

# Equality Act 2006

## 2006 CHAPTER 3

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An Act to make provision for the establishment of the Commission for Equality and Human Rights; to dissolve the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission; to make provision about discrimination on grounds of religion or belief; to enable provision to be made about discrimination on grounds of sexual orientation; to impose duties relating to sex discrimination on persons performing public functions; to amend the Disability Discrimination Act 1995; and for connected purposes.

[16th February 2006]

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

#### THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

##### *The Commission*

#### **1. Establishment**

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

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

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

#### **3 General duty**

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

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

#### 4 Strategic plan

- (1) The Commission shall prepare a plan showing—
  - (a) activities or classes of activity to be undertaken by the Commission in pursuance of its functions under this Act,
  - (b) an expected timetable for each activity or class, and
  - (c) priorities for different activities or classes, or principles to be applied in determining priorities.
- (2) The Commission shall review the plan—
  - (a) at least once during the period of three years beginning with its completion,
  - (b) at least once during each period of three years beginning with the completion of a review, and
  - (c) at such other times as the Commission thinks appropriate.
- (3) If the Commission thinks it appropriate as a result of a review, the Commission shall revise the plan.
- (4) The Commission shall send the plan and each revision to the [Minister]<sup>1</sup>, who shall lay a copy before Parliament.
- (5) The Commission shall publish the plan and each revision.

#### 5 Strategic plan: consultation

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

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

#### 6 Disclosure

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

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<sup>1</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(a)

- (d) by way of representations made in relation to, or otherwise in connection with, a notice under section 32, or
  - (e) from a person with whom the Commission enters into, or considers entering into, an agreement under section 23.
- (3) This subsection authorises a disclosure made—
- (a) for the purpose of the exercise of a function of the Commission under any of sections 16, 20, 21, 24, 25, 31 and 32,
  - (b) in a report of an inquiry, investigation or assessment published by the Commission,
  - (c) in pursuance of an order of a court or tribunal,
  - (d) with the consent of each person to whom the disclosed information relates,
  - (e) in a manner that ensures that no person to whom the disclosed information relates can be identified,
  - (f) for the purpose of civil or criminal proceedings to which the Commission is party, or
  - (g) if the information was acquired by the Commission more than 70 years before the date of the disclosure.
- (4) But subsection (3) does not authorise, nor may the Commission make, a disclosure of information provided by or relating to an intelligence service unless the service has authorised the disclosure.
- (5) In subsection (4) “intelligence service” means—
- (a) the Security Service,
  - (b) the Secret Intelligence Service, and
  - (c) the Government Communications Headquarters.
- (6) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **7 Scotland: human rights**

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

- (a) the person is established by Act of the Scottish Parliament, and
- (b) the person's principal duties relate to human rights and are similar to any of the Commission's duties under section 9.

(5) Subsections (1) and (3) shall not prevent the Commission from relying on section 13(1)(f) so as to act jointly or cooperate (but not assist) for a purpose relating to human rights and connected with Scotland.

### *Duties*

## **8 Equality and diversity**

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

## **9 Human rights**

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

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

## 10 Groups

- (1) The Commission shall, by exercising the powers conferred by this Part–
- (a) promote understanding of the importance of good relations–
    - (i) between members of different groups, and
    - (ii) between members of groups and others,
  - (b) encourage good practice in relation to relations–
    - (i) between members of different groups, and
    - (ii) between members of groups and others,
  - (c) work towards the elimination of prejudice against, hatred of and hostility towards members of groups, and
  - (d) work towards enabling members of groups to participate in society.
- (2) In this Part “group” means a group or class of persons who share a common attribute in respect of any of the following matters–
- (a) age,
  - (b) disability,
  - (c) gender,
  - (d) proposed, commenced or completed reassignment of gender (within the meaning given by section 82(1) of the Sex Discrimination Act 1975 (c. 65)),
  - (e) race,
  - (f) religion or belief, and
  - (g) sexual orientation.
- (3) For the purposes of this Part a reference to a group (as defined in subsection (2)) includes a reference to a smaller group or smaller class, within a group, of persons who share a common attribute (in addition to the attribute by reference to which the group is defined) in respect of any of the matters specified in subsection (2)(a) to (g).
- (4) In determining what action to take in pursuance of this section the Commission shall have particular regard to the importance of exercising the powers conferred by this Part in relation to groups defined by reference to race, religion or belief.
- (5) The Commission may, in taking action in pursuance of subsection (1) in respect of groups defined by reference to disability and others, promote or encourage the favourable treatment of disabled persons.
- (6) The [Minister]<sup>2</sup> may by order amend the list in subsection (2) so as to–

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<sup>2</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(b)

- (a) add an entry, or
- (b) vary an entry.

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

## 11 Monitoring the law

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

## 12 Monitoring progress

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

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<sup>3</sup> words substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 113

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

### *General powers*

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

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

#### **14 Codes of practice**

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

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<sup>4</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(c)

- (h) Parts 2 and 3 of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), and
  - (i) Parts 2 and 3 of the Employment Equality (Age) Regulations 2006.
- (2) A code of practice under subsection (1) shall contain provision designed–
- (a) to ensure or facilitate compliance with a provision or enactment listed in subsection (1), or
  - (b) to promote equality of opportunity.
- (3) The Commission may issue a code of practice giving practical guidance to landlords and tenants in England or Wales about–
- (a) circumstances in which a tenant requires the consent of his landlord to make a relevant improvement, within the meaning of section 49G(7) of the Disability Discrimination Act 1995 (c. 50) (improvements), to a dwelling house,
  - (b) reasonableness in relation to that consent, and
  - (c) the application in relation to relevant improvements (within that meaning) to dwelling houses of–
    - (i) section 19(2) of the Landlord and Tenant Act 1927 (c. 36) (consent to improvements),
    - (ii) sections 81 to 85 of the Housing Act 1980 (c. 51) (tenant's improvements),
    - (iii) sections 97 to 99 of the Housing Act 1985 (c. 68) (tenant's improvements), and
    - (iv) section 49G of the Disability Discrimination Act 1995.
- (4) The Commission may issue a code of practice giving practical guidance to landlords and tenants of houses (within the meaning of the Housing (Scotland) Act 2006 (asp 01)) in Scotland about–
- (a) circumstances in which the tenant requires the consent of the landlord to carry out work in relation to the house for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence,
  - (b) circumstances in which it is unreasonable to withhold that consent,
  - (c) circumstances in which any condition imposed on the granting of that consent is unreasonable, and
  - (d) the application in relation to such work of–
    - (i) sections 28 to 31 and 34(6) of the Housing (Scotland) Act 2001 (asp 10), and
    - (ii) sections 52, 53 and 64(6) of the Housing (Scotland) Act 2006 (asp 01).
- (5) The Commission shall comply with a direction of the Minister to issue a code under this section in connection with a specified matter if–
- (a) the matter is not listed in subsection (1), but
  - (b) the Minister expects to add it by order under section 15(6).
- (6) Before issuing a code under this section the Commission shall–
- (a) publish proposals, and
  - (b) consult such persons as it thinks appropriate.
- (7) Before issuing a code under this section the Commission shall submit a draft to the [Minister]<sup>5</sup>, who shall–

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<sup>5</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(d)

- (a) if he approves the draft–
    - (i) notify the Commission, and
    - (ii) lay a copy before Parliament, or
  - (b) otherwise, give the Commission written reasons why he does not approve the draft.
- (8) Where a draft is laid before Parliament under subsection (7)(a)(ii), if neither House passes a resolution disapproving the draft within 40 days–
- (a) the Commission may issue the code in the form of the draft, and
  - (b) it shall come into force in accordance with provision made by the [Minister]<sup>6</sup> by order.
- (9) If, or in so far as, a code relates to a duty imposed by or under section 76A, 76B or 76C of the Sex Discrimination Act 1975 (c. 65), section 71 of the Race Relations Act 1976 (c. 74) or section 49A or 49D of the Disability Discrimination Act 1995 (c. 50) (public authorities: general anti-discrimination duties) the [Minister]<sup>7</sup> shall consult the Scottish Ministers and the Welsh Ministers before–
- (a) approving a draft under subsection (7)(a) above, or
  - (b) making an order under subsection (8)(b) above.
- (10) In relation to a code of practice under subsection (4), the [Minister]<sup>8</sup> shall consult the Scottish Ministers before–
- (a) approving a draft under subsection (7)(a) above, or
  - (b) making an order under subsection (8)(b) above.

## 15 Codes of practice: supplemental

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

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<sup>6</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(d)

<sup>7</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(d)

<sup>8</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(d)

(b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

(5) Subsection (4)(b) does not apply in relation to a code issued under section 14(4).

(6) The [Minister]<sup>9</sup> may by order amend section 14 so as to vary the range of matters that codes of practice under that section may address.

## 16 Inquiries

(1) The Commission may conduct an inquiry into a matter relating to any of the Commission's duties under sections 8, 9 and 10.

(2) If in the course of an inquiry the Commission begins to suspect that a person may have committed an unlawful act—

(a) in continuing the inquiry the Commission shall, so far as possible, avoid further consideration of whether or not the person has committed an unlawful act,

(b) the Commission may commence an investigation into that question under section 20,

(c) the Commission may use information or evidence acquired in the course of the inquiry for the purpose of the investigation, and

(d) the Commission shall so far as possible ensure (whether by aborting or suspending the inquiry or otherwise) that any aspects of the inquiry which concern the person investigated, or may require his involvement, are not pursued while the investigation is in progress.

(3) The report of an inquiry—

(a) may not state (whether expressly or by necessary implication) that a specified or identifiable person has committed an unlawful act, and

(b) shall not otherwise refer to the activities of a specified or identifiable person unless the Commission thinks that the reference—

(i) will not harm the person, or

(ii) is necessary in order for the report adequately to reflect the results of the inquiry.

(4) Subsections (2) and (3) shall not prevent an inquiry from considering or reporting a matter relating to human rights (whether or not a necessary implication arises in relation to the equality enactments).

(5) Before settling a report of an inquiry which records findings which in the Commission's opinion are of an adverse nature and relate (whether expressly or by necessary implication) to a specified or identifiable person the Commission shall—

(a) send a draft of the report to the person,

(b) specify a period of at least 28 days during which he may make written representations about the draft, and

(c) consider any representations made.

(6) Schedule 2 makes supplemental provision about inquiries.

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<sup>9</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(e)

## 17 Grants

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

## 18 Human rights

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

## 19 Groups

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

### *Enforcement powers*

## 20 Investigations

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

(5) Schedule 2 makes supplemental provision about investigations.

## **21 Unlawful act notice**

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

## **22 Action plans**

- (1) This section applies where a person has been given a notice under section 21 which requires him (under section 21(4)(a)) to prepare an action plan.
- (2) The notice must specify a time by which the person must give the Commission a first draft plan.
- (3) After receiving a first draft plan from a person the Commission shall—

*(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)*

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

## 23 Agreements

- (1) The Commission may enter into an agreement with a person under which–
- (a) the person undertakes–
    - (i) not to commit an unlawful act of a specified kind, and
    - (ii) to take, or refrain from taking, other specified action (which may include the preparation of a plan for the purpose of avoiding an unlawful act), and

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

## **24 Applications to court**

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

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

- (1) This section applies to an act which is unlawful under any of the following–
  - (a) sections 38 to 40 of the Sex Discrimination Act 1975 (c. 65) (advertising; and instructions or pressure to discriminate),
  - (b) sections 29 to 31 of the Race Relations Act 1976 (c. 74) (advertising; and instructions or pressure to discriminate),
  - (c) sections 16B and 16C of the Disability Discrimination Act 1995 (c. 50) (advertising; and instructions or pressure to discriminate),
  - (ca) sections 28UB and 28UC of that Act (advertising; and instructions or pressure to discriminate), [...]<sup>10</sup>

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<sup>10</sup> added by Equality Act (Sexual Orientation) Regulations 2007/1263 Reg. 32

- (d) sections 54 and 55 below (religious discrimination: advertising; and instructions or pressure to discriminate)[, and]<sup>11</sup>  
[ (e) regulations 10 and 11 of the Equality Act (Sexual Orientation) Regulations 2007. ]<sup>12</sup>
- (2) Legal proceedings in relation to action to which this section applies—
- (a) may be brought by the Commission in accordance with this section, and
  - (b) may not be brought by anyone else.
- (3) Where the Commission thinks that a person has done an act to which this section applies the Commission may—
- (a) present a complaint to an employment tribunal, where the act is alleged to be unlawful by reference to—
    - (i) Part 2 of the Sex Discrimination Act 1975,
    - (ii) Part 2 of the Race Relations Act 1976,
    - (iii) Part 2 of the Disability Discrimination Act 1995,
    - (iv) Part 3 of that Act in so far as it relates to employment services, or
    - (v) Part 2 of this Act, or
  - (b) in any other case, apply to a county court (in England and Wales) or the sheriff (in Scotland).
- (4) On a complaint or application under subsection (3) in respect of an alleged act to which this section applies, the tribunal, court or sheriff shall determine whether the allegation is correct.
- (5) The Commission may apply to a county court (in England and Wales) for an injunction restraining a person from doing an act to which this section applies where—
- (a) either—
    - (i) a tribunal or court has determined under subsection (4) that the person has done an act to which this section applies, or
    - (ii) the Commission thinks that the person has done an act to which this section applies, and
  - (b) the Commission thinks that if unrestrained the person is likely to do another act to which this section applies.
- (6) The Commission may apply to the sheriff (in Scotland) for an interdict prohibiting a person from doing an act to which this section applies where—
- (a) either—
    - (i) a tribunal or the sheriff has determined under subsection (4) that the person has done an act to which this section applies, or
    - (ii) the Commission thinks that the person has done an act to which this section applies, and
  - (b) the Commission thinks that without an interdict the person is likely to do another act to which this section applies.
- (7) Subsection (1) does not apply to an act which constitutes an offence.

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<sup>11</sup> added by Equality Act (Sexual Orientation) Regulations 2007/1263 Reg. 32

<sup>12</sup> added by Equality Act (Sexual Orientation) Regulations 2007/1263 Reg. 32

## 26 Section 25: supplemental

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

## 27 Conciliation

- (1) The Commission may make arrangements for the provision of conciliation services for disputes in respect of which proceedings have been or could be brought under or by virtue of–
  - (a) section 66 of the Sex Discrimination Act 1975 (c. 65) (civil proceedings),
  - (b) section 57 of the Race Relations Act 1976 (c. 74) (civil proceedings),
  - (c) section 25, 28I, 28N, 28V, 31ADA or 31AE(1) of the Disability Discrimination Act 1995 (c. 50) (civil proceedings),
  - (d) section 66 below,
  - (e) a provision of regulations under Part 3 of this Act corresponding to section 66 below,
  - (f) regulation 31 of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660) (civil proceedings),
  - (g) regulation 31 of the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661) (civil proceedings), or
  - (h) regulation 39 of the Employment Equality (Age) Regulations 2006 (Jurisdiction of County and Sheriff Courts).
- (1A) The Commission may make arrangements for the provision of conciliation services for disputes in respect of which proceedings have been or could be brought in England and Wales or Scotland under regulation 9 of the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 (civil proceedings).
- (2) The Commission may make arrangements for the provision of conciliation services for disputes about a landlord's reasonableness in relation to consent to the making of an improvement to a dwelling in England or Wales where the improvement would be likely to facilitate the enjoyment of the premises by the tenant or another lawful occupier having regard to a disability.
- (3) The Commission may make arrangements for the provision of conciliation services for disputes about whether–
  - (a) it is unreasonable for a landlord of a house (within the meaning of the Housing (Scotland) Act 2006 (asp 01)) in Scotland to withhold consent to the carrying out of work in relation to the house for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence, or

- (b) any condition imposed by such a landlord on consenting to the carrying out of such work is unreasonable.
- (4) The Commission shall aim to exercise the powers in subsections (1) to (3) so as to ensure that, so far as is reasonably practicable, conciliation services are available to parties who want them.
- (5) Information communicated to a person providing conciliation services in accordance with arrangements under this section may not be adduced in legal proceedings without the consent of the person who communicated the information.
- (6) None of the following shall participate in the provision of conciliation services for which arrangements are made under this section—
- (a) a Commissioner,
  - (b) a member of the Commission's staff,
  - (c) a member of a committee established by the Commission, and
  - (d) an Investigating Commissioner.
- (7) The Commission shall make administrative arrangements designed to secure that information in connection with conciliation services provided in accordance with arrangements made under this section is not disclosed to—
- (a) a Commissioner, or
  - (b) a member of the Commission's staff.
- (8) But subsection (7) shall not apply to a disclosure—
- (a) made with the consent of the parties to the dispute to which it relates,
  - (b) which does not identify individuals or enable them to be identified, or
  - (c) of information without which arrangements under this section cannot be made.
- (9) In this section “conciliation services” means a service which is provided—
- (a) by a person who is not party to a dispute,
  - (b) to the parties to the dispute, and
  - (c) with the aim of enabling the dispute to be settled by agreement and without legal proceedings.
- (10) The [Minister]<sup>13</sup> may by order amend this section so as to vary the range of disputes in respect of which the Commission may make arrangements for the provision of conciliation services.

## 28 Legal assistance

- (1) The Commission may assist an individual who is or may become party to legal proceedings if—
- (a) the proceedings relate or may relate (wholly or partly) to a provision of the equality enactments, and
  - (b) the individual alleges that he has been the victim of behaviour contrary to a provision of the equality enactments.
- (2) The Commission may assist an individual who is or may become party to legal proceedings in England and Wales if and in so far as the proceedings concern or may concern the question of a landlord's reasonableness in relation to consent to the making of an improvement to a dwelling

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<sup>13</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(f)

where the improvement would be likely to facilitate the enjoyment of the premises by the tenant or another lawful occupier having regard to a disability.

(3) The Commission may assist an individual who is or may become a party to legal proceedings in Scotland if and in so far as the proceedings concern or may concern the question whether–

- (a) it is unreasonable for a landlord to withhold consent to the carrying out of work in relation to a house (within the meaning of the Housing (Scotland) Act 2006 (asp 01)) for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence, or
- (b) any condition imposed by a landlord on consenting to the carrying out of such work is unreasonable.

(4) In giving assistance under this section the Commission may provide or arrange for the provision of–

- (a) legal advice;
- (b) legal representation;
- (c) facilities for the settlement of a dispute;
- (d) any other form of assistance.

(5) Assistance may not be given under subsection (1) in relation to alleged behaviour contrary to a provision of Part V of the Disability Discrimination Act 1995 (c. 50) (public transport).

(6) Where proceedings relate or may relate partly to a provision of the equality enactments and partly to other matters–

- (a) assistance may be given under subsection (1) in respect of any aspect of the proceedings while they relate to a provision of the equality enactments, but
- (b) if the proceedings cease to relate to a provision of the equality enactments, assistance may not be continued under subsection (1) in respect of the proceedings (except in so far as it is permitted by virtue of subsection (7) or (8)).

(7) The Lord Chancellor may by order disapply subsection (6)(b), and enable the Commission to give assistance under subsection (1), in respect of legal proceedings which–

- (a) when instituted, related (wholly or partly) to a provision of the equality enactments,
- (b) have ceased to relate to the provision of the equality enactments, and
- (c) relate (wholly or partly) to any of the Convention rights within the meaning given by section 1 of the Human Rights Act 1998 (c. 42).

(8) The [Minister]<sup>14</sup> may by order enable the Commission to give assistance under this section in respect of legal proceedings in the course of which an individual who is or has been a disabled person relies or proposes to rely on a matter relating to his disability; but an order under this subsection may not permit assistance in relation to alleged behaviour contrary to a provision of Part V of the Disability Discrimination Act 1995 (c. 50).

(9) An order under subsection (7) or (8) may make provision generally or only in relation to proceedings of a specified kind or description (which in the case of an order under subsection (7) may, in particular, refer to specified provisions of the equality enactments) or in relation to specified circumstances.

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<sup>14</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(g)

(10) This section is without prejudice to the effect of any restriction imposed, in respect of representation—

- (a) by virtue of an enactment (including an enactment in or under an Act of the Scottish Parliament), or
- (b) in accordance with the practice of a court.

(11) A legislative provision which requires insurance or an indemnity in respect of advice given in connection with a compromise contract or agreement shall not apply to advice provided by the Commission under this section.

(12) A reference in this section to a provision of the equality enactments includes a reference to a provision of Community law which—

- (a) relates to discrimination on grounds of sex (including reassignment of gender), racial origin, ethnic origin, religion, belief, disability, age or sexual orientation, and
- (b) confers rights on individuals.

(13) In its application by virtue of subsection (12), subsection (1)(b) shall have effect as if it referred to an allegation by an individual that he is disadvantaged by—

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

## **29 Legal assistance: costs**

(1) This section applies where—

- (a) the Commission has assisted an individual under section 28 in relation to proceedings, and
- (b) the individual becomes entitled to some or all of his costs in the proceedings (whether by virtue of an award or by virtue of an agreement).

