within the meaning of the Scotland Act 1998 (c. 46));
- (b) the National Assembly for Wales, if the code concerns any matter relating to functions transferred to the Assembly by or under the Government of Wales Act 1998 (c. 38).

Revisions of existing codes of practice

- 10 4 Where the Commission proposes to revise a code of practice under this Act—
- (a) it must comply with paragraph 2 in relation to the revisions; and
- (b) the other provisions of this Schedule apply to the revised code of practice as they apply to a new code of practice.

SCHEDULE 6

Section 50(7)

15 PROCEDURE OF SPECIAL EDUCATIONAL NEEDS AND DISABILITY TRIBUNAL

- 1 In addition to its jurisdiction under Part 4 of the Education Act 1996 (c. 56), the Special Educational Needs and Disability Tribunal is to exercise the jurisdiction conferred on it by section 50.
- 2 (1) Regulations may make provision about—
- 20 (a) the proceedings of the Special Educational Needs and Disability Tribunal on a reference made to it in pursuance of section 50; and
- (b) the making of a reference.
- (2) The regulations may, in particular, include provision—
- 25 (a) as to the manner in which a reference must be made;
- (b) for determining whether the reference should be transferred to another tribunal (within the meaning of section 48) in any case where it is alleged that, in addition to being done on disability grounds, the act complained of was done for a reason related to any prohibited ground other than disability;
- 30 (c) if the jurisdiction of the Special Educational Needs and Disability Tribunal is being exercised by more than one tribunal—
- (i) for determining by which tribunal any reference is to be heard; and
- (ii) for the transfer of proceedings from one tribunal to another;
- 35 (d) for enabling functions which relate to matters preliminary or incidental to a reference to be performed by the President, or by the chairman;
- (e) enabling hearings to be conducted in the absence of any member other than the chairman;
- 40 (f) as to the persons who may appear on behalf of the parties;
- (g) for granting any person such disclosure or inspection of documents or right to further particulars as might be granted by a county court;

- (h) requiring persons to attend to give evidence and produce documents;
- (i) for authorising the administration of oaths to witnesses;
- (j) for the determination of references without a hearing in prescribed circumstances; 5
- (k) as to the withdrawal of references;
- (l) for enabling the Special Educational Needs and Disability Tribunal to stay proceedings on a reference;
- (m) for the award of costs or expenses;
- (n) for taxing or otherwise settling costs or expenses (and, in particular, for enabling costs to be taxed in the county court); 10
- (o) for the registration and proof of decisions and orders; and
- (p) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be determined in accordance with the regulations. 15
- 3 Proceedings before the Special Educational Needs and Disability Tribunal are to be held in private, except in prescribed circumstances.
- 4 (1) The Secretary of State may pay such allowance for the purpose of or in connection with the attendance of persons at the Special Educational Needs and Disability Tribunal as he may, with the consent of the Treasury, determine. 20
- (2) In relation to Wales, the power conferred by sub-paragraph (1) may be exercised only with the agreement of the National Assembly.
- 5 (1) Part 1 of the Arbitration Act 1996 (c. 23) does not apply to proceedings before the Special Educational Needs and Disability Tribunal but regulations may make provision, in relation to such proceedings, corresponding to any provision of that Part. 25
- (2) The regulations may make provision for a reference under this Chapter to be heard, in prescribed circumstances, with an appeal under Part 4 of the Education Act 1996 (c. 56). 30
- 6 A person who without reasonable excuse fails to comply with—
- (a) a requirement in respect of the disclosure or inspection of documents imposed by the regulations by virtue of paragraph (2)(g); or
- (b) a requirement imposed by the regulations by virtue of paragraph 2(2)(h); 35
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 7 (1) In any proceedings brought by virtue of section 50, a certificate signed by or on behalf of a Minister of the Crown and certifying that any conditions or requirements specified in the certificate— 40
- (a) were imposed by a Minister of the Crown; and
- (b) were in operation at a time or throughout a time so specified;
- is conclusive evidence of the matters certified.