(2) The Commission's expenses in providing the assistance—

- (a) shall be charged on sums paid to the individual by way of costs, and
- (b) may be enforced as a debt due to the Commission.

(3) A requirement to pay money to the Commission under subsection (2) ranks, in England and Wales, after a requirement imposed by virtue of section 11(4)(f) of the Access to Justice Act 1999 (c. 22) (recovery of costs in funded cases).

(4) Subsection (2), in its application to Scotland, shall not affect the operation of section 17(2A) of the Legal Aid (Scotland) Act 1986 (c. 47) (requirement in certain cases to pay to the Scottish Legal Aid Board sums recovered under awards of, or agreements as to, expenses).

(5) For the purposes of subsection (2) the Commission's expenses shall be calculated in accordance with such provision (if any) as the [Minister]<sup>15</sup> makes for the purpose by regulations; and regulations may, in particular, provide for the apportionment of expenditure incurred by the Commission—

- (a) partly for one purpose and partly for another, or
- (b) for general purposes.

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<sup>15</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(h)

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

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

(1) The Commission shall have capacity to institute or intervene in legal proceedings, whether for judicial review or otherwise, if it appears to the Commission that the proceedings are relevant to a matter in connection with which the Commission has a function.

(2) The Commission shall be taken to have title and interest in relation to the subject matter of any legal proceedings in Scotland which it has capacity to institute, or in which it has capacity to intervene, by virtue of subsection (1).

(3) The Commission may, in the course of legal proceedings for judicial review which it institutes (or in which it intervenes), rely on section 7(1)(b) of the Human Rights Act 1998 (c. 42) (breach of Convention rights); and for that purpose—

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

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

(4) Subsections (1) and (2)—

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

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

(1) The Commission may assess the extent to which or the manner in which a person has complied with a duty under or by virtue of—

- (a) section 76A, 76B or 76C of the Sex Discrimination Act 1975 (c. 65) (public authorities: duty to eliminate discrimination, &c.),
- (b) section 71 of the Race Relations Act 1976 (c. 74) (public authorities: duty to eliminate discrimination, &c.), or
- (c) section 49A or 49D of the Disability Discrimination Act 1995 (c. 50) (public authorities: duty to eliminate discrimination, &c.).

(2) Schedule 2 makes supplemental provision about assessments.

(3) This section is without prejudice to the generality of sections 16 and 20.

### 32 Public sector duties: compliance notice

- (1) This section applies where the Commission thinks that a person has failed to comply with a duty under or by virtue of—
- (a) section 76A, 76B or 76C of the Sex Discrimination Act 1975 (public authorities: duty to eliminate discrimination, &c.),
  - (b) section 71 of the Race Relations Act 1976 (public authorities: duty to eliminate discrimination, &c.), or
  - (c) section 49A or 49D of the Disability Discrimination Act 1995 (public authorities: duty to eliminate discrimination, &c.).
- (2) The Commission may give the person a notice requiring him—
- (a) to comply with the duty, and
  - (b) to give the Commission, within the period of 28 days beginning with the date on which he receives the notice, written information of steps taken or proposed for the purpose of complying with the duty.
- (3) A notice under this section may require a person to give the Commission information required by the Commission for the purposes of assessing compliance with the duty; in which case the notice shall specify—
- (a) the period within which the information is to be given (which shall begin with the date on which the notice is received and shall not exceed three months), and
  - (b) the manner and form in which the information is to be given.
- (4) The Commission may not give a notice under this section in respect of a duty under section 76A of the Sex Discrimination Act 1975, section 71(1) of the Race Relations Act 1976 or section 49A of the Disability Discrimination Act 1995 unless—
- (a) the Commission has carried out an assessment under section 31 above, and
  - (b) the notice relates to the results of the assessment.
- (5) A person who receives a notice under this section shall comply with it.
- (6) But a notice under this section shall not oblige a person to give information—
- (a) that he is prohibited from disclosing by virtue of an enactment, or
  - (b) that he could not be compelled to give in proceedings before the High Court or the Court of Session.
- (7) Paragraphs 11 and 14 of Schedule 2 shall have effect (with any necessary modifications) in relation to a requirement imposed by a notice under this section as they have effect in relation to a requirement imposed by a notice under paragraph 9 of that Schedule.
- (8) If the Commission thinks that a person, to whom a notice under this section has been given, has failed to comply with a requirement of the notice, the Commission may apply to the court for an order requiring the person to comply.
- (9) In subsection (8) “the court” means—
- (a) where the notice related to a duty under section 76A of the Sex Discrimination Act 1975 (c. 65), section 71(1) of the Race Relations Act 1976 (c. 74) or section 49A of the Disability Discrimination Act 1995 (c. 50), the High Court (in England and Wales) or (in Scotland) the Court of Session, and
  - (b) in any other case, a county court (in England and Wales) or the sheriff (in Scotland).

(10) A notice under this section shall specify a time before which the Commission may not make an application under subsection (8) in respect of the notice.

(11) Legal proceedings in relation to a duty by virtue of section 76B or 76C of the Sex Discrimination Act 1975, section 71(2) of the Race Relations Act 1976 or section 49D of the Disability Discrimination Act 1995–

- (a) may be brought by the Commission in accordance with subsection (8) above, and
- (b) may not be brought in any other way.

### *Interpretation*

## **33 Equality and human rights enactments**

(1) In this Part “the equality enactments” means–

- (a) the Equal Pay Act 1970 (c. 41),
- (b) the Sex Discrimination Act 1975,
- (c) the Race Relations Act 1976,
- (d) the Disability Discrimination Act 1995,
- (e) Part 2 of this Act,
- (f) regulations under Part 3 of this Act,
- (g) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661),
- (h) the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), and
- (i) the Employment Equality (Age) Regulations 2006.

(2) In this Part “the equality and human rights enactments” means the equality enactments and the Human Rights Act 1998 (c. 42).

(3) The [Minister]<sup>16</sup> may by order amend the list in subsection (1) so as to–

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

## **34 Unlawful**

(1) In this Part (except section 30(3)) “unlawful” means contrary to a provision of the equality enactments.

(2) But action is not unlawful for the purposes of this Part by reason only of the fact that it contravenes a duty under or by virtue of–

- (a) section 76A, 76B or 76C of the Sex Discrimination Act 1975 (c. 65) (public authorities: duty to eliminate discrimination, &c.),
- (b) section 71 of the Race Relations Act 1976 (c. 74) (public authorities: duty to eliminate discrimination, &c.), or
- (c) any of the following provisions of the Disability Discrimination Act 1995 (c. 50)–
  - (i) Part 5 (public transport),
  - (ii) sections 49A and 49D (public authorities), and

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<sup>16</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(i)

- (iii) section 49G (consent to tenant's improvements).

### 35 General

In this Part–

- “act” includes deliberate omission,
- “groups” has the meaning given by section 10,
- “the Commission” means the Commission for Equality and Human Rights,
- “disabled person” has the meaning given by section 8,
- “human rights” has the meaning given by section 9,
- [ “the Minister” means the Lord Privy Seal,]<sup>17</sup>
- “race” includes colour, nationality, ethnic origin and national origin,
- “religion or belief” has the same meaning as in Part 2 (as defined by section 44), and
- “sexual orientation” means an individual's sexual orientation towards–
  - (a) persons of the same sex as him or her,
  - (b) persons of the opposite sex, or
  - (c) both.

#### *Dissolution of Existing Commissions*

### 36 Dissolution

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

### 37 Transfer of property, &c.

- (1) An order under section 36(1) in respect of any of the former Commissions may provide for the transfer to the Commission for Equality and Human Rights of specified property, rights and liabilities of the former Commission.
- (2) The Secretary of State may give a former Commission any direction that the Secretary of State thinks appropriate in connection with the dissolution of the former Commission or the establishment of the Commission for Equality and Human Rights; and a direction may, in particular, require the former Commission–
  - (a) to provide information in connection with property, rights or liabilities;
  - (b) to provide information in connection with the exercise of functions;

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<sup>17</sup> definition inserted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 15(1)

- (c) to transfer specified property, rights and liabilities to a specified person;
  - (d) to make property, staff or facilities available, on such terms or conditions as may be specified in the direction, to the Commission for Equality and Human Rights;
  - (e) not to take action of a specified kind or in specified circumstances.
- (3) The Secretary of State may direct a former Commission to prepare a scheme for the transfer of specified property, rights and liabilities to—
- (a) the Commission for Equality and Human Rights, or
  - (b) another person specified in the direction.
- (4) If the Secretary of State gives a direction under subsection (3)—
- (a) the former Commission shall prepare a scheme in accordance with the direction, having consulted either the Commission for Equality and Human Rights or the person specified under subsection (3)(b), and
  - (b) the scheme shall have effect—
    - (i) when approved by the Secretary of State, and
    - (ii) subject to any modifications made by him, having consulted the former Commission and either the Commission for Equality and Human Rights or the person specified under subsection (3)(b).
- (5) Where a former Commission ceases to exist by virtue of section 36(1)(a), its property, rights and liabilities shall by virtue of this subsection vest in the Commission for Equality and Human Rights (and this subsection operates in addition to any transfer provided for by virtue of subsection (1) above).
- (6) An order, direction or scheme under or by virtue of this section may, in particular—
- (a) specify property, rights or liabilities;
  - (b) specify a class or description of property, rights or liabilities;
  - (c) specify property, rights or liabilities to a specified extent.

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

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

- (4) Section 37, and a direction, scheme or order under or by virtue of that section, shall operate in relation to property, rights or liabilities—
- (a) whether or not they would otherwise be capable of being transferred,
  - (b) without any instrument or other formality being required, and
  - (c) irrespective of any requirement for consent that would otherwise apply.
- (5) A scheme or order under or by virtue of section 37 which relates to rights or liabilities under a contract of employment—
- (a) must provide for the application of the [Transfer of Undertakings (Protection of Employment) Regulations 2006]<sup>18</sup>, and
  - (b) must provide that for any purpose relating to an employee of a former commission who becomes an employee of the Commission for Equality and Human Rights by virtue of the scheme or order—
    - (i) a period of employment with the former commission shall be treated as a period of employment with the Commission for Equality and Human Rights, and
    - (ii) the transfer to that Commission shall not be treated as a break in service.

### *Miscellaneous*

## **39 Orders and regulations**

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

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<sup>18</sup> possible drafting error - words are purportedly substituted in 2006 c.3 s.39(5), but the words do not appear in that section but in s.38(5); the substitution is therefore made in s.38(5) by Transfer of Undertakings (Protection of Employment) Regulations 2006/246 Sch. 2 para. 1(l)

#### **40 Consequential amendments**

Schedule 3 (consequential amendments) shall have effect.

#### **41 Transitional: the Commission**

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

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

- (1) An order under section 36(1)(a) or (b) may—
  - (a) provide for a former Commission to continue to exercise a function in respect of a transitional case of a kind specified;
  - (b) provide for the Commission for Equality and Human Rights to exercise a function of a former Commission in respect of a transitional case of a kind specified.
- (2) An order under section 93 commencing a provision of Schedule 3 or 4 may include a saving or a consequential or incidental provision for the purpose of the operation of provision made by virtue of subsection (1) above; and the saving, consequential or incidental provision may, in

particular, include provision applying, disapplying or modifying the application of a provision of this Act or of another enactment (including an enactment in or under an Act of the Scottish Parliament).

(3) A code of practice issued by a Commission dissolved by virtue of section 36, or which relates to a function of a Commission removed by virtue of section 36(1)(b)–

(a) shall continue to have effect until revoked by the Secretary of State, at the request of the Commission for Equality and Human Rights, by order made by statutory instrument, and

(b) may be revised by the Commission for Equality and Human Rights as if it had been issued under section 14.

(4) Consultation undertaken by a former Commission in relation to the issue or revision of a code of practice may be relied upon by the Commission for Equality and Human Rights for a purpose of section 14.

(5) An order under subsection (3)(a) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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

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

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

(1) The Disability Rights Commission may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in relation to a dispute of any description concerning the question whether–

(a) it is unreasonable for a landlord to withhold consent to the carrying out of any relevant work in relation to a house (within the meaning of the Housing (Scotland) Act 2006 (asp 01)) in Scotland, or

(b) any condition imposed by a landlord on consenting to the carrying out of any such work is unreasonable.

(2) Subsections (2) to (8) of section 28 apply for the purpose of this section as they apply for the purpose of that section and for that purpose a reference in that section to–

(a) a dispute arising under Part 3 is to be construed as a reference to a dispute mentioned in subsection (1), and

(b) arrangements under that section is to be construed as a reference to arrangements under subsection (1).

(3) In subsection (1), “relevant work”, in relation to a house, means work for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence.”

(2) In section 53A (codes of practice) of that Act–

(a) after subsection (1E) insert–

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

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

(b) after subsection (4A) insert–

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

(c) after subsection (6A) insert–

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

(d) after subsection (8A) insert–

“(8B) Subsection (8A) does not apply to a code of practice under subsection (1F).”

(3) In section 7 of the Disability Rights Commission Act 1999 (c. 17) (provision of assistance in relation to proceedings), in subsection (1), after paragraph (aa) insert–

“(ab) proceedings in Scotland of any description to the extent that the question whether–

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

## Part 2

### DISCRIMINATION ON GROUNDS OF RELIGION OR BELIEF

#### *Key concepts*

#### **44 Religion and belief**

In this Part–

- (a) “religion” means any religion,
- (b) “belief” means any religious or philosophical belief,
- (c) a reference to religion includes a reference to lack of religion, and
- (d) a reference to belief includes a reference to lack of belief.

#### **45 Discrimination**

(1) A person (“A”) discriminates against another (“B”) for the purposes of this Part if on grounds of the religion or belief of B or of any other person except A (whether or not it is also A's religion or belief) A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances).

(2) In subsection (1) a reference to a person's religion or belief includes a reference to a religion or belief to which he is thought to belong or subscribe.

(3) A person (“A”) discriminates against another (“B”) for the purposes of this Part if A applies to B a provision, criterion or practice–

- (a) which he applies or would apply equally to persons not of B's religion or belief,
- (b) which puts persons of B's religion or belief at a disadvantage compared to some or all others (where there is no material difference in the relevant circumstances),
- (c) which puts B at a disadvantage compared to some or all persons who are not of his religion or belief (where there is no material difference in the relevant circumstances), and
- (d) which A cannot reasonably justify by reference to matters other than B's religion or belief.

(4) A person (“A”) discriminates against another (“B”) if A treats B less favourably than he treats or would treat another and does so by reason of the fact that, or by reason of A's knowledge or suspicion that, B–

- (a) has brought or intended to bring, or intends to bring, proceedings under this Part,
- (b) has given or intended to give, or intends to give, evidence in proceedings under this Part,
- (c) has provided or intended to provide, or intends to provide, information in connection with proceedings under this Part,
- (d) has done or intended to do, or intends to do, any other thing under or in connection with this Part, or
- (e) has alleged or intended to allege, or intends to allege, that a person contravened this Part.

(5) Subsection (4) does not apply where A's treatment of B relates to B's making or intending to make, not in good faith, a false allegation.

*Prohibited discrimination***46 Goods, facilities and services**

(1) It is unlawful for a person (“A”) concerned with the provision to the public or a section of the public of goods, facilities or services to discriminate against a person (“B”) who seeks to obtain or use those goods, facilities or services—

- (a) by refusing to provide B with goods, facilities or services,
- (b) by refusing to provide B with goods, facilities or services of a quality which is the same as or similar to the quality of goods, facilities or services that A normally provides to—
  - (i) the public, or
  - (ii) a section of the public to which B belongs,
- (c) by refusing to provide B with goods, facilities or services in a manner which is the same as or similar to that in which A normally provides goods, facilities or services to—
  - (i) the public, or
  - (ii) a section of the public to which B belongs, or
- (d) by refusing to provide B with goods, facilities or services on terms which are the same as or similar to the terms on which A normally provides goods, facilities or services to—
  - (i) the public, or
  - (ii) a section of the public to which B belongs.

(2) Subsection (1) applies, in particular, to—

- (a) access to and use of a place which the public are permitted to enter,
- (b) accommodation in a hotel, boarding house or similar establishment,
- (c) facilities by way of banking or insurance or for grants, loans, credit or finance,
- (d) facilities for entertainment, recreation or refreshment,
- (e) facilities for transport or travel, and
- (f) the services of a profession or trade.

(3) Where a skill is commonly exercised in different ways in relation to or for the purposes of different religions or beliefs, a person who normally exercises it in relation to or for the purpose of a religion or belief does not contravene subsection (1) by—

- (a) insisting on exercising the skill in the way in which he exercises it in relation to or for the purposes of that religion or belief, or
- (b) if he reasonably considers it impracticable to exercise the skill in that way in relation to or for the purposes of another religion or belief, refusing to exercise it in relation to or for the purposes of that other religion or belief.

(4) Subsection (1)—

- (a) does not apply in relation to the provision of goods, facilities or services by a person exercising a public function, and
- (b) does not apply to discrimination in relation to the provision of goods, facilities or services if discrimination in relation to that provision—
  - (i) is unlawful by virtue of another provision of this Part or by virtue of a provision of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), or
  - (ii) would be unlawful by virtue of another provision of this Part or of those regulations but for an express exception.

(5) For the purposes of subsection (1) it is immaterial whether or not a person charges for the provision of goods, facilities or services.

#### **47 Premises**

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

#### **48 Section 47: exceptions**

- (1) Section 47 shall not apply to anything done in relation to the disposal or management of part of premises by a person (“the landlord”) if—
  - (a) the landlord or a near relative resides, and intends to continue to reside, in another part of the premises,
  - (b) the premises include parts (other than storage areas and means of access) shared by residents of the premises, and
  - (c) the premises are not normally sufficient to accommodate—
    - (i) in the case of premises to be occupied by households, more than two households in addition to that of the landlord or his near relative, or
    - (ii) in the case of premises to be occupied by individuals, more than six individuals in addition to the landlord or his near relative.
- (2) In subsection (1) “near relative” means—
  - (a) spouse or civil partner,
  - (b) parent or grandparent,
  - (c) child or grandchild (whether or not legitimate),
  - (d) the spouse or civil partner of a child or grandchild,
  - (e) brother or sister (whether of full blood or half-blood), and
  - (f) any of the relationships listed in paragraphs (b) to (e) above that arises through marriage, civil partnership or adoption.
- (3) Section 47(1) and (3) shall not apply to the disposal of premises by a person who—
  - (a) owns an estate or interest in the premises,
  - (b) occupies the whole of the premises,
  - (c) does not use the services of an estate agent for the purposes of the disposal, and
  - (d) does not arrange for the publication of an advertisement for the purposes of the disposal.

**49 Educational establishments**

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

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

**50 Section 49: exceptions**

- (1) Section 49(1)(a), (b) and (c)(i) and (ii) shall not apply in relation to–
- (a) a school designated under section 69(3) of the School Standards and Framework Act 1998 (c. 31) (foundation or voluntary school with religious character),
  - (b) a school listed in the register of independent schools for England or for Wales if the school's entry in the register records that the school has a religious ethos,
  - (c) a school transferred to an education authority under section 16 of the Education (Scotland) Act 1980 (transfer of certain schools to education authorities) which is conducted in the interest of a church or denominational body,
  - (d) a school provided by an education authority under section 17(2) of that Act (denominational schools),
  - (e) a grant-aided school (within the meaning of that Act) which is conducted in the interest of a church or denominational body, or
  - (f) a school registered in the register of independent schools for Scotland if the school–

- (i) admits only pupils who belong, or whose parents belong, to one or more particular denominations, or
  - (ii) is conducted in the interest of a church or denominational body.
- (2) Section 49(1)(c)(i), (ii) or (iv) shall not apply in relation to anything done in connection with—
- (a) the content of the curriculum, or
  - (b) acts of worship or other religious observance organised by or on behalf of an educational establishment (whether or not forming part of the curriculum).
- (3) The [Minister]<sup>19</sup> may by order—
- (a) amend or repeal an exception in subsection (1) or (2);
  - (b) provide for an additional exception to section 49;
  - (c) make provision about the construction or application of section 45(3)(d) in relation to section 49.
- (4) An order under subsection (3)—
- (a) may include transitional, incidental or consequential provision (including provision amending an enactment (including an enactment in or under an Act of the Scottish Parliament)),
  - (b) may make provision generally or only in respect of specified cases or circumstances (which may, in particular, be defined by reference to location),
  - (c) may make different provision in respect of different cases or circumstances (which may, in particular, be defined by reference to location),
  - (d) shall be made by statutory instrument,
  - (e) may not be made unless the [Minister]<sup>20</sup> has consulted the Scottish Ministers, the Welsh Ministers and such other persons as he thinks appropriate, and
  - (f) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

## 51 Local education authorities and education authorities

- (1) It is unlawful for a local education authority (in England and Wales) or an education authority (in Scotland) in the exercise of their functions to discriminate against a person.
- (2) In its application to local education authorities the prohibition in subsection (1) shall not apply to—
- (a) the exercise of an authority's functions under section 14 of the Education Act 1996 (c. 56) (provision of schools),
  - (b) the exercise of an authority's functions in relation to transport,
  - (c) the exercise of an authority's functions under section 13 of that Act (general responsibility for education) in so far as they relate to a matter specified in paragraph (a) or (b) above, or
  - (d) the exercise of functions as the responsible body for an establishment listed in the Table in section 49.

<sup>19</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(j)

<sup>20</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(j)

- (3) In its application to education authorities the prohibition in subsection (1) shall not apply to—
- (a) the exercise of an authority's functions under section 17 of the Education (Scotland) Act 1980 (c. 44) (provision etc. of schools),
  - (b) the exercise of an authority's functions in relation to transport,
  - (c) the exercise of an authority's functions under section 1 of that Act, section 2 of the Standards in Scotland's Schools etc. Act 2000 (asp 6) and sections 4 and 5 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (duties in relation to provision of education) in so far as they relate to a matter specified in paragraph (a) or (b) above,
  - (d) the exercise of an authority's functions under section 50(1) of the Education (Scotland) Act 1980 (education of pupils in exceptional circumstances) in so far as they consist of making arrangements of the kind referred to in subsection (2) of that section, or
  - (e) the exercise of functions as the responsible body for an establishment listed in the Table in section 49.

## **52 Public authorities: general**

- (1) It is unlawful for a public authority exercising a function to do any act which constitutes discrimination.
- (2) In subsection (1)—
- (a) “public authority” includes any person who has functions of a public nature (subject to subsections (3) and (4)), and
  - (b) “function” means function of a public nature.
- (3) The prohibition in subsection (1) shall not apply to—
- (a) the House of Commons,
  - (b) the House of Lords,
  - (c) the authorities of either House of Parliament,
  - (d) the Security Service,
  - (e) the Secret Intelligence Service,
  - (f) the Government Communications Headquarters, or
  - (g) a part of the armed forces of the Crown which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.
- (4) The prohibition in subsection (1) shall not apply to—
- (a) the exercise of a judicial function (whether in connection with a court or a tribunal),
  - (b) anything done on behalf of or on the instructions of a person exercising a judicial function (whether in connection with a court or a tribunal),
  - (c) preparing, passing (or making), confirming, approving or considering an enactment (including legislation made by or by virtue of a Measure of the General Synod of the Church of England),
  - (d) the making of an instrument by a Minister of the Crown under an enactment,
  - (e) the making of an instrument by the Scottish Ministers or a member of the Scottish Executive under an enactment,
  - (ea) the making of an instrument by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government under an enactment,
  - (f) a decision of any of the following kinds taken in accordance with rules under section 3(2) of the Immigration Act 1971 (c. 77) (“immigration rules”) or anything done for the purposes of or in pursuance of a decision of any of those kinds—

- (i) a decision to refuse entry clearance or leave to enter the United Kingdom on the grounds that the exclusion of the person from the United Kingdom is conducive to the public good,
  - (ii) a decision to cancel leave to enter or remain in the United Kingdom on the grounds that the exclusion of the person from the United Kingdom is conducive to the public good,
  - (iii) a decision to refuse an application to vary leave to enter or remain in the United Kingdom on the grounds that it is undesirable to permit the person to remain in the United Kingdom,
  - (iv) a decision to vary leave to enter or remain in the United Kingdom on the grounds that it is undesirable to permit the person to remain in the United Kingdom,
  - (g) a decision in connection with an application for entry clearance or for leave to enter or remain in the United Kingdom or anything done for the purposes of or in pursuance of a decision of that kind (whether or not the decision is taken in pursuance of a provision of immigration rules) if the decision is taken on the grounds—
    - (i) that a person holds an office or position in connection with a religion or belief or provides services in connection with a religion or belief,
    - (ii) that a religion or belief is not to be treated in the same way as certain other religions or beliefs, or
    - (iii) that the exclusion from the United Kingdom of a person to whom paragraph (i) applies is conducive to the public good,
  - (h) a decision taken, or guidance given, by the Secretary of State in connection with a decision of a kind specified in paragraph (f) or (g),
  - (i) a decision taken in accordance with guidance given by the Secretary of State in connection with a decision of a kind specified in paragraph (f) or (g),
  - (j) a decision not to institute or continue criminal proceedings (and anything done for the purpose of reaching, or in pursuance of, such a decision),
  - (k) action in relation to—
    - (i) the curriculum of an educational institution,
    - (ii) admission to an educational institution which has a religious ethos,
    - (iii) acts of worship or other religious observance organised by or on behalf of an educational institution (whether or not forming part of the curriculum),
    - (iv) the governing body of an educational institution which has a religious ethos,
    - (v) transport to or from an educational institution, or
    - (vi) the establishment, alteration or closure of educational institutions,
  - (l) the exercise of the power under section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being), or
  - (m) action which—
    - (i) is unlawful by virtue of another provision of this Part or by virtue of a provision of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), or
    - (ii) would be unlawful by virtue of another provision of this Part other than section 46, or by virtue of a provision of those regulations, but for an express exception.
- (5) In an action under section 66 in respect of a contravention of this section—
- (a) the court shall not grant an injunction unless satisfied that it will not prejudice criminal proceedings or a criminal investigation, and

- (b) the court shall grant any application to stay the section 66 proceedings on the grounds of prejudice to criminal proceedings or to a criminal investigation, unless satisfied that the proceedings or investigation will not be prejudiced.
- (6) Section 70(4) shall not apply in relation to a reply, or a failure to reply, to a question in connection with an alleged contravention of this section—
- (a) if the respondent or potential respondent reasonably asserts that to have replied differently or at all might have prejudiced criminal proceedings or a criminal investigation,
  - (b) if the respondent or potential respondent reasonably asserts that to have replied differently or at all would have revealed the reason for not instituting or not continuing criminal proceedings,
  - (c) where the reply is of a kind specified for the purposes of this paragraph by order of the [Minister]<sup>21</sup> ,
  - (d) where the reply is given in circumstances specified for the purposes of this paragraph by order of the [Minister]<sup>22</sup> , or
  - (e) where the failure occurs in circumstances specified for the purposes of this paragraph by order of the [Minister]<sup>23</sup> .
- (7) In this section—
- “criminal investigation” means—
- (a) an investigation into the commission of an alleged offence, and
  - (b) a decision whether to institute criminal proceedings, and
- “enactment” includes an enactment in or under an Act of the Scottish Parliament.
- (8) An order under subsection (6)(c) to (e)—
- (a) may include transitional or incidental provision,
  - (b) may make provision generally or only for specified cases or circumstances,
  - (c) may make different provision for different cases or circumstances,
  - (d) shall be made by statutory instrument, and
  - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In the application of this section to proceedings in Scotland—
- (a) a reference to the court shall be taken as a reference to the sheriff,
  - (b) a reference to an injunction shall be taken as a reference to an interdict,
  - (c) a reference to staying proceedings shall be taken as a reference to sisting proceedings, and
  - (d) a reference to the respondent or potential respondent shall be taken as a reference to the defender or potential defender.

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<sup>21</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(k)

<sup>22</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(k)

<sup>23</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(k)

*Other unlawful acts***53 Discriminatory practices**

- (1) It is unlawful for a person to operate a practice which would be likely to result in unlawful discrimination if applied to persons of any religion or belief.
- (2) It is unlawful for a person to adopt or maintain a practice or arrangement in accordance with which in certain circumstances a practice would be operated in contravention of subsection (1).
- (3) In this section “unlawful discrimination” means discrimination which is unlawful by virtue of any of sections 46 to 52.
- (4) Proceedings in respect of a contravention of this section may be brought only—
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with sections 20 to 24.

**54 Discriminatory advertisements**

- (1) It is unlawful to publish an advertisement, or to cause an advertisement to be published, if it indicates (expressly or impliedly) an intention by any person to discriminate unlawfully.
- (2) In subsection (1) the reference to unlawful discrimination is a reference to discrimination which is unlawful by virtue of any of sections 46 to 52.
- (3) Proceedings in respect of a contravention of subsection (1) may be brought only—
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25.
- (4) A person who publishes an advertisement shall not be liable in proceedings under that section in respect of the publication of the advertisement if he proves that—
  - (a) he published in reliance on a statement, made by a person causing the advertisement to be published, that subsection (1) would not apply, and
  - (b) that it was reasonable to rely on that statement.
- (5) A person commits an offence if he knowingly or recklessly makes a false statement of the kind mentioned in subsection (4)(a).
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**55 Instructing or causing discrimination**

- (1) It is unlawful for a person to instruct another to unlawfully discriminate.
- (2) It is unlawful for a person to cause or attempt to cause another to unlawfully discriminate.
- (3) It is unlawful for a person to induce or attempt to induce another to unlawfully discriminate.
- (4) For the purposes of subsection (3) inducement may be direct or indirect.
- (5) In this section a reference to unlawful discrimination is a reference to discrimination which is unlawful by virtue of any of sections 46 to 52.

- (6) Proceedings in respect of a contravention of this section may be brought only–
- (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25.

*General exceptions*

**56 Statutory requirements**

(1) Nothing in this Part shall make it unlawful to do anything which is necessary, or in so far as it is necessary, for the purpose of complying with–

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (ba) a Measure of the National Assembly for Wales,
- (bb) an Act of the National Assembly for Wales,
- (c) legislation made or to be made–
  - (i) by a Minister of the Crown,
  - (ii) by Order in Council,
  - (iii) by the Scottish Ministers or a member of the Scottish Executive,
  - (iv) by the National Assembly for Wales constituted by the Government of Wales Act 1998,
  - (iva) by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or
  - (v) by or by virtue of a Measure of the General Synod of the Church of England,
- (d) a condition or requirement imposed by a Minister of the Crown by virtue of anything listed in paragraphs (a) to (c), or
- (e) a condition or requirement imposed after the end of the initial period by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government by virtue of anything listed in paragraphs (a) to (c).

[ (2) In subsection (1)(e) “the initial period” has the same meaning as in the Government of Wales Act 2006 (see section 161(5) of that Act). ]<sup>24</sup>

**57 Organisations relating to religion or belief**

- (1) This section applies to an organisation the purpose of which is–
- (a) to practice a religion or belief,
  - (b) to advance a religion or belief,
  - (c) to teach the practice or principles of a religion or belief,
  - (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or
  - (e) to improve relations, or maintain good relations, between persons of different religions or beliefs.
- (2) But this section does not apply to an organisation whose sole or main purpose is commercial.

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<sup>24</sup> added by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 117(4)

- (3) Nothing in this Part shall make it unlawful for an organisation to which this section applies or anyone acting on behalf of or under the auspices of an organisation to which this section applies–
- (a) to restrict membership of the organisation,
  - (b) to restrict participation in activities undertaken by the organisation or on its behalf or under its auspices,
  - (c) to restrict the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices, or
  - (d) to restrict the use or disposal of premises owned or controlled by the organisation.
- (4) Nothing in this Part shall make it unlawful for a minister–
- (a) to restrict participation in activities carried on in the performance of his functions in connection with or in respect of an organisation to which this section relates, or
  - (b) to restrict the provision of goods, facilities or services in the course of activities carried on in the performance of his functions in connection with or in respect of an organisation to which this section relates.
- (5) But subsections (3) and (4) permit a restriction only if imposed–
- (a) by reason of or on the grounds of the purpose of the organisation, or
  - (b) in order to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.
- (6) In subsection (4) the reference to a minister is a reference to a minister of religion, or other person, who–
- (a) performs functions in connection with a religion or belief to which an organisation, to which this section applies, relates, and
  - (b) holds an office or appointment in, or is accredited, approved or recognised for purposes of, an organisation to which this section applies.

## **58 Charities relating to religion or belief**

- (1) Nothing in this Part shall make it unlawful for a person to provide benefits only to persons of a particular religion or belief, if–
- (a) he acts in pursuance of a charitable instrument, and
  - (b) the restriction of benefits to persons of that religion or belief is imposed by reason of or on the grounds of the provisions of the charitable instrument.
- (2) Nothing in this Part shall make it unlawful for the Charity Commission or the holder of the Office of the Scottish Charity Regulator to exercise a function in relation to a charity in a manner which appears to [the Commission]<sup>25</sup> or to the holder to be expedient in the interests of the charity, having regard to the provisions of the charitable instrument.
- (3) In this section “charitable instrument”–
- (a) means an instrument establishing or governing a charity, and
  - (b) includes a charitable instrument made before the commencement of this section.

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<sup>25</sup> words substituted by Charities Act 2006 c. 50 Sch. 8 para. 212(2)(b)

**59 Faith schools, &c.**

(1) Nothing in this Part shall make it unlawful for an educational institution established or conducted for the purpose of providing education relating to, or within the framework of, a specified religion or belief—

- (a) to restrict the provision of goods, facilities or services, or
- (b) to restrict the use or disposal of premises.

(2) But subsection (1) permits a restriction only if imposed—

- (a) by reason of or on the grounds of the purpose of the institution, or
- (b) in order to avoid causing offence, on grounds of the religion or belief to which the institution relates, to persons connected with the institution.

(3) In this Part a reference to the provision of facilities or services shall not, in so far as it applies to an educational institution, include a reference to educational facilities or educational services provided to students of the institution.

**60 Membership requirement**

(1) Nothing in this Part shall make it unlawful for a charity to require members, or persons wishing to become members, to make a statement which asserts or implies membership or acceptance of a religion or belief.

(2) Subsection (1) shall apply to the imposition of a requirement by a charity only if—

- (a) the charity, or an organisation of which the charity is part, first imposed a requirement of the kind specified in subsection (1) before 18th May 2005, and
- (b) the charity or organisation has not ceased since that date to impose a requirement of that kind.

**61 Education, training and welfare**

Nothing in this Part shall make it unlawful to do anything by way of—

- (a) meeting special needs for education, training or welfare of persons of a religion or belief, or
- (b) providing ancillary benefits in connection with meeting the needs mentioned in paragraph (a).

**62 Care within family**

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

**63 National security**

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

## 64 Amendment of exceptions

- (1) The [Minister]<sup>26</sup> may by order amend this Part so as to—
  - (a) create an exception to the prohibition under section 52(1), or,
  - (b) vary an exception to a prohibition under this Part.
- (2) Before making an order under subsection (1) the [Minister]<sup>27</sup> shall consult the Commission for Equality and Human Rights.
- (3) An order under subsection (1)—
  - (a) may include transitional, incidental or consequential provision (including provision amending an enactment (including an enactment in or under an Act of the Scottish Parliament)),
  - (b) may make provision generally or only for specified cases or circumstances,
  - (c) may make different provision for different cases or circumstances,
  - (d) shall be made by statutory instrument, and
  - (e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### *Enforcement*

## 65 Restriction of proceedings

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

## 66 Claim of unlawful action

- (1) A claim that a person has done anything that is unlawful by virtue of this Part may be brought in a county court (in England and Wales) or in the sheriff court (in Scotland) by way of proceedings in tort (or reparation) for breach of statutory duty.
- (2) Proceedings in England and Wales alleging that any of the following bodies has acted unlawfully by virtue of section 49 or 51 may not be brought unless the claimant has given written notice to the Secretary of State; and those bodies are—

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<sup>26</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(1)

<sup>27</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(1)

- (a) a local education authority, and
- (b) the responsible body of an educational establishment listed in the Table in section 49.

(3) Proceedings in Scotland alleging that any of the following bodies has acted unlawfully by virtue of section 49 or 51 may not be brought unless the pursuer has given written notice to the Scottish Ministers; and those bodies are—

- (a) an education authority, and
- (b) the responsible body of an educational establishment listed in the Table in section 49.

(4) In subsection (1) the reference to a claim that a person has done an unlawful act includes a reference to a claim that a person is to be treated by virtue of this Part as having done an unlawful act.

(5) In proceedings under this section, if the claimant (or pursuer) proves facts from which the court could conclude, in the absence of a reasonable alternative explanation, that an act which is unlawful by virtue of this Part has been committed, the court shall assume that the act was unlawful unless the respondent (or defender) proves that it was not.

## **67 Immigration**

(1) Proceedings may not be brought under section 66 alleging that a person has acted unlawfully by virtue of section 52 if the question of the lawfulness of the act could be raised (and has not been raised) in immigration proceedings (disregarding the possibility of proceedings brought out of time with permission).

(2) If in immigration proceedings a court or tribunal has found that an act was unlawful by virtue of section 52, a court hearing proceedings under section 66 shall accept that finding.

- (3) In this section “immigration proceedings” means proceedings under or by virtue of—
- (a) the Immigration Acts, or
  - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).

## **68 Remedies**

(1) This section applies to proceedings under section 66.

(2) A court may, in addition to any remedy available to it in proceedings for tort, grant any remedy that the High Court could grant in proceedings for judicial review.

(3) A court may not award damages in proceedings in respect of an act that is unlawful by virtue of section 45(3) if the respondent proves that there was no intention to treat the claimant unfavourably on grounds of religion or belief.

(4) A court may award damages by way of compensation for injury to feelings (whether or not other damages are also awarded).

- (5) In the application of this section to proceedings in Scotland—
- (a) a reference to the High Court shall be taken as a reference to the Court of Session,
  - (b) a reference to tort shall be taken as a reference to reparation,
  - (c) a reference to the respondent shall be taken as a reference to the defender, and
  - (d) a reference to the claimant shall be taken as a reference to the pursuer.

(6) This section is subject to section 52(5).

## 69 Timing

- (1) Proceedings under section 66 may be brought only—
  - (a) within the period of six months beginning with the date of the act (or last act) to which the proceedings relate, or
  - (b) with the permission of the court in which the proceedings are brought.
- (2) In relation to immigration proceedings within the meaning of section 67, the period specified in subsection (1)(a) above shall begin with the first date on which proceedings under section 66 may be brought.

## 70 Information

- (1) In this section—
  - (a) a reference to a claimant is a reference to a person who has brought proceedings under this Part,
  - (b) a reference to a potential claimant is a reference to a person who—
    - (i) thinks he may have been the subject of an act that is unlawful by virtue of this Part, and
    - (ii) wishes to consider whether to bring proceedings under this Part, and
  - (c) a person questioned by a potential claimant for the purpose of considering whether to bring proceedings is referred to as a potential respondent.
- (2) The Minister shall by order prescribe—
  - (a) forms by which a claimant or potential claimant may question the respondent or a potential respondent about the reasons for an action or about any matter that is or may be relevant, and
  - (b) forms by which a respondent or potential respondent may reply (if he wishes).
- (3) A claimant's or potential claimant's questions, and a respondent or potential respondent's replies, (in each case whether or not put by a prescribed form) shall be admissible as evidence in proceedings in respect of the act to which the questions relate if (and only if) the questions are put—
  - (a) within the period of six months beginning with the date of the act (or last act) to which they relate, and
  - (b) in such manner as the Minister may prescribe by order.
- (4) A court may draw an inference from—
  - (a) a failure to reply to a claimant's or potential claimant's questions (whether or not put by a prescribed form) within the period of eight weeks beginning with the date of receipt, or
  - (b) an evasive or equivocal reply to a claimant's or potential claimant's questions (whether or not put by a prescribed form).
- (5) The [Minister]<sup>28</sup> may by order amend subsection (3)(a) so as to substitute a new period for that specified.
- (6) In the application of this section to Scotland—

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<sup>28</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(m)

- (a) a reference to a claimant or potential claimant shall be taken as a reference to a pursuer or potential pursuer, and
  - (b) a reference to a respondent or potential respondent shall be taken as a reference to a defender or potential defender.
- (7) An order under this section—
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) This section is subject to section 52(6).

## **71 National security**

(1) Rules of court may make provision for enabling a county court or sheriff court in which a claim is brought under section 66, where the court considers it expedient in the interests of national security—

- (a) to exclude from all or part of the proceedings—
    - (i) the claimant;
    - (ii) the claimant's representatives;
    - (iii) any assessors;
  - (b) to permit a claimant or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or the part of the proceedings, from which he is excluded;
  - (c) to take steps to keep secret all or part of the reasons for the court's decision in the proceedings.
- (2) The Attorney General or, in Scotland, the Advocate General for Scotland, may appoint a person to represent the interests of a claimant in, or in any part of, proceedings from which the claimant or his representatives are excluded by virtue of subsection (1).
- (3) A person may be appointed under subsection (2) only—
- (a) in relation to proceedings in England and Wales, if he has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), or
  - (b) in relation to proceedings in Scotland, if he is—
    - (i) an advocate, or
    - (ii) qualified to practice as a solicitor in Scotland.
- (4) A person appointed under subsection (2) shall not be responsible to the person whose interests he is appointed to represent.