- (2) A document purporting to be such a certificate shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

SCHEDULE 7

Section 54(4)

INVESTIGATIONS

5 *Notices*

- 1 (1) If the Commission proposes to conduct an investigation under this Schedule,
it must give to every person whose affairs it intends to investigate notice of
the proposal.
- 10 (2) A notice under sub-paragraph (1) must set out the scope and purpose of the
investigation.
- 2 The Commission must invite every person on whom a notice under
paragraph 1 is given to comment on the matters to which the proposed
investigation returns.
- 15 3 (1) If the Commission decides to conduct the investigation, it must invite every
person whose affairs to be investigated to make oral or written
representations to it on the matters under consideration.
- (2) The Commission may appoint one or more competent persons to conduct an
investigation on its behalf.
- (3) The investigations are to be conducted in private.
- 20 (4) In all other respects, the Commission may determine the procedure for
conducting investigations.

Information and evidence

- 4 The Commission may make such inquiries and call for such reports as the
Commission thinks fit.
- 25 5 (1) The Commission may by notice in writing require any person who is the
subject of the investigation, or any other person who in the opinion of the
Commission is able to provide information or produce documents relevant
to it—
- 30 (a) to provide specified information or information of a specified
description;
- (b) to produce specified documents or documents of a specified
description;
- (c) to attend at a specified time and place to answer questions.
- 35 (2) A statement made under a requirement imposed under this paragraph is
admissible in evidence in any proceedings under this Act, so long as it
complies with any requirements governing the admissibility of evidence in
the circumstances in question.

(3) “Specified” means specified in the notice.

6 Where the person who is the subject of the investigation is an employer, the Commission may require him to take such reasonable action as the Commission may specify by notice in writing for communicating to his workers (or to workers of any class) any written material provided by the Commission for the purposes of the investigation. 5

Contempt

- 7 (1) If a person (“A”) fails to comply with a requirement imposed on him under paragraph 5 or 6, the Commission may certify that fact in writing to the court.
- (2) If a person (“B”) intentionally obstructs the Commission (or any officer of the Commission) in the performance of its functions in connection with the investigation, the Commission may certify that fact in writing to the court. 10
- (3) The court may enquire into any case certified under sub-paragraph (1) or (2) and if it is satisfied—
- (a) in a case falling within sub-paragraph (1), that A failed without reasonable excuse to comply with the requirement; 15
 - (b) in a case falling within sub-paragraph (2), that B obstructed the Commission without lawful authority or reasonable excuse;
- it may deal with A or B (and in the case of a body corporate, any director or officer of A or B) as if he were in contempt. 20
- (4) “Court” means—
- (a) the High Court;
 - (b) in Scotland, the Court of Session.

SCHEDULE 8

Section 92(1)

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>	
1970 c. 41.	Equal Pay Act 1970.	The whole Act.	
1975 c. 24.	House of Commons Disqualification Act 1975.	In Part II of Schedule 1, the entries relating to the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission.	30
1975 c. 25.	Northern Ireland Assembly Disqualification Act 1975.	In Part II of Schedule 1, the entries relating to the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission.	35
1975 c. 65.	Sex Discrimination Act 1975.	The whole Act.	
1976 c. 74.	Race Relations Act 1976.	The whole Act.	
1996 c. 18.	Employment Rights Act 1996.	Sections 109 and 156.	

Equality Bill [HL]

A

BILL

To make provision making it unlawful to discriminate on the grounds of age, gender reassignment, religion or belief or sexual orientation; to make new provision with respect to discrimination on the grounds of disability, race or sex; to make provision making it unlawful to harass or victimise another person on any of those grounds; to make provision facilitating progress towards the achievement of equality as between persons of certain descriptions; to establish and provide for the functions of the Equality Commission for Great Britain; and for connected purposes.

The Lord Lester of Herne Hill

Ordered to be printed, 14th January 2003

© Parliamentary copyright House of Lords 2003
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
Fax 01603 723000

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON - THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by
The Stationery Office Limited
£9.00

HL Bill 19

(806228)

53/2

ISBN 0-10-840394-7



9 780108 403941