## **72 Validity and revision of contracts**

- (1) A term of a contract is void where—
- (a) its inclusion renders the making of the contract unlawful by virtue of this Part,
  - (b) it is included in furtherance of an act which is unlawful by virtue of this Part, or
  - (c) it provides for the doing of an act which would be unlawful by virtue of this Part.
- (2) Subsection (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against a party to the contract; but the term shall be unenforceable against that party.

- (3) A term in a contract which purports to exclude or limit a provision of this Part is unenforceable by a person in whose favour the term would operate apart from this subsection.
- (4) Subsection (3) does not apply to a contract settling a claim under section 66.
- (5) On the application of a person interested in a contract to which subsection (1) applies, a county court or sheriff court may make an order for removing or modifying a term made unenforceable by that subsection; but an order shall not be made unless all persons affected—
- (a) have been given notice of the application (except where notice is dispensed with in accordance with rules of court), and
  - (b) have been afforded an opportunity to make representations to the court.
- (6) An order under subsection (5) may include provision in respect of a period before the making of the order.

### *General*

#### **73 Aiding unlawful acts**

- (1) It is unlawful knowingly to help another person (whether or not as his employee or agent) to do anything which is unlawful under this Part.
- (2) A person commits an offence if he knowingly or recklessly makes a false statement, in connection with assistance sought from another, that a proposed act is not unlawful under this Part.
- (3) A person guilty of an offence under subsection (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **74 Employers' and principals' liability**

- (1) Anything done by a person in the course of his employment shall be treated for the purposes of this Part as done by the employer as well as by the person.
- (2) Anything done by a person as agent for another shall be treated for the purposes of this Part as done by the principal as well as by the agent.
- (3) It is immaterial for the purposes of this section whether an employer or principal knows about or approves of an act.
- (4) In proceedings under this Part against a person in respect of an act alleged to have been done by his employee it shall be a defence for the employer to provide that he took such steps as were reasonably practicable to prevent the employee—
- (a) from doing the act, or
  - (b) from doing acts of that kind in the course of his employment.
- (5) Subsections (1) and (2) shall not apply to the commission of an offence under section 54.

#### **75 Police, &c.**

- (1) This section applies to—

- (a) a constable who is a member of a police force maintained under the Police Act 1996 (c. 16) or the Police (Scotland) Act 1967 (c. 77),
  - (b) a special constable appointed for a police area in accordance with either of those Acts, and
  - (c) a person appointed as a police cadet in accordance with either of those Acts.
- (2) A person to whom this section applies shall be treated for the purposes of this Part as the employee of his chief officer of police; and anything done by the person in the performance or purported performance of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund—
- (a) compensation, costs or expenses awarded against a chief officer of police in proceedings brought against him under this Part;
  - (b) costs or expenses incurred by a chief officer of police in proceedings brought against him under this Part so far as not recovered in the proceedings;
  - (c) sums required by a chief officer of police for the settlement of a claim made against him under this Part if the settlement is approved by the police authority.
- (4) A police authority may pay out of the police fund—
- (a) damages or costs awarded in proceedings under this Part against a person under the direction and control of the chief officer of police;
  - (b) costs incurred and not recovered by such a person in such proceedings;
  - (c) sums required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (5) In section 56(4) of the Serious Organised Crime and Police Act 2005 (c. 15) (application of discrimination legislation to seconded staff) after paragraph (f) insert—
- “; and
- (g) section 74 of the Equality Act 2006.”

## **76 Indirect provision of benefit, &c.**

A reference in this Part to providing a service, facility or benefit of any kind includes a reference to facilitating access to the service, facility or benefit.

## **77 Employment Equality Regulations**

- (1) For regulation 2(1) of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660) (definition of “religion or belief”) substitute—
- “(1) In these Regulations—
- (a) “religion” means any religion,
  - (b) “belief” means any religious or philosophical belief,
  - (c) a reference to religion includes a reference to lack of religion, and
  - (d) a reference to belief includes a reference to lack of belief.”
- (2) For regulation 3(1)(a) of the Regulations substitute—

“(a) on the grounds of the religion or belief of B or of any other person except A (whether or not it is also A's religion or belief) A treats B less favourably than he treats or would treat other persons;”.

(3) Omit regulation 3(2) of the Regulations.

## 78 Crown application

(1) Section 52 binds the Crown.

(2) The remainder of this Part applies to an act done on behalf of the Crown as it applies to an act done by a private person.

(3) For the purposes of subsection (2) an act is done on behalf of the Crown if (and only if) done—

(a) by or on behalf of a Minister of the Crown,

(b) by or on behalf of the Scottish Ministers,

[ (ba) by or on behalf of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, ]<sup>29</sup>

(c) by a government department,

(d) by a body established by an enactment (including an enactment in or under an Act of the Scottish Parliament) acting on behalf of the Crown,

(e) by or on behalf of the holder of an office established by an enactment (including an enactment in or under an Act of the Scottish Parliament) acting on behalf of the Crown, or

(f) by or on behalf of an office-holder in the Scottish Administration (within the meaning of section 126(7) of the Scotland Act 1998 (c. 46)).

(4) The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Part as they apply to proceedings in England and Wales which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown; but section 20 of that Act (removal of proceedings from county court to High Court) shall not apply to proceedings under this Part.

(5) The provisions of Part V of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Part as they apply to proceedings in Scotland which by virtue of the said Part are treated as civil proceedings by or against the Crown; but the proviso to section 44 of that Act (removal of proceedings from the sheriff court to the Court of Session) shall not apply to proceedings under this Part.

## 79 Interpretation

(1) In this Part “charity”—

(a) in relation to England and Wales, has the meaning given by the Charities Act 2006, and

(b) in relation to Scotland, means a body entered in the Scottish Charity Register.

(2) In this Part—

(a) a reference to action includes a reference to deliberate omission, and

(b) a reference to refusal includes a reference to deliberate omission.

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<sup>29</sup> added by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 118

[ (3) In this Part “the Minister” means the Lord Privy Seal. ]<sup>30</sup>

## **80 Territorial application**

- (1) This Part applies in relation to anything done in Great Britain.
- (2) This Part also applies to the provision of–
  - (a) facilities for travel on a British ship, a British hovercraft or a British aircraft, and
  - (b) benefits, facilities or services provided on a British ship, a British hovercraft or a British aircraft.
- (3) Section 52, in so far as it relates to granting entry clearance (within the meaning of the Immigration Acts), applies to anything done whether inside or outside the United Kingdom.
- (4) In this section–
 

“British aircraft” means an aircraft registered in Great Britain,  
 “British hovercraft” means a hovercraft registered in Great Britain, and  
 “British ship” means a ship which is–

  - (a) registered in Great Britain, or
  - (b) owned by or used for purposes of the Crown.
- (5) This section shall not make it unlawful to do anything in or over a country other than the United Kingdom, or in or over the territorial waters of a country other than the United Kingdom, for the purpose of complying with a law of the country.

## **PART 3**

### **DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION**

## **81 Regulations**

- (1) The Minister may by regulations make provision about discrimination or harassment on grounds of sexual orientation.
- (2) In subsection (1) “sexual orientation” has the meaning given by section 35.
- (3) The regulations may, in particular–
  - (a) make provision of a kind similar to Part 2 of this Act;
  - (b) define discrimination;
  - (c) define harassment;
  - (d) make provision for enforcement (which may, in particular, include provision–
    - (i) creating a criminal offence of a kind similar to, and with the same maximum penalties as, an offence created by an enactment relating to discrimination or equality;
    - (ii) about validity and revision of contracts;
    - (iii) about discriminatory advertisements;
    - (iv) about instructing or causing discrimination or harassment);

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<sup>30</sup> inserted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 15(2)

- (e) provide for exceptions (whether or not of a kind similar to those provided for by Part 2 of this Act or any other enactment relating to discrimination or equality);
  - (f) make provision which applies generally or only in specified cases or circumstances;
  - (g) make different provision for different cases or circumstances;
  - (h) include incidental or consequential provision (which may include provision amending an enactment);
  - (i) include transitional provision.
- (4) The regulations—
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) In subsection (3)(h) “enactment” includes an enactment in or under an Act of the Scottish Parliament.
- [ (6) In this section “the Minister” means the Lord Privy Seal. ]<sup>31</sup>

## 82 Regulations for Northern Ireland

- (1) The Office of the First Minister and deputy First Minister may by regulations make provision about discrimination or harassment on grounds of sexual orientation.
- (2) In subsection (1) “sexual orientation” has the same meaning as in the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (SR 2003 No. 497).
- (3) The regulations may, in particular—
- (a) make provision of a kind similar to Part 3 of the Race Relations Order (discrimination on grounds of race, etc. other than in employment field) and Part 4 of that Order so far as it applies for the purposes of Part 3;
  - (b) define discrimination;
  - (c) define harassment;
  - (d) make provision for enforcement (which may, in particular, include provision—
    - (i) creating a criminal offence of a kind similar to, and with the same maximum penalties as, an offence created by the Race Relations Order;
    - (ii) about validity and revision of contracts;
    - (iii) about discriminatory advertisements;
    - (iv) about instructing or causing discrimination or harassment);
  - (e) provide for exceptions (whether or not of a kind similar to those provided for by Part 6 of the Race Relations Order or any other enactment relating to discrimination);
  - (f) confer powers or impose duties or restrictions on the Equality Commission for Northern Ireland of a kind similar to those conferred or imposed on the Commission by Part 7 of the Race Relations Order;
  - (g) make provision which applies generally or only in specified cases or circumstances;
  - (h) make different provision for different cases or circumstances;
  - (i) include incidental or consequential provision (which may include provision amending an enactment);

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<sup>31</sup> inserted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 15(3)

- (j) include transitional provision.
- (4) The power to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)).
- (5) Regulations may not be made under this section unless a draft has been laid before and approved by resolution of the Northern Ireland Assembly.
- (6) In this section–  
 “the Race Relations Order” means the Race Relations (Northern Ireland) Order 1997 (SI 1997/869 (N.I. 6));  
 “enactment” includes an enactment contained in or made under Northern Ireland legislation.

## PART 4

### PUBLIC FUNCTIONS

#### *Sex discrimination*

### 83 Prohibition of discrimination

(1) In the Sex Discrimination Act 1975 (c. 65) the following shall be inserted at the beginning of Part III (discrimination in non-employment fields)–

#### “21A Public authorities

- (1) It is unlawful for a public authority exercising a function to do any act which constitutes–  
 (a) discrimination, or  
 (b) harassment within the meaning of section 4A(1) and (2), (5) and (6).
- (2) In subsection (1)–  
 (a) “public authority” includes any person who has functions of a public nature (subject to subsections (3) and (4)), and  
 (b) “function” means function of a public nature.
- (3) The prohibition in subsection (1) shall not apply to–  
 (a) the House of Commons,  
 (b) the House of Lords,  
 (c) the Security Service,  
 (d) the Secret Intelligence Service,  
 (e) the Government Communications Headquarters, or  
 (f) a part of the armed forces of the Crown which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.
- (4) The prohibition in subsection (1) shall not apply to the functions and actions listed in the Table of Exceptions in subsection (9) (but nothing in that Table permits anything which is prohibited by virtue of any Community law relating to discrimination).
- (5) The Secretary of State may by order amend the Table of Exceptions.

- (6) In an action under section 66 in respect of a contravention of this section–
  - (a) the court shall not grant an injunction or interdict unless satisfied that it will not prejudice criminal proceedings or a criminal investigation, and
  - (b) the court shall grant any application to stay or sist the section 66 proceedings on the grounds of prejudice to criminal proceedings or to a criminal investigation, unless satisfied that the proceedings or investigation will not be prejudiced.
- (7) Section 74(2)(b) shall not apply in relation to a respondent's reply, or a failure to reply, to a question in connection with an alleged contravention of this section–
  - (a) if the respondent reasonably asserts that to have replied differently or at all might have prejudiced criminal proceedings or a criminal investigation,
  - (b) if the respondent reasonably asserts that to have replied differently or at all would have revealed the reason for not instituting or not continuing criminal proceedings,
  - (c) where the reply is of a kind specified for the purposes of this paragraph by order of the Secretary of State,
  - (d) where the reply is given in circumstances specified for the purposes of this paragraph by order of the Secretary of State, or
  - (e) where the failure occurs in circumstances specified for the purposes of this paragraph by order of the Secretary of State.
- (8) In this section “criminal investigation” means–
  - (a) an investigation into the commission of an alleged offence, and
  - (b) a decision whether to institute criminal proceedings.
- (9) The following is the Table of Exceptions referred to in subsection (4).

		<i>Legislation</i>
1	<ul style="list-style-type: none"> <li>Ⓐ an Act of Parliament,</li> <li>Ⓑ a Bill for an Act of Parliament,</li> <li>Ⓒ an Act of the Scottish Parliament, or</li> <li>Ⓓ a Bill for an Act of the Scottish Parliament.</li> </ul>	Preparing, making, or considering–
2	<ul style="list-style-type: none"> <li>Ⓐ by a Minister of the Crown,</li> <li>Ⓑ by Order in Council,</li> <li>Ⓒ by the Scottish Ministers or any member of the Scottish Executive,</li> <li>Ⓓ by the National Assembly for Wales, or</li> <li>Ⓔ by or by virtue of a Measure of the General Synod of the Church of England.</li> </ul>	Preparing, making, confirming, approving, or considering legislation made or to be made–
3	<ul style="list-style-type: none"> <li>Ⓐ an Act of Parliament,</li> <li>Ⓑ an Act of the Scottish Parliament, or</li> <li>Ⓒ legislation of a kind described in Item 2.</li> </ul>	Action which is necessary, or in so far as it is necessary, for the purpose of complying with–
<i>The courts, &amp;c.</i>		
4		A judicial function (whether in connection with a court or a tribunal).

5	Anything done on behalf of or on the instructions of a person exercising a judicial function (whether in connection with a court or a tribunal).
6	A decision not to institute or continue criminal proceedings.
7	Anything done for the purpose of reaching, or in pursuance of, a decision not to institute or continue criminal proceedings.
	<i>Separate services, &amp;c.</i>
8	The provision of a service for one sex only where only persons of that sex require the service.
9	The provision of separate services for each sex where a joint service would or might be less effective.
0	The provision of a service for one sex only where–
1	(a) the service is also provided jointly for both sexes, and
1	(b) if the service were provided only jointly it would or might be insufficiently effective.
1	The provision of a service for one sex only where–
1	(a) if the service were provided for both sexes jointly it would or might be less effective, and
1	(b) the extent to which the service is required by the other sex makes it not reasonably practicable to provide separate services for that sex.
2	The provision of separate services for each sex in different ways or to different extents where–
1	(a) if the service were provided for both sexes jointly it would or might be less effective, and
1	(b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service for that sex in the same way or to the same extent as for the other sex.
3	Action taken for the purpose of assisting one sex to overcome–
1	(a) a disadvantage (as compared with the other sex), or
1	(b) the effects of discrimination.
	<i>Miscellaneous</i>
4	The exercise of a function of the Charity Commissioners for England and Wales or the holder of the Office of the Scottish Charity Regulator in relation to an instrument in relation to which section 43 applies.
5	Action which is unlawful by virtue of another provision of this Act.
6	Action which would be unlawful by virtue of another provision of this Act but for an express exception.”

(2) In section 17(5) of the Sex Discrimination Act 1975 (c. 65) (police) for “by virtue of subsection (1)” substitute “by virtue of subsection (1) or (1A)”.

(3) In section 81 of that Act (orders)–  
 (a) in subsection (2) after “sections” insert “21A,”, and  
 (b) after subsection (2) insert–

“(2A) An order under section 21A(5) may not be made unless–  
 (a) the Secretary of State has consulted the Commission, and  
 (b) a draft has been laid before and approved by resolution of each House of Parliament.”

(4) In section 85 of that Act (Crown application) after subsection (3) insert–

“(3A) Section 21A binds the Crown.”

#### **84 General duty to promote equality, &c.**

(1) In the Sex Discrimination Act 1975 the following shall be inserted at the beginning of Part VIII (supplemental)–

##### **“76A Public authorities: general statutory duty**

(1) A public authority shall in carrying out its functions have due regard to the need–

- (a) to eliminate unlawful discrimination and harassment, and
- (b) to promote equality of opportunity between men and women.

(2) In subsection (1)–

- (a) “public authority” includes any person who has functions of a public nature (subject to subsections (3) and (4)),
- (b) “functions” means functions of a public nature, and
- (c) the reference to unlawful discrimination shall be treated as including a reference to contravention of terms of contracts having effect in accordance with an equality clause within the meaning of section 1 of the Equal Pay Act 1970 (c. 41).

(3) The duty in subsection (1) shall not apply to–

- (a) the House of Commons,
- (b) the House of Lords,
- (c) the Scottish Parliament,
- (d) the General Synod of the Church of England,
- (e) the Security Service,
- (f) the Secret Intelligence Service,
- (g) the Government Communications Headquarters,
- (h) a part of the armed forces of the Crown which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters, or
- (i) a person specified for the purpose of this paragraph by order of the Secretary of State (and a person may be specified generally or only in respect of specified functions).

(4) The duty in subsection (1) shall not apply to the exercise of–

- (a) a function in connection with proceedings in the House of Commons or the House of Lords,
- (b) a function in connection with proceedings in the Scottish Parliament (other than a function of the Scottish Parliamentary Corporate Body),
- (c) a judicial function (whether in connection with a court or a tribunal),
- (d) a function exercised on behalf of or on the instructions of a person exercising a judicial function (whether in connection with a court or a tribunal), or
- (e) a function specified for the purpose of this paragraph by order of the Secretary of State.

(5) Subsection (1)(b) is without prejudice to the effect of any exception to or limitation of the law about sex discrimination.

(6) A failure in respect of performance of the duty under subsection (1) does not confer a cause of action at private law.”

(2) In section 81 of the Sex Discrimination Act 1975 (c. 65) (orders) after subsection (2A) (inserted by section 83 above) insert–

“(2B) An order under section 76A(3)(i) or (4)(e) may not be made unless the Secretary of State has consulted the Commission.”

(3) In section 85 of that Act (Crown application) after subsection (3A) (inserted by section 83 above) insert–

“(3B) Section 76A binds the Crown.”

## **85 Specific duties**

(1) In the Sex Discrimination Act 1975 (c. 65) the following shall be inserted after section 76A (inserted by section 84 above)–

### **“76B Specific duties**

(1) The Secretary of State may by order impose on a person to whom the duty in section 76A(1) applies, or in so far as that duty applies to a person, a duty which the Secretary of State thinks will ensure better performance of the duty under section 76A(1).

(2) Before making an order under subsection (1) the Secretary of State shall consult the Commission.

(3) The Secretary of State–

(a) must consult the National Assembly for Wales before making an order under subsection (1) in respect of a person exercising functions in relation to Wales, and

(b) may not, without the consent of the National Assembly for Wales, make an order under subsection (1) in respect of a person all of whose functions are public functions in relation to Wales.

(4) A failure in respect of performance of a duty imposed under subsection (1) does not confer a cause of action at private law.

### **76C Specific duties: Scotland**

(1) Section 76B(1) shall not apply in relation to a person who is a relevant Scottish authority or a cross-border authority.

(2) The Secretary of State may by order impose on a cross-border authority to whom the duty under section 76A(1) applies, or in so far as that duty applies to the cross-border authority, a duty which the Secretary of State thinks will ensure better performance of the duty under section 76A(1), to the extent that the cross-border authority's functions are not Scottish functions.

(3) The Scottish Ministers may by order impose on a relevant Scottish authority to whom the duty under section 76A(1) applies, or in so far as that duty applies to the relevant Scottish authority, a duty which the Scottish Ministers think will ensure better performance of the duty under section 76A(1).

(4) The Scottish Ministers may by order impose on a cross-border authority to whom the duty under section 76A(1) applies, or in so far as that duty applies to the cross-border authority, a duty which the Scottish Ministers think will ensure better performance of the duty under section 76A(1), to the extent that the cross-border authority's functions are Scottish functions.

(5) Before making an order under any of subsections (2) to (4) the person making the order shall consult the Commission.

(6) Before making an order under subsection (2) the Secretary of State shall consult the Scottish Ministers.

(7) Before making an order under subsection (4) the Scottish Ministers shall consult the Secretary of State.

(8) A failure in respect of performance of a duty imposed under this section does not confer a cause of action at private law.

(9) In this section—

“relevant Scottish authority” means—

- (a) a member of the Scottish Executive or a junior Scottish Minister,
- (b) the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland,
- (c) an office of a description specified in an Order in Council under section 126(8)(b) of the Scotland Act 1998 (c. 46) (other non-ministerial offices in the Scottish Administration), or
- (d) a public body, public office or holder of a public office—
  - (i) which is not a cross-border authority or the Scottish Parliamentary Corporate Body,
  - (ii) whose functions are exercisable only in or as regards Scotland, and
  - (iii) some at least of whose functions do not relate to reserved matters (within the meaning of the Scotland Act 1998),

“cross-border authority” means a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998, and

“Scottish functions” means functions which are exercisable in or as regards Scotland and which do not relate to reserved matters (within the meaning of the Scotland Act 1998).

## **76D Specific duties: enforcement**

(1) This section applies where the Commission thinks that a person has failed to comply with a duty imposed under section 76B or 76C.

(2) The Commission may give the person a notice requiring him—

- (a) to comply with the duty, and

(b) to give the Commission, within the period of 28 days beginning with the date on which he receives the notice, written information of steps taken for the purpose of complying with the duty.

(3) A notice under this section may require a person to give the Commission information required by the Commission for the purposes of assessing compliance with the duty; in which case the notice shall specify—

- (a) the period within which the information is to be given (which shall begin with the date on which the notice is received and shall not exceed three months), and
- (b) the manner and form in which the information is to be given.

(4) A person who receives a notice under this section shall comply with it.

(5) But a notice under this section shall not oblige a person to give information that he could not be compelled to give in proceedings before the High Court or the Court of Session.

(6) If the Commission thinks that a person, to whom a notice under this section has been given, has failed to comply with a requirement of the notice, the Commission may apply to a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring the person to comply.”

(2) In section 81 of the Sex Discrimination Act 1975 (c. 65) (orders) after subsection (2B) (inserted by section 84 above) insert—

“(2C) An order under section 76C(3) or (4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

**86** [...] <sup>32</sup>

## **87 National security**

In the Sex Discrimination Act 1975 the following shall be inserted after section 66A (burden of proof in county and sheriff courts)—

### **“66B National security**

(1) Rules of court may make provision for enabling a county court or sheriff court in which a claim is brought under section 66(1), where the court considers it expedient in the interests of national security—

- (a) to exclude from all or part of the proceedings—
  - (i) the claimant;
  - (ii) the claimant's representatives;
  - (iii) any assessors;
- (b) to permit a claimant or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or the part of the proceedings, from which he is excluded;
- (c) to take steps to keep secret all or part of the reasons for the court's decision in the proceedings.

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<sup>32</sup> repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

(2) The Attorney General or, in Scotland, the Advocate General for Scotland, may appoint a person to represent the interests of a claimant in, or in any part of, proceedings from which the claimant or his representatives are excluded by virtue of subsection (1).

(3) A person may be appointed under subsection (2) only–

(a) in relation to proceedings in England and Wales, if he has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), or

(b) in relation to proceedings in Scotland, if he is–

(i) an advocate, or

(ii) qualified to practice as a solicitor in Scotland.

(4) A person appointed under subsection (2) shall not be responsible to the person whose interests he is appointed to represent.”

### *Disability discrimination*

#### **88 General duty: exceptions**

In section 49C(4) of the Disability Discrimination Act 1995 (c. 50) (public authorities: general duty: exceptions) for “section 49A(1)(a), (b), (c) or (d)” substitute “one or more specified paragraphs of section 49A(1)”.

#### **89 National security**

In the Disability Discrimination Act 1995 the following shall be inserted after section 59 (statutory authority, national security, &c.)–

##### **“59A National security**

(1) Rules of court may make provision for enabling a county court or sheriff court in which a claim is brought in respect of alleged discrimination contrary to this Act (including anything treated by virtue of this Act as amounting to discrimination contrary to this Act), where the court considers it expedient in the interests of national security–

(a) to exclude from all or part of the proceedings–

(i) the claimant;

(ii) the claimant's representatives;

(iii) any assessors;

(b) to permit a claimant or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or the part of the proceedings, from which he is excluded;

(c) to take steps to keep secret all or part of the reasons for the court's decision in the proceedings.

(2) The Attorney General or, in Scotland, the Advocate General for Scotland, may appoint a person to represent the interests of a claimant in, or in any part of, proceedings from which the claimant or his representatives are excluded by virtue of subsection (1).

(3) A person may be appointed under subsection (2) only–

- (a) in relation to proceedings in England and Wales, if he has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), or
- (b) in relation to proceedings in Scotland, if he is–
  - (i) an advocate, or
  - (ii) qualified to practice as a solicitor in Scotland.

(4) A person appointed under subsection (2) shall not be responsible to the person whose interests he is appointed to represent.”

### *Race discrimination*

#### **90 National security**

In section 67A of the Race Relations Act 1976 (c. 74) (national security)–

- (a) in subsection (2), for “the claimant and his representatives” substitute “the claimant or his representatives”, and
- (b) in subsection (3)(b), for sub-paragraph (ii) substitute–

“(ii) qualified to practice as a solicitor in Scotland.”

## **PART 5**

### **GENERAL**

#### **91 Repeals**

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

#### **92 Crown application**

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

- (a) Ministers of the Crown,
- (b) government departments,
- (c) office-holders in the Scottish Administration (within the meaning of section 126(7) of the Scotland Act 1998 (c. 46)), and
- [ (ca) the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government, ]<sup>33</sup>
- (d) other agents of the Crown.

#### **93 Commencement**

(1) The preceding provisions of this Act, except for sections 41, 42 and 86, shall come into force in accordance with provision made by the Secretary of State by order.

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<sup>33</sup> added by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 119

- (2) An order under subsection (1)–
- (a) shall be made by statutory instrument,
  - (b) may make provision generally or only for a specified purpose,
  - (c) may make different provision for different purposes, and
  - (d) may include transitional provisions and savings.

## 94 Extent

- (1) This Act extends only to–
- (a) England and Wales, and
  - (b) Scotland.
- (2) But–
- (a) section 82 extends only to Northern Ireland, and
  - (b) except as provided by subsection (3), an amendment of an enactment by this Act shall have the same extent as the enactment amended (or as the relevant part of the enactment amended).
- (3) Paragraphs 36 to 38 and 41 to 56 of Schedule 3 (which amend the Estate Agents Act 1979 (c. 38) and the Disability Discrimination Act 1995 (c. 50)), together with corresponding entries in Schedule 4, shall not extend to Northern Ireland.

## 95. Short title

This Act may be cited as the Equality Act 2006.

## SCHEDULE 1

### THE COMMISSION: CONSTITUTION, &C.

#### Section 2

### PART 1

### CONSTITUTION

#### *Membership*

#### 1

- (1) The [Minister]<sup>34</sup> shall appoint not less than 10 or more than 15 individuals as members of the Commission (to be known as Commissioners).
- (2) The chief executive of the Commission (appointed under paragraph 7 below) shall be a Commissioner *ex officio*.

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<sup>34</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

**2**

- (1) In appointing Commissioners the Minister shall—
- (a) appoint an individual only if the Minister thinks that the individual—
    - (i) has experience or knowledge relating to a relevant matter, or
    - (ii) is suitable for appointment for some other special reason, and
  - (b) have regard to the desirability of the Commissioners together having experience and knowledge relating to the relevant matters.
- (2) For the purposes of sub-paragraph (1) the relevant matters are those matters in respect of which the Commission has functions including, in particular—
- (a) discrimination (whether on grounds of age, disability, gender, gender reassignment, race, religion or belief, sexual orientation or otherwise), and
  - (b) human rights.
- (3) The [Minister]<sup>35</sup> shall ensure that the Commission includes—
- (a) a Commissioner appointed under paragraph 1(1) who is (or has been) a disabled person,
  - (b) a Commissioner appointed under paragraph 1(1), with the consent of the Scottish Ministers, who knows about conditions in Scotland, and
  - (c) a Commissioner appointed under paragraph 1(1), with the consent of the Welsh Ministers, who knows about conditions in Wales.
- (4) A person may not be appointed for the purpose of satisfying more than one paragraph of sub-paragraph (3).

*Tenure***3**

- (1) A Commissioner shall hold and vacate office in accordance with the terms of his appointment (subject to this Schedule).
- (2) The appointment of a Commissioner must be expressed to be for a specified period of not less than two years or more than five years.
- (3) A Commissioner whose period of membership has expired may be reappointed.
- (4) A Commissioner may resign by notice in writing to the [Minister]<sup>36</sup> .
- (5) The [Minister]<sup>37</sup> may dismiss a Commissioner who is, in the opinion of the [Minister]<sup>38</sup> , unable, unfit or unwilling to perform his functions.
- (6) This paragraph does not apply to the chief executive.

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<sup>35</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>36</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>37</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>38</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

*Chairman***4**

- (1) The Minister shall appoint—
  - (a) a Commissioner as Chairman, and
  - (b) one or more Commissioners as deputy Chairman.
- (2) The Chairman shall—
  - (a) preside over meetings of the Commission,
  - (b) perform such functions as may be specified in the terms of his appointment, and
  - (c) perform such other functions as may be assigned to him by the Commission.
- (3) A deputy Chairman—
  - (a) may act for the Chairman when he is unavailable, and
  - (b) shall perform—
    - (i) such functions as may be specified in the terms of his appointment, and
    - (ii) such other functions as the Chairman may delegate or assign to him.
- (4) The Chairman or a deputy Chairman—
  - (a) shall vacate office if he ceases to be a Commissioner,
  - (b) may resign by notice in writing to the [Minister]<sup>39</sup>, and
  - (c) otherwise, shall hold and vacate office in accordance with the terms of his appointment (and may be reappointed).
- (5) If the Chairman resigns he shall cease to be a Commissioner (but he may be reappointed as a Commissioner).
- (6) The chief executive may not be appointed Chairman or deputy Chairman.

**PART 2****PROCEEDINGS***Procedure***5**

The Commission may regulate its own proceedings (subject to this Schedule).

**6**

- (1) The Commission shall determine a quorum for its meetings.
- (2) At least five Commissioners must participate in the process by which a determination under sub-paragraph (1) is made.

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<sup>39</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

*Staff***7**

- (1) The Commission—
- (a) shall appoint a chief executive, and
  - (b) may appoint other staff.
- (2) A person may be appointed under sub-paragraph (1)(a) only with the consent of the [Minister]<sup>40</sup>.
- (3) An appointment may be made under sub-paragraph (1)(b) only if consistent with arrangements determined by the Commission and approved by the [Minister]<sup>41</sup> as to—
- (a) numbers, and
  - (b) terms and conditions of appointment.

**8**

At the end of section 3(2) of the Employers' Liability (Compulsory Insurance) Act 1969 (c. 57) (exempt employers) add—

- “; and
- (c) the Commission for Equality and Human Rights.”

*Investigating Commissioners***9**

- (1) The Commission may appoint one or more Investigating Commissioners.
- (2) An Investigating Commissioner may be appointed only—
- (a) for the purpose of having delegated to him by the Commission the function of taking action of a kind listed in sub-paragraph (3), and
  - (b) with the consent of the Minister.
- (3) The kinds of action referred to in sub-paragraph (2)(a) are—
- (a) carrying out an inquiry under section 16,
  - (b) carrying out an investigation under section 20,
  - (c) giving an unlawful act notice under section 21, and
  - (d) entering into an agreement under section 23.
- (4) An Investigating Commissioner is not a Commissioner; but paragraphs 3(1), (4) and (5) and 33 apply to him as if he were (and with the substitution of references to the Commission for references to the [Minister]<sup>42</sup> ).

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<sup>40</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>41</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>42</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

### *Delegation*

#### **10**

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

### *Committees*

#### **11**

- (1) The Commission may establish one or more committees (to be known as advisory committees) to advise—
  - (a) the Commission, or
  - (b) an Investigating Commissioner.
- (2) An advisory committee may include any of the following—
  - (a) Commissioners;
  - (b) staff;
  - (c) other non-Commissioners.

#### **12**

- (1) The Commission may establish one or more committees to whom the Commission may delegate functions (to be known as decision-making committees).
- (2) A decision-making committee may include any of the following—
  - (a) Commissioners;
  - (b) staff;
  - (c) other non-Commissioners.
- (3) The Commission shall ensure that the Chairman of each decision-making committee is a Commissioner.
- (4) In allocating its resources the Commission shall ensure that each decision-making committee receives a share sufficient to enable it to exercise its functions.

#### **13**

A member of a committee shall hold and vacate office in accordance with the terms of his appointment by the Commission (which may include provision for dismissal).

#### **14**

The Commission—

- (a) may, to any extent, regulate the proceedings of a committee (and may, in particular, determine a quorum for meetings),
- (b) may, to any extent, permit a committee to regulate its own proceedings (and may, in particular, enable a committee to determine a quorum for meetings), and
- (c) may dissolve a committee.

**15**

- (1) The Commission may delegate a function to a decision-making committee.
- (2) This paragraph is subject to paragraphs 21, 22, 29, 30 and 52.

*Scotland Committee***16**

- (1) The Commission shall establish a decision-making committee to be known as the Scotland Committee.
- (2) The Commission shall ensure that the Scotland Committee is established before any of sections 8 to 12 comes into force (to any extent).

**17**

The Commission shall appoint as the Chairman of the Scotland Committee a Commissioner appointed for the purpose of satisfying paragraph 2(3)(b).

**18**

The Commission shall appoint each member of the Scotland Committee for a period of not less than two years or more than 5 years, subject to the possibilities of—

- (a) reappointment, and
- (b) dismissal in accordance with the terms of appointment.

**19**

The Scotland Committee shall advise the Commission about the exercise of the Commission's functions in so far as they affect Scotland.

**20**

Before exercising a function in a manner which in the opinion of the Commission is likely to affect persons in Scotland, the Commission shall consult the Scotland Committee.

**21**

- (1) The power under section 13—
  - (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Scotland Committee in so far as its exercise, in the opinion of the Commission, affects Scotland, and
  - (b) to that extent shall not be exercisable by the Commission.
- (2) Sub-paragraph (1) shall not apply to the power under section 13 in so far as it is treated as delegated to the Disability Committee in accordance with paragraph 52.
- (3) Sub-paragraph (1) shall not prevent the Commission from making arrangements under section 13(1)(d) or (e) for the provision of advice or guidance to persons anywhere in Great Britain.

**22**

- (1) The power under section 11(2)(c)—

(a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Scotland Committee in so far as it concerns the giving of advice to devolved government about enactments which, in the opinion of the Commission, affect only Scotland, and

(b) to that extent shall not be exercisable by the Commission.

(2) The power under section 11(2)(d)–

(a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Scotland Committee in so far as it concerns the giving of advice to devolved government about proposed changes in the law which, in the opinion of the Commission, would affect only Scotland, and

(b) to that extent shall not be exercisable by the Commission.

(3) Sub-paragraphs (1) and (2) shall not apply to the powers under section 11(2)(c) and (d) in so far as they are treated as delegated to the Disability Committee in accordance with paragraph 52.

## **23**

In allocating its resources the Commission shall ensure that the Scotland Committee receives a share sufficient to enable it to exercise its functions.

### *Wales Committee*

## **24**

(1) The Commission shall establish a decision-making committee to be known as the Wales Committee.

(2) The Commission shall ensure that the Wales Committee is established before any of sections 8 to 12 comes into force (to any extent).

## **25**

The Commission shall appoint as the Chairman of the Wales Committee a Commissioner appointed for the purpose of satisfying paragraph 2(3)(c).

## **26**

The Commission shall appoint each member of the Wales Committee for a period of not less than two years or more than 5 years, subject to the possibilities of–

(a) reappointment, and

(b) dismissal in accordance with the terms of appointment.

## **27**

The Wales Committee shall advise the Commission about the exercise of its functions in so far as they affect Wales.

## **28**

Before exercising a function in a manner which in the opinion of the Commission is likely to affect persons in Wales, the Commission shall consult the Wales Committee.

## **29**

(1) The power under section 13–

- (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Wales Committee in so far as its exercise, in the opinion of the Commission, affects Wales, and
  - (b) to that extent shall not be exercisable by the Commission.
- (2) Sub-paragraph (1) does not apply to the power under section 13 in so far as it is treated as delegated to the Disability Committee in accordance with paragraph 52.
- (3) Sub-paragraph (1) shall not prevent the Commission from making arrangements under section 13(1)(d) or (e) for the provision of advice or guidance to persons anywhere in Great Britain.

### 30

- (1) The power under section 11(2)(c)–
- (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Wales Committee in so far as it concerns the giving of advice to devolved government about enactments which, in the opinion of the Commission, affect only Wales, and
  - (b) to that extent shall not be exercisable by the Commission.
- (2) The power under section 11(2)(d)–
- (a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Wales Committee in so far as it concerns the giving of advice to devolved government about proposed changes in the law which, in the opinion of the Commission, would affect only Wales, and
  - (b) to that extent shall not be exercisable by the Commission.
- (3) Sub-paragraphs (1) and (2) shall not apply to the powers under section 11(2)(c) and (d) in so far as they are treated as delegated to the Disability Committee in accordance with paragraph 52.

### 31

In allocating its resources the Commission shall ensure that the Wales Committee receives a share sufficient to enable it to exercise its functions.

### *Annual report*

### 32

- (1) The Commission shall for each financial year prepare a report on the performance of its functions in that year (to be known as its annual report).
- (2) An annual report shall, in particular, indicate in what manner and to what extent the Commission's performance of its functions has accorded to the plan under section 4.
- (3) The matters addressed by an annual report shall, in particular, include the Commission's activities in relation to–
- (a) Scotland, and
  - (b) Wales.

- (4) The Commission shall send each annual report to the [Minister]<sup>43</sup> within such period, beginning with the end of the financial year to which the report relates, as he may specify.
- (5) The [Minister]<sup>44</sup> shall lay before Parliament a copy of each annual report received under sub-paragraph (4).
- (6) The Commission shall send a copy of each annual report to—
- (a) the Scottish Parliament, and
  - (b) the National Assembly for Wales.

### *Savings*

#### **33**

The validity of proceedings of the Commission shall not be affected by—

- (a) a vacancy (whether for Commissioner, Chairman, deputy Chairman or chief executive), or
- (b) a defect in relation to an appointment.

#### **34**

The validity of proceedings of a committee of the Commission shall not be affected by—

- (a) a vacancy (including a vacancy in the office of Chairman), or
- (b) a defect in relation to an appointment (including a defect in relation to the office of Chairman).

## **PART 3**

### **MONEY**

#### *Remuneration, &c.*

#### **35**

(1) The Commission may pay to the Chairman, a deputy Chairman or another Commissioner—

- (a) such remuneration as the [Minister]<sup>45</sup> may determine, and
- (b) such travelling and other allowances as the [Minister]<sup>46</sup> may determine.

(2) The Commission may pay to or in respect of the Chairman, a deputy Chairman or another Commissioner such sums as the [Minister]<sup>47</sup> may determine by way of, or in respect of, pensions, allowances or gratuities.

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<sup>43</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>44</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>45</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>46</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>47</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

(3) If the [Minister]<sup>48</sup> thinks that there are special circumstances that make it right for a person ceasing to hold office as Chairman, deputy Chairman or Commissioner to receive compensation, the Commission may pay to him such compensation as the [Minister]<sup>49</sup> may determine.

(4) This paragraph does not apply to the Chief Executive.

### 36

(1) The Commission may pay sums to or in respect of a member or former member of staff by way of or in respect of—

- (a) remuneration,
- (b) allowances,
- (c) pensions,
- (d) gratuities, or
- (e) compensation for loss of employment.

(2) In Schedule 1 to the Superannuation Act 1972 (c. 11) (employment to which superannuation schemes may extend) in the list of other bodies insert at the appropriate place—

- (a) “The Commission for Equality and Human Rights.”

(3) The Commission shall pay to the Minister for the Civil Service such sums as he may determine in respect of any increase attributable to sub-paragraph (2) in the sums payable out of money provided by Parliament under the Superannuation Act 1972 (c. 11).

### 37

(1) The Commission may, with the approval of the [Minister]<sup>50</sup>, pay sums to or in respect of a member or former member of an advisory or decision-making committee by way of or in respect of—

- (a) remuneration,
- (b) allowances, or
- (c) gratuities.

(2) This paragraph does not apply in relation to a person who is a member of staff of the Commission.

(3) Approval for the purposes of sub-paragraph (1) may be general or specific.

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<sup>48</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>49</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>50</sup> words substituted has effect subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

*Funding by Minister***38**

The [Minister]<sup>51</sup> shall pay to the Commission such sums as appear to the [Minister]<sup>52</sup> reasonably sufficient for the purpose of enabling the Commission to perform its functions.

*Charging***39**

The Commission may make a charge for a service provided under section 13 or 27.

*Accounts***40**

- (1) The Commission shall—
  - (a) keep proper accounting records, and
  - (b) prepare a statement of accounts in respect of each financial year in such form as the Minister may direct.
- (2) The Commission shall send a copy of a statement under sub-paragraph (1)(b) to—
  - (a) the Minister, and
  - (b) the Comptroller and Auditor General.
- (3) A copy of a statement must be sent under sub-paragraph (2) within such period, beginning with the end of the financial year to which the statement relates, as the Minister may direct.
- (4) The Comptroller and Auditor General shall—
  - (a) examine, certify and report on a statement received under this paragraph, and
  - (b) lay a copy of the statement and his report before Parliament.
- (5) The [Minister]<sup>53</sup> may make a direction under sub-paragraph (1)(b) only with the consent of the Treasury.

*Financial year***41**

- (1) The financial year of the Commission shall be the period of 12 months ending with 31st March.
- (2) But the first financial year of the Commission shall be the period—
  - (a) beginning with the coming into force of section 1, and
  - (b) ending with—

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<sup>51</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>52</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>53</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

- (i) the following 31st March, if that section comes into force on 1st April, and
- (ii) the second following 31st March, in any other case.

## PART 4

### STATUS, &C.

#### *Status*

#### 42

- (1) The Commission shall not–
  - (a) be regarded as the servant or agent of the Crown, or
  - (b) enjoy any status, immunity or privilege of the Crown.
- (2) Service as Commissioner, Investigating Commissioner or employee of the Commission is not employment in the civil service of the State.
- (3) The [Minister]<sup>54</sup> shall have regard to the desirability of ensuring that the Commission is under as few constraints as reasonably possible in determining–
  - (a) its activities,
  - (b) its timetables, and
  - (c) its priorities.

#### *Supervision*

#### 43

In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments, &c. subject to investigation) at the appropriate place insert–

“The Commission for Equality and Human Rights.”

#### *Disqualifications*

#### 44

(1) In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies all members of which are disqualified) at the appropriate place insert–

“The Commission for Equality and Human Rights.”

(2) In Part III of that Schedule (other disqualifying offices) at the appropriate place insert–

“Investigating Commissioner of, or member of a decision-making committee of, the Commission for Equality and Human Rights.”

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<sup>54</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

**45**

(1) In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies all members of which are disqualified) at the appropriate place insert–

“The Commission for Equality and Human Rights.”

(2) In Part III of that Schedule (other disqualifying offices) at the appropriate place insert–

“Investigating Commissioner of, or member of a decision-making committee of, the Commission for Equality and Human Rights.”

**46**

A Commissioner or Investigating Commissioner, and a member of a decision-making committee of the Commission, shall be disqualified from being a member of the National Assembly for Wales.

*Records***47**

In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records) at the appropriate place in Part II of the Table at the end of paragraph 3 insert–

“The Commission for Equality and Human Rights.”

*Freedom of information***48**

In Part VI of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public bodies) at the appropriate place insert–

“The Commission for Equality and Human Rights.”

**PART 5****DISABILITY COMMITTEE***Establishment***49**

(1) The Commission shall establish a decision-making committee to be known as the Disability Committee.

(2) The Commission shall ensure that the Disability Committee is established before either section 8 or section 10, in so far as they relate to disability, comes into force (to any extent).

### *Membership*

#### **50**

- (1) The Commission shall ensure that—
- (a) there are not less than 7 or more than 9 members of the Disability Committee,
  - (b) at least one half of the members are (or have been) disabled persons, and
  - (c) the Chairman is (or has been) a disabled person.
- (2) The Transition Commissioner nominated by the chairman of the Disability Rights Commission may not be a member of the Disability Committee.

#### **51**

The appointment of each member of the Disability Committee shall be for a period of not less than two years or more than 5 years, subject to the possibilities of—

- (a) reappointment,
- (b) dismissal in accordance with the terms of appointment, and
- (c) the lapsing of the appointment upon the dissolution of the Committee.

### *Functions*

#### **52**

- (1) The Commission shall by virtue of this paragraph be treated as having delegated to the Disability Committee—
- (a) the Commission's duty under section 8 in so far as it relates to disability matters and may be fulfilled by the exercise of the powers conferred by or referred to in—
    - (i) section 11,
    - (ii) section 13(1)(a), (c) or (d) (or paragraph (e) or (f) in so far as it relates to paragraph (a), (c) or (d)),
    - (iii) section 14,
    - (iv) section 15,
    - (v) section 19, in so far as it relates to disability,
    - (vi) section 27,
    - (vii) section 28, or
    - (viii) section 30,
  - (b) the Commission's duty under section 10 in so far as it relates to disability and may be fulfilled by the exercise of those powers, and
  - (c) those powers in so far as they are or may be exercised for the purpose of disability matters.
- (2) Delegation under this paragraph shall not prevent the exercise by the Commission of a power, or the fulfilment by the Commission of a duty, by action which relates partly to disability matters and partly to other matters.
- (3) In this paragraph “disability matters” means—
- (a) matters provided for in Parts 1, 3, 4, 5 and 5B of the Disability Discrimination Act 1995 (c. 50),
  - (b) sections 8 and 10 above, in so far as they relate to disability, and
  - (c) matters addressed in sections 14(3) and (4), 27(2) and (3) and 28(2) and (3).

(4) Before exercising a power to which paragraph 21(2) or 22(3) applies the Disability Committee shall consult the Scotland Committee.

(5) Before exercising a power to which paragraph 29(2) or 30(3) applies the Disability Committee shall consult the Wales Committee.

### **53**

Before exercising a power or fulfilling a duty wholly or partly in relation to a matter affecting disabled persons (including, in particular, any matter provided for in Part 2 of the Disability Discrimination Act 1995 (c. 50)) the Commission shall consult the Disability Committee.

### **54**

The Disability Committee shall advise the Commission about the exercise of the Commission's functions in so far as they affect disabled persons (including, in particular, in so far as they relate to any matter provided for in Part 2 of the Disability Discrimination Act 1995).

## *Resources*

### **55**

In allocating its resources the Commission shall ensure that the Disability Committee receives a share sufficient to enable it to exercise its functions.

## *Report*

### **56**

(1) The Disability Committee shall for each financial year of the Commission submit to the Commission a report on the Committee's activities in that year.

(2) The Commission shall incorporate each report of the Disability Committee under sub-paragraph (1) into the relevant annual report of the Commission.

## *5-year review*

### **57**

The Commission shall arrange for a review of the activities of the Disability Committee to be conducted as soon as is reasonably practicable after the end of the period of five years beginning with the date of the commencement for all purposes of sections 8 and 10 in so far as they relate to disability.

### **58**

The following may not participate in the review (although those conducting the review may seek views from any of the following)–

- (a) a Commissioner or former Commissioner,
- (b) staff or former staff of the Commission,
- (c) a person who is or has been an Investigating Commissioner, and
- (d) a person who is or has been a member of a committee established by the Commission.

**59**

The Commission shall ensure–

- (a) that those conducting the review consult disabled persons and other persons whom they think likely to have an interest,
- (b) that those conducting the review submit a report to the Commission which, in particular, recommends for how long the Disability Committee should continue in existence, and
- (c) that the report is published.

**60**

As soon as is reasonably practicable after receiving a report under paragraph 59 the Commission shall recommend to the [Minister]<sup>55</sup> for how long the Disability Committee should continue in existence.

**61**

As soon as is reasonably practicable after receiving a recommendation under paragraph 60 the [Minister]<sup>56</sup> shall by order–

- (a) dissolve the Disability Committee with effect from such time as shall be specified in the order, and
- (b) repeal this Part of this Schedule with effect from that time.

**62**

An order under paragraph 61 may include provision about–

- (a) the conduct of the business of the Disability Committee before its dissolution;
- (b) the conduct of the Commission after the dissolution of the Disability Committee in relation to functions formerly delegated to that committee.

**63**

The dissolution of the Disability Committee is without prejudice to any power of the Commission under this Schedule–

- (a) to establish a committee, or
- (b) to delegate to a committee.

**64**

The Disability Committee may not be dissolved under paragraph 14(c).

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<sup>55</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

<sup>56</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 16(o)

**SCHEDULE 2****INQUIRIES, INVESTIGATIONS AND ASSESSMENTS****Sections 16, 20 and 31***Introduction***1**

This Schedule applies to—

- (a) inquiries under section 16,
- (b) investigations under section 20, and
- (c) assessments under section 31.

*Terms of reference***2**

Before conducting an inquiry the Commission shall—

- (a) publish the terms of reference of the inquiry in a manner that the Commission thinks is likely to bring the inquiry to the attention of persons whom it concerns or who are likely to be interested in it, and
- (b) in particular, give notice of the terms of reference to any persons specified in them.

**3**

Before conducting an investigation the Commission shall—

- (a) prepare terms of reference specifying the person to be investigated and the nature of the unlawful act which the Commission suspects,
- (b) give the person to be investigated notice of the proposed terms of reference,
- (c) give the person to be investigated an opportunity to make representations about the proposed terms of reference,
- (d) consider any representations made, and
- (e) publish the terms of reference once settled.

**4**

Before conducting an assessment of a person's compliance with a duty the Commission shall—

- (a) prepare terms of reference,
- (b) give the person notice of the proposed terms of reference,
- (c) give the person an opportunity to make representations about the proposed terms of reference,
- (d) consider any representations made, and
- (e) publish the terms of reference once settled.

**5**

Paragraphs 2 to 4 shall apply in relation to revised terms of reference as they apply in relation to original terms of reference.

## *Representations*

### **6**

- (1) The Commission shall make arrangements for giving persons an opportunity to make representations in relation to inquiries, investigations and assessments.
- (2) In particular, in the course of an investigation, inquiry or assessment the Commission must give any person specified in the terms of reference an opportunity to make representations.

### **7**

Arrangements under paragraph 6 may (but need not) include arrangements for oral representations.

### **8**

- (1) The Commission shall consider representations made in relation to an inquiry, investigation or assessment.
- (2) But the Commission may, where they think it appropriate, refuse to consider representations—
  - (a) made neither by nor on behalf of a person specified in the terms of reference, or
  - (b) made on behalf of a person specified in the terms of reference by a person who is not a barrister, an advocate or a solicitor.
- (3) If the Commission refuse to consider representations in reliance on sub-paragraph (2) they shall give the person who makes them written notice of the Commission's decision and the reasons for it.

## *Evidence*

### **9**

In the course of an inquiry, investigation or assessment the Commission may give a notice under this paragraph to any person.

### **10**

- (1) A notice given to a person under paragraph 9 may require him—
  - (a) to provide information in his possession,
  - (b) to produce documents in his possession, or
  - (c) to give oral evidence.
- (2) A notice under paragraph 9 may include provision about—
  - (a) the form of information, documents or evidence;
  - (b) timing.
- (3) A notice under paragraph 9—
  - (a) may not require a person to provide information that he is prohibited from disclosing by virtue of an enactment,
  - (b) may not require a person to do anything that he could not be compelled to do in proceedings before the High Court or the Court of Session, and
  - (c) may not require a person to attend at a place unless the Commission undertakes to pay the expenses of his journey.

**11**

The recipient of a notice under paragraph 9 may apply to a county court (in England and Wales) or to the sheriff (in Scotland) to have the notice cancelled on the grounds that the requirement imposed by the notice is–

- (a) unnecessary having regard to the purpose of the inquiry, investigation or assessment to which the notice relates, or
- (b) otherwise unreasonable.

**12**

(1) Sub-paragraph (2) applies where the Commission thinks that a person–

- (a) has failed without reasonable excuse to comply with a notice under paragraph 9, or
- (b) is likely to fail without reasonable excuse to comply with a notice under paragraph 9.

(2) The Commission may apply to a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring a person to take such steps as may be specified in the order to comply with the notice.

**13**

(1) A person commits an offence if without reasonable excuse he–

- (a) fails to comply with a notice under paragraph 9 or an order under paragraph 12(2),
- (b) falsifies anything provided or produced in accordance with a notice under paragraph 9 or an order under paragraph 12(2), or
- (c) makes a false statement in giving oral evidence in accordance with a notice under paragraph 9.

(2) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**14**

(1) Where a person is given a notice under paragraph 9 he shall disregard it, and notify the Commission that he is disregarding it, in so far as he thinks it would require him–

- (a) to disclose sensitive information within the meaning of paragraph 4 of Schedule 3 to the Intelligence Services Act 1994 (c. 13) (Intelligence and Security Committee),
- (b) to disclose information which might lead to the identification of an employee or agent of an intelligence service (other than one whose identity is already known to the Commission),
- (c) to disclose information which might provide details of processes used in recruiting, selecting or training employees or agents of an intelligence service,
- (d) to disclose information which might provide details of, or cannot practicably be separated from, information falling within any of paragraphs (a) to (c), or
- (e) to make a disclosure of information relating to an intelligence service which would prejudice the interests of national security.

(2) In sub-paragraph (1) “intelligence service” means–

- (a) the Security Service,
- (b) the Secret Intelligence Service, and
- (c) the Government Communications Headquarters.

(3) Where in response to a notice under paragraph 9 a person gives a notice to the Commission under sub-paragraph (1) above–

- (a) paragraphs 12 and 13 shall not apply in relation to that part of the notice under paragraph 9 to which the notice under sub-paragraph (1) above relates,
- (b) the Commission may apply to the tribunal established by section 65 of the Regulation of Investigatory Powers Act 2000 (c. 23) for an order requiring the person to take such steps as may be specified in the order to comply with the notice,
- (c) the following provisions of that Act shall apply in relation to proceedings under this paragraph as they apply in relation to proceedings under that Act (with any necessary modifications)–
  - (i) section 67(7), (8) and (10) to (12) (determination),
  - (ii) section 68 (procedure), and
  - (iii) section 69 (rules), and
- (d) the tribunal shall determine proceedings under this paragraph by considering the opinion of the person who gave the notice under sub-paragraph (1) above in accordance with the principles that would be applied by a court on an application for judicial review of the giving of the notice.

(4) Where the Commission receives information or documents from or relating to an intelligence service in response to a notice under paragraph 9, the Commission shall store and use the information or documents in accordance with any arrangements specified by the Secretary of State.

(5) The recipient of a notice under paragraph 9 may apply to the High Court (in England and Wales) or the Court of Session (in Scotland) to have the notice cancelled on the grounds that the requirement imposed by the notice is undesirable for reasons of national security, other than for the reason that it would require a disclosure of a kind to which sub-paragraph (1) above applies.

### *Reports*

#### **15**

The Commission shall publish a report of its findings on an inquiry, investigation or assessment.

### *Recommendations*

#### **16**

- (1) The Commission may make recommendations–
  - (a) as part of a report of an inquiry, investigation or assessment under paragraph 15, or
  - (b) in respect of a matter arising in the course of an inquiry, investigation or assessment.
- (2) A recommendation may be addressed to any class of person.

### *Effect of report*

#### **17**

- (1) A court or tribunal–
  - (a) may have regard to a finding of the report of an inquiry, investigation or assessment, but

- (b) shall not treat it as conclusive.

## 18

A person to whom a recommendation in the report of an inquiry, investigation or assessment is addressed shall have regard to it.

### *Courts and tribunals*

## 19

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

### *Intelligence services*

## 20

- (1) An inquiry may not consider—
- (a) whether an intelligence service has acted (or is acting) in a way which is incompatible with a person's human rights, or
  - (b) other matters concerning human rights in relation to an intelligence service.
- (2) In this paragraph “intelligence service” has the same meaning as in paragraph 14.

## SCHEDULE 3

### AMENDMENTS CONSEQUENTIAL ON PART 1

#### Section 40

#### *Public Records Act 1958 (c. 51)*

### 1

In Schedule 1 to the Public Records Act 1958 (definition of public records) omit the reference to the Disability Rights Commission.

#### *Parliamentary Commissioner Act 1967 (c. 13)*

### 2

In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, &c. subject to investigation) omit the references to—

- (a) the Commission for Racial Equality,
- (b) the Disability Rights Commission, and
- (c) the Equal Opportunities Commission.

*Superannuation Act 1972 (c. 11)***3**

In Schedule 1 to the Superannuation Act 1972 (employments) omit the references to—

- (a) the Commission for Racial Equality,
- (b) the Disability Rights Commission, and
- (c) the Equal Opportunities Commission.

*House of Commons Disqualification Act 1975 (c. 24)***4**

- (1) The House of Commons Disqualification Act 1975 shall be amended as follows.
- (2) In Part II of Schedule 1 (bodies of which all members are disqualified) omit the references to—
  - (a) the Commission for Racial Equality,
  - (b) the Disability Rights Commission, and
  - (c) the Equal Opportunities Commission.
- (3) In Part III of Schedule 1 (disqualifying offices) omit the references to—
  - (a) Additional Commissioner of the Commission for Racial Equality, and
  - (b) Additional Commissioner of the Equal Opportunities Commission.

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)***5**

- (1) The Northern Ireland Assembly Disqualification Act 1975 shall be amended as follows.
- (2) In Part II of Schedule 1 (bodies of which all members are disqualified) omit the references to—
  - (a) the Commission for Racial Equality,
  - (b) the Disability Rights Commission, and
  - (c) the Equal Opportunities Commission.
- (3) In Part III of Schedule 1 (disqualifying offices) omit the references to—
  - (a) Additional Commissioner of the Commission for Racial Equality, and
  - (b) Additional Commissioner of the Equal Opportunities Commission.

*Sex Discrimination Act 1975 (c. 65)***6**

The Sex Discrimination Act 1975 shall be amended as follows.

**7**

In section 37(3) (discriminatory practices) for “sections 67 to 71 of this Act” substitute “sections 20 to 24 of the Equality Act 2006”.

**8**

At the end of section 38 (discriminatory advertisements) add—

- “(6) Proceedings in respect of a contravention of subsection (1) may be brought only–
- (a) by the Commission, and
  - (b) in accordance with section 25 of the Equality Act 2006.”

**9**

At the end of section 39 (instructions to discriminate (which becomes subsection (1))) add–

- “(2) Proceedings in respect of a contravention of subsection (1) may be brought only–
- (a) by the Commission, and
  - (b) in accordance with section 25 of the Equality Act 2006.”

**10**

At the end of section 40 (pressure to discriminate) add–

- “(3) Proceedings in respect of a contravention of subsection (1) may be brought only–
- (a) by the Commission, and
  - (b) in accordance with section 25 of the Equality Act 2006.”

**11**

Part VI (the Equal Opportunities Commission) shall cease to have effect.

**12**

Sections 67 to 73 (enforcement) shall cease to have effect.

**13**

Section 75 (assistance by Equal Opportunities Commission) shall cease to have effect.

**14**

(1) Section 76 (timing of proceedings) shall be amended as follows.

(2) In subsection (2A) for “two months.” substitute “three months.”

(3) After subsection (2B) insert–

“(2C) The period allowed by subsection (2)(a) or (b) shall be extended by three months in the case of a dispute which is referred for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 (unless the period is extended under subsection (2A)).”

(4) Subsections (3) and (4) shall cease to have effect.

(5) In subsection (5) for “complaint, claim or application” substitute “complaint or claim”.

**15**

Section 76D (public authorities: enforcement) (inserted by section 85 of this Act) shall cease to have effect.

**16**

Section 76E (codes of practice) (inserted by section 86 of this Act) shall cease to have effect.

**17**

In section 81 (orders)–

- (a) in subsection (1) omit the words “and 59(2)”, and
- (b) in subsection (2) omit the words “, 59(2)”.

**18**

In section 82 (interpretation)–

- (a) in subsection (1)–
  - (i) in the definition of “the Commission”, for “Equal Opportunities Commission” substitute “Commission for Equality and Human Rights”, and
  - (ii) omit the definitions of “formal investigation” and “non-discrimination notice”, and
- (b) in subsection (4)–
  - (i) after “this Act” omit the words “a non-discrimination notice or”,
  - (ii) after “the appeal against the” omit the words “notice or”, and
  - (iii) omit the words from “and for this purpose” to the end.

**19**

In Schedule 2 (education admissions: transitional exemption)–

- (a) in paragraph 5(1) for “Equal Opportunities Commission set up under Part VI” substitute “the Commission”, and
- (b) in paragraph 6 for “Equal Opportunities Commission” substitute “the Commission”.

**20**

Schedule 3 (Equal Opportunities Commission) shall cease to have effect.

*Race Relations Act 1976 (c. 74)*

**21**

The Race Relations Act 1976 shall be amended as follows.

**22**

In section 28(3) (discriminatory practices), for “sections 58 to 62” substitute “sections 20 to 24 of the Equality Act 2006”.

**23**

At the end of section 29 (discriminatory advertisements) add–

- “(6) Proceedings in respect of a contravention of subsection (1) may be brought only–
  - (a) by the Commission, and
  - (b) in accordance with section 25 of the Equality Act 2006.”

**24**

At the end of section 30 (instructions to discriminate, &c. (which becomes subsection (1))) add–

- “(2) Proceedings in respect of a contravention of subsection (1) may be brought only–
  - (a) by the Commission, and
  - (b) in accordance with section 25 of the Equality Act 2006.”

**25**

At the end of section 31 (pressure to discriminate, &c.) add–

- “(3) Proceedings in respect of a contravention of subsection (1) may be brought only–
- (a) by the Commission, and
  - (b) in accordance with section 25 of the Equality Act 2006.”

**26**

Part VII (Commission for Racial Equality) shall cease to have effect.

**27**

Sections 58 to 64 (enforcement) shall cease to have effect.

**28**

Section 66 (assistance by Commission for Racial Equality) shall cease to have effect.

**29**

(1) Section 68 (timing of proceedings) shall be amended as follows.

(2) Subsection (3) shall cease to have effect.

(3) In subsection (3A)–

- (a) omit paragraph (c), and
- (b) for “two months.” substitute “three months.”

(4) After subsection (3B) insert–

“(3C) The period allowed by subsection (2)(a) shall be extended by three months in the case of a dispute which is referred for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 (unless it is extended under subsection (3A)).”

(5) Subsections (4) and (5) shall cease to have effect.

(6) In subsection (6) for “complaint, claim or application” substitute “complaint or claim”.

**30**

Section 71C (codes of practice) shall cease to have effect.

**31**

Sections 71D and 71E (general public authority duty: compliance notice) shall cease to have effect.

**32**

In section 74 (orders and regulations)–

- (a) in subsection (1) omit the words “(except section 50(2)(a))”,
- (b) in subsection (2) for “(except sections 50(2)(a) and 73(1))” substitute “(except section 73(1))”, and
- (c) subsection (5) shall cease to have effect.

**33**

In section 78 (interpretation)–

- (a) in subsection (1)–

- (i) in the definition of “the Commission” for “Commission for Racial Equality” substitute “Commission for Equality and Human Rights”, and
  - (ii) omit the definitions of “non-discrimination notice” and “formal investigation”, and
- (b) in subsection (4)–
- (i) after “this Act” omit the words “a non-discrimination notice or”,
  - (ii) after “the appeal against the” omit the words “notice or”, and
  - (iii) omit the words from “and for this purpose” to the end of the subsection.

**34**

Schedule 1 (Commission for Racial Equality) shall cease to have effect.

**35**

In Part II of Schedule 1A (general statutory duty)–

- (a) omit the references to–
  - (i) the Commission for Racial Equality,
  - (ii) the Disability Rights Commission, and
  - (iii) the Equal Opportunities Commission, and
- (b) at the appropriate place insert “Commission for Equality and Human Rights”.

*Estate Agents Act 1979 (c. 38)*

**36**

The Estate Agents Act 1979 shall be amended as follows.

**37**

In section 9(6) (provision of information to Office of Fair Trading)–

- (a) for paragraph (a) substitute–
  - “(a) the Commission for Equality and Human Rights, and”
- , and
- (b) paragraph (c) (and the word “and” immediately before it) shall cease to have effect.

**38**

(1) Schedule 1 shall be amended as follows.

(2) For paragraph 2(b) to (d) substitute–

- “(b) where he has been given an unlawful act notice under section 21 of the Equality Act 2006 and no appeal under that section is pending or can be brought;
- (c) where he is the subject of an injunction, interdict or order under section 24 (unlawful acts) or 25 (unlawful advertising, pressure, &c.) of the Equality Act 2006;
- (d) where–
  - (i) a county court has determined in accordance with section 25 of the Equality Act 2006 that he committed an act which is unlawful under section 38, 39 or 40 of the Sex Discrimination Act 1975 or section 29, 30 or 31 of the Race Relations Act 1976 (unlawful advertising, pressure, &c.), and

(ii) no appeal under section 25 of the Equality Act 2006 is pending or can be brought (disregarding an appeal out of time);”.

(3) Paragraph 2(f) to (h) shall cease to have effect.

(4) In the words following paragraph 2(h) after “injunction” insert, “, interdict”.

(5) In paragraph 4(1) and (2) omit–

- (a) the words “and notices”, and
- (b) the words “(1) and”.

*Legal Aid (Scotland) Act 1986 (c. 47)*

**39**

(1) The Legal Aid (Scotland) Act 1986 shall be amended as follows.

(2) In section 4(2) (sums which may be paid out of the Scottish Legal Aid Fund), after paragraph (ab) insert–

“(ac) any sums payable by the Board under section 17(2D) of this Act;”.

(3) In section 17 (contributions and payments out of property recovered), after subsection (2B) insert–

“(2C) Subsection (2D) below applies where, after applying sums paid to the Board under subsection (2A) above in respect of the expenses of any party in any proceedings–

- (a) there is a surplus in the Fund on the account of the party; and
- (b) the party received, in respect of the same proceedings, assistance from the Commission for Equality and Human Rights under section 28 of the Equality Act 2006 (power of the Commission to provide legal assistance).

(2D) The Board shall apply the surplus to pay to the Commission any sums due to it under section 29(2) of that Act (Commission's entitlement to recover expenses incurred in providing assistance) in respect of the assistance provided by it to the party.”

*Employment Act 1989 (c. 38)*

**40**

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

*Disability Discrimination Act 1995 (c. 50)*

**41**

The Disability Discrimination Act 1995 shall be amended as follows.

**42**

At the end of section 16B (discriminatory advertisements) add–

- “(5) Proceedings in respect of a contravention of subsection (1) may be brought only–
- (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25 of the Equality Act 2006.”

**43**

At the end of section 16C (instructions and pressure to discriminate) add–

- “(4) Proceedings in respect of a contravention of this section may be brought only–
- (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25 of the Equality Act 2006.”

**44**

Section 17B (proceedings by Disability Rights Commission) shall cease to have effect.

**45**

Section 28 (conciliation services) shall cease to have effect.

**46**

In sections 28C(4) and 28T(2) (non-discrimination in education) for “section 53A.” substitute “section 14 of the Equality Act 2006.”

**47**

Section 31B (conciliation services) shall cease to have effect.

**48**

In section 49D(5) for “Disability Rights Commission” substitute “Commission for Equality and Human Rights”.

**49**

Sections 49E and 49F (public authorities: enforcement) shall cease to have effect.

**50**

Section 49H (let property: conciliation of disputes) shall cease to have effect.

**51**

Section 49I (conciliation of disputes: rented housing in Scotland) shall cease to have effect.

**52**

Section 53A (codes of practice) shall cease to have effect.

**53**

In section 67(5)(b) (regulations and orders) omit the words “53A(6)(a)”.

**54**

In section 68(1) (interpretation), in the definition of “regulations” omit the words “to 49F”.

**55**

In section 70(5A) for “7B, 49G, 49H and 53A(1D) and (1E)” substitute “7B and 49G”.

**56**

(1) For paragraph 6(2) of Schedule 3 (enforcement) substitute–

“(2) Where, in relation to proceedings or prospective proceedings under section 25, the dispute concerned is referred for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by three months.”

(2) In each of paragraphs 10(2) and 13(2) of Schedule 3 (enforcement)–

- (a) for “section 28” or “section 31B” substitute “section 27 of the Equality Act 2006”, and
- (b) for “two months.” substitute “three months.”

*Employment Tribunals Act 1996 (c. 17)*

**57**

After section 21(1)(gb) of the Employment Tribunals Act 1996 (jurisdiction of Employment Appeal Tribunal) insert–

“(gc) the Equality Act 2006.”.

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

**58**

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

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

**59**

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

*Freedom of Information Act 2000 (c. 36)*

**60**

In Part VI of Schedule 1 to the Freedom of Information Act 2000 (public bodies) omit the references to–

- (a) the Commission for Racial Equality,
- (b) the Disability Rights Commission, and
- (c) the Equal Opportunities Commission.

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

**61**

In Schedule 4 to the Anti-terrorism, Crime and Security Act 2001 (disclosure)–

- (a) paragraphs 13, 14 and 46 shall cease to have effect, and
- (b) after paragraph 53A insert–

**“53B Equality Act 2006**

Section 6 of the Equality Act 2006.”

*Housing (Scotland) Act 2001 (asp 10)*

**62**

In paragraph 8(e) of Schedule 5 to the Housing (Scotland) Act 2001, for “Disability Rights Commission” substitute “Commission for Equality and Human Rights”.

*Housing (Scotland) Act 2006 (asp 01)*

**63**

In each of the following provisions of the Housing (Scotland) Act 2006, for “Disability Rights Commission” substitute “Commission for Equality and Human Rights”–

- (a) section 53(1)(g),
- (b) section 65(4), and
- (c) section 67(2)(b)(i).

**SCHEDULE 4**

**REPEALS**

**Section 91**

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Public Records Act 1958 (c. 51)	In Part II of Schedule 1, the reference to the Disability Rights Commission.
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2, the references to the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission.
Superannuation Act 1972 (c. 11)	In Schedule 1, the references to the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission.
House of Commons Disqualification Act 1975 (c. 24)	In Part II of Schedule 1, the references to the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission. In Part III of Schedule 1, the references to an Additional Commissioner of the Commission for Racial Equality and an Additional Commissioner of the Equal Opportunities Commission.
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part II of Schedule 1, the references to the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission. In Part III of Schedule 1, the references to an Additional Commissioner of the Commission for Racial Equality and an Additional Commissioner of the Equal Opportunities Commission.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Sex Discrimination Act 1975 (c. 65)	<p>Part VI.  Sections 67 to 73.  Section 75.  Section 76(3) and (4).  Section 76D.  Section 76E.  In section 81(1) the words “and 59(2)”.  In section 81(2) the words “, 59(2)”.  In section 82(1) the definitions of “formal investigation” and “non-discrimination notice”.  In section 82(4) the words—</p> <ul style="list-style-type: none"> <li>(a) “a non-discrimination notice or”,</li> <li>(b) “notice or”, and</li> <li>(c) the words from “and for this purpose” to the end of the subsection.</li> </ul> <p>Schedule 3.</p>
Race Relations Act 1976 (c. 74)	<p>Part VII.  Sections 58 to 64.  Section 66.  Sections 71C to 71E.  Section 68(3), (3A)(c), (4) and (5).  In section 74(1), the words “(except section 50(2)(a))”.  Section 74(5).</p>
Race Relations Act 1976 (c. 74) — <i>cont.</i>	<p>In section 78(1) the definitions of “formal investigation” and “non-discrimination notice”.  In section 78(4) the words—</p> <ul style="list-style-type: none"> <li>(a) “a non-discrimination notice or”,</li> <li>(b) “notice or”, and</li> <li>(c) the words from “and for this purpose” to the end of the subsection.</li> </ul> <p>Schedule 1.  In Part II of Schedule 1A, the references to the Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission.  Paragraphs 1, 2, 6, 7, 8 and 9 of Schedule 4.</p>
Estate Agents Act 1979 (c. 38)	<p>Section 9(6)(c) (and the word “and” immediately before it).  Paragraph 2(f) to (h) of Schedule 1.  In each sub-paragraph of paragraph 4 of Schedule 1—</p> <ul style="list-style-type: none"> <li>(a) the words “and notices”, and</li> <li>(b) the words “(1) and”.</li> </ul>
County Courts Act 1984 (c. 28)	Paragraphs 54 and 61 of Schedule 2.
Legal Aid (Scotland) Act 1986 (c. 47)	Paragraphs 5 and 6 of Schedule 3.
Legal Aid Act 1988 (c. 34)	Paragraphs 6 and 7 of Schedule 5.
Housing Act 1988 (c. 50)	Section 137.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Employment Act 1989 (c. 38)	Paragraph 16 of Schedule 6.
Local Government and Housing Act 1989 (c. 42)	Section 180.
Trade Union Reform and Employment Rights Act 1993 (c. 19)	Paragraph 15 of Schedule 7.
Disability Discrimination Act 1995 (c. 50)	Section 17B. Section 28. Section 31B. Section 49E. Section 49F. Section 49H. Section 49I. Section 53A. In section 67(5)(b), the words “, 53A(6)(a)”. In the definition of “regulations” in section 68(1), the words “to 49F”.
Employment Tribunals Act 1996 (c. 17)	Paragraphs 3 and 4(3) of Schedule 1.
Disability Rights Commission Act 1999 (c. 17)	The whole Act.
Access to Justice Act 1999 (c. 22)	Paragraphs 13, 14 and 56 of Schedule 4.
Race Relations (Amendment) Act 2000 (c. 34)	Paragraphs 8, 9 and 11 of Schedule 2.
Freedom of Information Act 2000 (c. 36)	In Part VI of Schedule 1, the references to the Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission.
Special Educational Needs and Disability Act 2001 (c. 10)	Sections 35 to 37. Schedule 7.
Anti-terrorism, Crime and Security Act 2001 (c. 24)	Paragraphs 13, 14 and 46 of Schedule 4.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Paragraphs 13 and 15 of Schedule 7.
Disability Discrimination Act 2005 (c. 13)	Section 16(2) and (3). Paragraphs 10, 25, 28 and 50 of Schedule 1.
Equality Act 2006	Section 86.

## EXPLANATORY NOTES

*(This note is not part of the Order)*

### INTRODUCTION

1. These explanatory notes relate to the Equality Act which received Royal Assent on 16 February 2006. They have been prepared by the Department of Trade and Industry and (in relation to sections 7, 9 and 18) the Department for Constitutional Affairs and (in relation to sections 44 to 80) the Home Office in order to assist the reader in understanding the Act. They do not form a part of the Act and have not been endorsed by Parliament.

*(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)*

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

3. The Act relates to matters within the responsibilities of the Secretary of State for Trade and Industry, the Secretary of State for Constitutional Affairs, the Secretary of State for Work and Pensions and the Home Secretary. The Secretary of State for Education and Skills has a key interest in education matters within the Act. References to the Secretary of State in the Act mean any Secretary of State. In practice, some of the functions conferred upon the Secretary of State will be exercised by the Secretary of State for Trade and Industry, the Secretary of State for Constitutional Affairs, the Home Secretary and the Secretary of State for Work and Pensions jointly and others by only one of them or by the Secretary of State for Education and Skills. This will reflect their respective ministerial portfolios. In one case an order-making power is conferred specifically on the Lord Chancellor — as described in more detail in the commentary on section 28. The order-making power in section 50(4) will be exercisable only by the Secretary of State for Education and Skills. The power to make regulations under section 82 will be exercisable by the Office of the First Minister and the Deputy First Minister in Northern Ireland.

## **SUMMARY**

4. The Act's main provisions:

- establish the Commission for Equality and Human Rights (CEHR) and define its purpose and functions;
- make unlawful discrimination on the grounds of religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises, and the exercise of public functions;
- enable provision to be made for discrimination on the grounds of sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions; and
- create a duty on public authorities to promote equality of opportunity between women and men ('the gender duty'), and prohibit sex discrimination and harassment in the exercise of public functions.

5. The CEHR will take on the work of the existing equality Commissions (the Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE), and the Disability Rights Commission (DRC)) and will additionally assume responsibility for promoting equality and combating unlawful discrimination in three new strands, namely sexual orientation, religion or belief, and age. The CEHR will also have responsibility for the promotion of human rights.

## **BACKGROUND**

6. The Sex Discrimination Act 1975 (c. 65) (SDA), Race Relations Act 1976 (c. 74) (RRA) and the Disability Rights Commission Act 1999 (c. 17) (DRCA) created the EOC, CRE, and DRC respectively. The founding legislation confers responsibility on the Commissions for combating unlawful discrimination and promoting equality of opportunity as regards gender, race or disability. The EOC has responsibilities for the SDA and Equal Pay Act 1970, the CRE has responsibility for the RRA and the DRC enforces the Disability Discrimination Act (DDA).

7. The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661) and Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660) made unlawful discrimination on the grounds of sexual orientation and religion or belief in employment and

vocational training. These Regulations implement the UK's obligations under the EC Employment Directive (Directive 2000/78/EC). Legislation is also being prepared to prohibit age discrimination in these areas, as required by the Employment Directive. There is currently no statutory institution with responsibility for promoting equality or combating unlawful discrimination in these new equality strands. Similarly, although all public authorities must adhere to the provisions of the Human Rights Act 1998, there is currently no statutory body charged with promoting human rights in Great Britain.

8. In October 2002, the Government issued a consultation paper (“Equality and Diversity: Making it Happen — Consultation on future structures for equality institutions”) comprising a review of existing institutional support for equality legislation and options for the future, in particular the feasibility of creating a single equality Commission for Great Britain. A majority of respondents to the consultation supported the establishment of a single equality body.

9. In October 2003, the Government announced its intention to bring together the work of the existing Commissions in a new body that would also take responsibility for new laws on age, religion or belief and sexual orientation, and for the first time provide institutional support for human rights.

10. The White Paper (Cm 6185 “Fairness for All: A New Commission for Equality and Human Rights”) was published on 12 May 2004. The White Paper set out the Government's detailed proposals for the CEHR, including its role, duties and powers, and outlined the way in which the CEHR will deliver services to its key stakeholders. Views were invited on the proposals by 6 August 2004, and the Government's response to that consultation was published on 18 November 2004.

## **THE ACT**

11. The Act is in five Parts and has four Schedules.

12. Part 1 including Schedules 1, 2 and 3 establishes the CEHR and sets out its duties, general powers, enforcement powers and the interpretation of this Part of the Act. Dissolution of the existing equality Commissions is also covered in this Part of the Act.

13. Part 2 sets out provisions prohibiting discrimination on grounds of religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions.

14. Part 3 allows provision to be made by regulations prohibiting discrimination on grounds of sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions.

15. Part 4 sets out provisions prohibiting sex discrimination in the exercise of public functions and creates a duty on all public authorities to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between women and men.

16. Part 5 including Schedule 4 contains general supplementary material including repeals, Crown application, commencement and extent.

## **COMMENTARY ON SECTIONS**

### **Part 1: The Commission for Equality and Human Rights**

#### **Section 1: Establishment**

17. Section 1 establishes the CEHR.

## Section 2: Constitution, &c.

18. Section 2 introduces Schedule 1 which sets out provisions relating to the constitution of the CEHR; its members (the Commissioners); their appointment criteria; and their tenure of office; the tenure of office of the Chairman and the deputy Chairman; regulation of its proceedings; appointment of its staff; appointment of its Investigating Commissioners; its powers of delegation and the committees to which certain functions must be delegated; preparation of its annual report; remuneration of Commissioners and staff; its financial arrangements; and its status.

## Section 3: General duty

19. Section 3 sets out the outcomes for society that the CEHR is required to work towards. It explains the rationale for the CEHR, combining work in equality, human rights and good relations between different groups in society. The CEHR is required to exercise its functions in Part 1 in order to work towards the outcomes set out in this section.

## Section 4: Strategic plan

20. Section 4 places the CEHR under a duty to publish and lay before Parliament, a strategic plan setting out the activities or types of activity it plans to carry out, the timetable for these activities, and the priorities for these activities (or the principles on how these priorities should be determined).

21. Subsection (2) requires the CEHR to review its strategic plan at least once every three years from publication, although it does not have to revise the plan after each review if it does not think it appropriate to do so. The CEHR must publish the original plan and each revision of it, and ensure that the plan and each revision is sent to the Secretary of State to lay before Parliament.

## Section 5: Strategic plan: consultation

22. Section 5 places the CEHR under a duty to consult on the preparation and review of its strategic plan. The CEHR is required to consult with those who have knowledge or experience relevant to the CEHR's functions and others the CEHR considers appropriate. The CEHR is also required to issue a general invitation to make representations, to ensure it is able to consult with as large a group of people as possible.

23. The CEHR will be required to take account of any representations it receives in the course of its consultation.

## Section 6: Disclosure

24. Section 6 creates a summary criminal offence of unauthorised disclosure by a former or current Commissioner, Investigating Commissioner, employee, or member of a committee established by the Commission, of information provided to the CEHR by third parties in the course of an inquiry, investigation, assessment, compliance notice process, or a negotiation to obtain an agreement. Information obtained through the exercise of its other functions will be subject to disclosure in accordance with the Freedom of Information Act 2000. Subsection (3) provides an exhaustive list of categories for which a disclosure can be authorised. They are disclosure made: for the purpose of the exercise of a function of the CEHR under any of sections 16, 20, 21, 24, 25, 31 and 32; in a report of an inquiry, investigation, or assessment published by the CEHR; in pursuance of an order of a court or tribunal; with the consent of each person to whom the disclosed information relates; in a manner that ensures that no person to whom the disclosed information relates can be identified; for the purpose of civil or criminal proceedings to which the CEHR is party, or; if the information was acquired by the CEHR more than 70 years before the date of the disclosure. Subsection (3) does not permit disclosure of information provided by, or relating to, an intelligence service. Such

material can only be disclosed under subsection (4) where the intelligence service has given its consent. Subsection (6) provides that the penalty for a summary conviction shall be a fine up to the statutory maximum i.e. £5,000.

### **Section 7: Scotland: human rights**

25. Section 7 provides that the CEHR may not take human rights action in relation to matters falling within the devolved competence of the Scottish Parliament, except with the consent of a person established by Act of the Scottish Parliament whose principal duties relate to human rights (for example a Human Rights Commissioner). “Human rights action” is defined in subsection (2).

### **Section 8: Equality and diversity**

26. Sections 8 to 12 set out the duties of the CEHR. Later sections in Part 1 set out the general powers the CEHR has to meet its obligations under these duties.

27. Section 8 sets out the CEHR's duties in relation to equality and diversity. The provisions require the CEHR to promote understanding of, and encourage good practice in relation to, equality and diversity (whether or not this relates to compliance with the equality enactments (as listed in section 33)), promote equality of opportunity, promote awareness and understanding of rights under the equality enactments and to work towards the elimination of unlawful discrimination and harassment, including through using its enforcement powers.

28. Subsection (3) clarifies that the Commission may promote the favourable treatment of disabled persons in carrying out its equality and diversity duties. This provision ensures the Commission's work is consistent with the requirements of the Disability Discrimination Act 1995. Subsection (4) defines disabled persons for the purposes of this Act.

### **Section 9: Human rights**

29. Section 9 sets out the CEHR's duties in relation to human rights. The provisions require the CEHR to promote understanding of the importance of human rights, encourage good practice in relation to human rights, and promote awareness, understanding and protection of human rights. In addition, the CEHR will be required to encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c.42) (HRA) (which prohibits them from acting in a way which is incompatible with the Convention rights as defined in section 1 of the HRA).

30. The latter duty applies only in relation to public authorities (“public authority” is defined in section 6 of the HRA). However, in relation to the more general duties under this section, the CEHR will not be limited to dealing with public authorities. It will, for example, also be able to provide encouragement to the voluntary and commercial sectors to adopt appropriate human rights standards as the basis of the relationship with their clients and customers in the provision of their services.

31. Subsection (2) makes clear that the CEHR may take action under this section in respect of human rights other than the “Convention rights” set out in Schedule 1 to the HRA. However, subsection (3) requires the CEHR to have particular regard to the importance of exercising its powers in relation to the Convention rights.

32. Subsection (4) requires the CEHR to take account of relevant human rights when fulfilling its duties under sections 8 and 10.

### **Section 10: Groups**

33. Section 10 sets out the CEHR's duties in relation to promoting good relations between members of different groups, within different groups, and between members of different groups and wider

society. It also requires the CEHR to work towards eliminating prejudice against members of groups and enabling members of groups to participate in society, for example in challenging racism in the media, or enabling disabled people to become involved in civic activities.

34. Subsections (2) and (3) define groups as people who share one of the attributes listed in subsection (2), including smaller groups who may share an attribute in addition to the one by which that group is defined, such as Muslim women, or Black and minority ethnic lesbians and gay men, or young disabled people. Groups may or may not consider themselves to be “communities”. The Commission's work with groups can apply to communities as well as groups.

35. Subsection (4) ensures that, in carrying out its duties under this section, the CEHR should have particular regard to the need to exercise its powers in relation to groups defined by reference to race, religion or belief.

36. Subsection (5) ensures that in carrying out its duties in relation to working with groups, the Commission may promote or encourage the favourable treatment of disabled people, to ensure consistency with the general approach of the Disability Discrimination Act.

### **Section 11: Monitoring the law**

37. Section 11 sets out the obligations and powers of the CEHR to keep the equality and human rights enactments under review and provide advice and recommendations on the law and proposed changes to the law.

38. Subsection (1) requires the CEHR to monitor the effectiveness of the equality and human rights enactments. The equality and human rights enactments are listed in section 33 and, for the purposes of this section, include the whole of this Act (subsection (3)(c)). Subsections (2)(a) and (b) enable but do not require the CEHR to advise the Government about the effectiveness of the equality and human rights enactments and to recommend changes. Subsections (2)(c) and (d) enable the CEHR to give advice to the Government or the devolved administrations in Scotland or Wales about the effect of legislation (not limited to the equality and human rights enactments) or the likely effect of any proposed changes to the law.

### **Section 12: Monitoring progress**

39. Section 12 places the CEHR under a duty to publish reports on what progress has been made towards the achievement of desirable outcomes i.e. the results to aim for in encouraging and supporting the development of the society described in section 3. To meet its obligations under this duty, the CEHR will need to evaluate available evidence in order to identify desired outcomes for society and the indicators by reference to which progress can be measured. The CEHR will be required to consult widely on which of these should be priorities for the CEHR to monitor.

40. Once the CEHR has determined what outcomes and indicators are priorities, it will use the indicators to monitor progress towards the outcomes over a period of time. The CEHR is required to publish a report within three years of this section coming into force, and every three years thereafter. The Secretary of State must lay the progress report before Parliament.

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

41. Section 13 sets out the general powers available to the CEHR, and the general activities it can undertake, to carry out any or all of its duties. These activities are publishing or disseminating ideas and information, giving advice and guidance, undertaking research and providing education or training.

Subsections (1)(e) and (f) permit the CEHR to work in partnership with others, or to arrange for others to carry out any of the listed activities. This may include contractual or grant-based partnerships.

43. Subsection (2) confirms that advice given under this section does not include the preparation of documents to be used for the purpose of legal proceedings. The CEHR has separate powers to provide such advice in respect of particular types of legal proceedings, as laid down in section 28.

#### **Section 14: Codes of practice**

44. Section 14 enables the CEHR to issue a code of practice in respect of specified areas of discrimination legislation, to assist in compliance with the legislation and to promote equality of opportunity. Additionally, the CEHR may issue a code of practice on specified provisions of landlord and tenant and housing legislation.

45. Subsection (1) lists the areas in the equality enactments (as defined in section 33) in relation to which the CEHR is to be able to issue codes of practice.

46. Subsections (3) and (4) set out the circumstances and the areas of landlord and tenant and housing legislation on which a code can be issued giving practical guidance to landlords and tenants in England or Wales (subsection (2)) and in Scotland (subsection (3)).

47. Subsection (5) places an obligation upon the CEHR to comply with a direction of the Secretary of State to prepare a code of practice in respect of a matter not currently covered by this section but which the Secretary of State expects to add by means of the order-making power provided in section 15(6) to vary the range of matters on which the CEHR may prepare a code of practice.

48. Subsection (6) requires the CEHR to publish for consultation proposals for any code of practice.

49. Subsection (7) prevents the CEHR from issuing a code of practice unless it has been approved in draft by the Secretary of State and then laid before Parliament. Either House of Parliament may pass a resolution disapproving the draft code within 40 days of it being laid. If no such resolution is passed, subsection (8) provides that the code of practice will come into force on a day specified by order by the Secretary of State.

50. Subsection (9) requires the Secretary of State to consult Scottish Ministers and the National Assembly for Wales prior to approving a draft code of practice or commencing a code of practice which relates to the duties on the public sector regarding the general and specific duties for race, gender or disability under the RRA, SDA and DDA, respectively.

51. Subsection (10) requires the Secretary of State to consult the Scottish Ministers prior to approving a draft code of practice or commencing a code of practice issued under subsection (4) which gives practical guidance to landlords and tenants of houses in Scotland.

#### **Section 15: Codes of practice: supplemental**

52. Subsection (1) of this section makes provision for the codes of practice issued under section 14 to be revised. Subsection (3) provides for any code to be revoked by an order made by the Secretary of State at the request of the CEHR. An order to revoke a code will be subject to the negative resolution Parliamentary procedure.

53. Subsection (4) describes the legal effect of a code of practice. It provides that a failure to comply with a provision of a code of practice does not itself give rise to criminal or civil proceedings, but a code of practice is admissible in such proceedings and must be taken into account by a court or tribunal if the court or tribunal considers the code to be relevant.

54. Subsection (5) disappplies the requirement in subsection (4)(b) for a court or tribunal to take account of a code of practice issued under section 14(4). However, the Housing (Scotland) Act 2006 provides for the Scottish courts and tribunals to take account of such codes.

55. Subsection (6) provides for an order-making power to allow the Secretary of State to vary the range of matters that codes of practice may address. In accordance with section 39(4), any such order will be subject to the affirmative resolution procedure.

### **Section 16: Inquiries**

56. Section 16 gives the CEHR a power to conduct inquiries into matters relating to its duties in respect of equality and diversity, human rights and groups. These could be thematic (for example into the causes of unequal outcomes), sectoral (looking at inequality in, for example, the uptake of health screening services or at the employment of disabled people in particular sectors, e.g. the retail sector) or relate to one or more named parties.

57. Subsection (2) provides that if the CEHR begins to suspect that a person who is the subject of an inquiry may have committed an unlawful act (i.e. a breach of the equality enactments, as set out in sections 33 & 34), it should not continue to consider that act as part of the inquiry. The CEHR can, however, use the information acquired in the course of an inquiry as the basis on which to launch an investigation. The CEHR is under a duty to ensure that so far as possible, those aspects of an inquiry which concern the person being investigated or which require his involvement are not pursued while the investigation is in progress.

58. Subsection (3) provides that the report of an inquiry may not conclude, expressly or by necessary implication, that a specified or identifiable person has committed an unlawful act. Nor may the report refer to the activities of a person in terms that will harm the person unless it is necessary in order that the report adequately reflect the results of the inquiry.

59. Subsection (4) provides that restrictions on the CEHR considering unlawful acts under the equality enactments should not impact on the CEHR's consideration and reporting of human rights matters in the course of an inquiry.

60. Subsection (5) provides that the CEHR, in circumstances where the findings are in the opinion of the CEHR of an adverse nature, must allow a specified or identifiable person at least 28 days in which to make written representations on the draft of a report which records findings which relate to that person, and requires the CEHR to consider any such representations.

61. Schedule 2 sets out the provisions relating to terms of reference, representations, evidence, reports and recommendations and effects of reports in relation to inquiries, investigations and assessments. Commentary on Schedule 2 can be found below.

### **Section 17: Grants**

62. Section 17 provides the CEHR with a power to make grants to others, in pursuance of any of its duties under sections 8 to 10. This is a power currently available only to the CRE under section 44 of the RRA.

63. Subsection (2) allows the CEHR to attach conditions, including as to repayment, to the financial assistance that it provides.

64. Subsection (3) provides that, where the CEHR provides financial assistance in the exercise of its powers to co-operate with or assist others under Part 1 of the Act, it may do so only in accordance with the provisions of section 17.

**Section 18: Human rights**

65. Section 18 allows the CEHR to co-operate with other people or organisations within the United Kingdom and abroad when undertaking its human rights duties as set out in section 9. Section 13 permits the CEHR to co-operate with others in respect of the activities set out in that section; section 18 allows co-operation to extend beyond those activities in relation to human rights. In particular, this will allow the CEHR to co-operate with human rights commissions or commissioners in other parts of the United Kingdom, and to give its opinion to international bodies about the compliance of the United Kingdom with its international human rights obligations.

**Section 19: Groups**

66. Section 19 provides the CEHR with powers additional to the general powers set out in section 13, to fulfil its duties in respect of groups set out in section 10.

67. The provisions of section 19 enable the CEHR to monitor crimes affecting members of certain groups and undertake activities to reduce crime within or affecting members of those groups. The CEHR can also arrange social, recreational, sporting, civic, educational or other activities designed to involve members of groups.

68. The CEHR can undertake these activities itself, or can arrange to assist or cooperate with others in making such arrangements.

**Section 20: Investigations**

69. Section 20 gives the CEHR a power to conduct investigations into persons (both natural and legal). Such an investigation may be into the commission of an unlawful act under the equality enactments, compliance with a requirement of an unlawful act notice issued under section 21 or compliance with the terms of an agreement entered into under section 23.

70. Under subsection (2), the CEHR may only carry out an investigation under subsection (1)(a) if it suspects that the person concerned may have committed an unlawful act.

71. Subsection (3) provides that a belief of unlawful discrimination or harassment, sufficient to satisfy the requirement in subsection (2), may have been acquired by the CEHR in the course of an inquiry, but need not be. The CEHR may carry out an investigation without having first carried out an inquiry.

72. Subsection (4) sets out the requirements which must be met before the CEHR can settle a report which records a finding that the person concerned has: committed an unlawful act; failed to comply with a requirement imposed by an unlawful act notice under section 21; or failed to comply with an undertaking given under section 23. The CEHR must send the person concerned a draft of the report and allow him at least 28 days in which to make written representations and consider any representations made.

73. Schedule 2 sets out the provisions relating to terms of reference, representations, evidence, reports and recommendations and effects of recommendations in respect of inquiries, investigation and assessments. Commentary on Schedule 2 can be found below.

**Section 21: Unlawful act notice**

74. Section 21 makes provision for the CEHR to issue an unlawful act notice after an investigation confirming an unlawful act has taken place.

75. Subsection (1) permits the CEHR to issue an unlawful act notice in circumstances where it has conducted an investigation and is satisfied that the party investigated has committed an unlawful act, as defined in section 34. Under subsection (2) an unlawful act notice must set out the unlawful act and the legislative provision by virtue of which the act is unlawful. Subsection (3) requires the CEHR to include in the notice details of the appeal procedure against the notice, the scope for a subsequent investigation into the subject's compliance with the notice and the scope for the CEHR to apply to a court for an injunction or interdict under section 24 if it thinks the unlawful act is continuing. Under subsection (4) the CEHR may include within the notice a provision requiring the recipient to prepare an action plan (as provided for in section 22) setting out how the unlawful act will cease or not be repeated. It allows the CEHR to recommend action that the person served the notice should take. Subsection (5) sets out the basis on which a person may appeal against an unlawful act notice and subsection (6) enables a court or tribunal to affirm, annul or vary a notice or requirement under it and includes the power to make an order for costs.

### **Section 22: Action plans**

76. Section 22 sets out the arrangements for an action plan that section 21 enables the CEHR to require of a person on whom it has served an unlawful act notice.

77. Subsection (2) requires that the unlawful act notice must specify a deadline for the first draft action plan.

78. Subsections (3) and (4) require the CEHR to either approve the first or any subsequent draft plan or give notice to the person that it is not adequate, specify a time for a revised draft and make recommendations as to the content of the revised draft.

79. Subsection (5) provides that, unless the CEHR gives the person notice that the draft plan is inadequate or applies to a court for an order (under subsection (6) below) to provide a revised draft, the action plan shall come into force within six weeks.

80. Subsection (6) enables the CEHR to apply to a county court (and the Scottish equivalent) for an order requiring a person to submit a draft or revised action plan by a deadline specified by the court. The court may also make a direction as to the plan's content. Subsection (6)(c) enables the CEHR to apply to a court for an order within five years of an action plan coming into force to require the person to comply with the action plan or to take specific action for a similar purpose. Subsection (9) provides that a person not complying with a court order commits a criminal offence.

81. Subsection (7) allows for an action plan to be varied by agreement.

82. Subsection (8) applies paragraphs 10 to 14 of Schedule 2 to consideration by the CEHR of the adequacy of a draft action plan.

### **Section 23: Agreements**

83. Section 23 makes provision for the CEHR to enter into an agreement with a person who it has reason to believe has committed an unlawful act, as defined in section 34. Agreements are enforceable through the courts. The CEHR is able to enter into an agreement where the other party undertakes not to commit a specified unlawful act, and to take or refrain from taking specified action. In return, the CEHR undertakes not to proceed under section 20 or 21 with an investigation or the issue of an unlawful act notice in respect of the act specified in the agreement.

84. Under subsection (4) an agreement may contain supplementary matters, such as action that may be taken in the event of a breakdown of the agreement or the circumstances in which either party

may terminate the agreement. It also allows the parties to consensually vary or terminate the agreement.

85. Subsection (5) provides that the CEHR can enter into an agreement with a public authority in respect of a breach of any of the public sector duties set out in section 34(2) in lieu of issuing a public sector duty compliance notice, as provided for in section 32.

#### **Section 24: Applications to court**

86. Section 24 gives the CEHR the power to apply for an injunction (and an interdict in Scotland) against a person who it believes that, unless restrained, is likely to commit an unlawful act. It also provides for the CEHR to apply to a court when the other party to an agreement provided for in section 23 has failed to comply, or the CEHR thinks is unlikely to comply, with an undertaking under the agreement. The court can order the other party to comply with his undertaking and take any such other action as the court may specify.

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

87. Section 25 sets out the CEHR's powers to bring legal proceedings (in its own name) in respect of the relevant provisions in the SDA, RRA, DDA and this Act that prohibit unlawful advertising, instructions and pressure to discriminate in respect of race, sex, disability and religion or belief.

88. Subsection (2) provides that the CEHR alone is entitled to bring proceedings in respect of these provisions of the equality legislation set out in subsection (1).

89. Under subsection (3) the CEHR can apply to an employment tribunal or county court (or to a sheriff in Scotland) for a finding that an act of unlawful advertising, pressure or instructions to discriminate has taken place.

90. Subsection (4) provides for a court or tribunal to which a complaint has been made by the CEHR to determine whether the allegation is correct.

91. Subsection (5) gives the CEHR the power to apply to a county court for an injunction and under subsection (6) to a sheriff in Scotland for an interdict, where it considers that, unless restrained, the person concerned may commit further acts of unlawful advertising or instructions or pressure to discriminate. The CEHR may apply for such an injunction in one of two circumstances: either where a court or tribunal has determined that such an act has been committed or where the CEHR believes that such an act has been committed.

92. Subsection (7) provides that the CEHR's enforcement powers in this section do not apply to the criminal offences in the SDA, RRA, DDA or this Act of making false or misleading statements about whether an advertisement is unlawful.

#### **Section 26: Section 25: supplemental**

93. Section 26 sets out the procedural rules governing the exercise of the CEHR's powers in relation to unlawful advertising, and instructions or pressure to discriminate under section 25.

94. Subsection (1) provides that the CEHR can only make an application to a court or tribunal under section 25(3) for a determination that an act covered by section 25 has taken place:

- within six months of the alleged unlawful act; or
- with the permission of the employment tribunal or court if after that six month time limit.

95. Subsection (2) prevents the CEHR, when applying for an injunction under section 25(5) or (6), from relying on the ruling of a court or tribunal under section 25(4) if there is an appeal pending

against that ruling, or if it would still be possible for an appeal to be brought within the normal time limits.

96. Subsection (3) provides that the CEHR can only apply to a county court for an injunction or to the sheriff in Scotland for an interdict under section 25(5) or (6) restraining a person from doing an act covered by section 25:

- within five years of the date on which the act last occurred; or
- with the permission of the court (or sheriff in Scotland) if after that five year time limit.

### Section 27: Conciliation

97. Section 27 gives the CEHR the power to make arrangements for the provision of conciliation services (as defined in subsection (9)).

98. Conciliation services can be provided in relation to disputes where proceedings have been or could be brought under specified sections of the equality enactments (listed in subsection (1)).

These are civil proceedings in respect of:

- goods, facilities and services, premises, public functions and education under the SDA;
- goods, facilities and services, premises, public functions and education under the RRA;
- goods, facilities and services, premises, public functions and education under the DDA (except for proceedings about admissions and exclusions);
- goods, facilities and services, premises, public functions and education under the provisions for religion and belief in this Act;
- activities covered by the Sexual Orientation Regulations that can be made under Part 3 of this Act, and;
- further and higher education under the Employment Equality (Sexual Orientation) Regulations and the Employment Equality (Religion or Belief) Regulations.

99. Conciliation services can also be provided (subsection (2)) in relation to disputes about a landlord's reasonableness in relation to consent to the making of disability related improvements to let residential property in England or Wales. Subsection (3) makes similar provision in respect of consent to the making of disability related works in Scotland.

100. Subsection (4) requires the CEHR to exercise this power to ensure that, so far as reasonably practicable, the conciliation services are available to those who want them.

101. Subsection (5) prevents information communicated to a person providing conciliation services from being used in litigation without the consent of the party who provided the information.

102. Subsection (6) excludes Commissioners, CEHR staff, Committee members and Investigating Commissioners from providing conciliation services.

103. Subsections (7) and (8) require the CEHR to make administrative arrangements to prevent information connected with a conciliation case from being passed to a member of the CEHR or its staff, except in the following circumstances: where the parties to the dispute agree; where the information does not make the individuals identifiable (e.g. where information is provided in aggregate form); or where the information is necessary for conciliation arrangements to be made.

104. Subsection (10) provides the Secretary of State with an order-making power (specified in section 39(4) as subject to an affirmative resolution procedure) to amend this section so as to vary the range of disputes in respect of which the CEHR can arrange conciliation services.

### Section 28: Legal assistance

105. Subsection (1) enables the CEHR to give assistance to an individual who alleges that he is a victim of behaviour contrary to the equality enactments (defined in section 33) and who is or may become a party to legal proceedings which relate to the alleged breach of the equality enactments. The CEHR will determine the criteria on which legal assistance is granted.

106. Subsection (2) enables the CEHR to give assistance to an individual who is or may become a party to legal proceedings in England or Wales insofar as the proceedings concern or may concern the question of a landlord's reasonableness in relation to consent to the making of disability related improvements to let residential property.

107 Subsection (3) makes similar provision in respect of legal proceedings in Scotland about consent to the making of disability related works in Scotland.

108. Under subsection (4) the types of legal assistance which the CEHR may provide or arrange are legal advice, legal representation, and facilities to settle the dispute or any other form of assistance. Such assistance may also include securing an arrangement to avert legal proceedings. This is distinguishable from the provision of formal conciliation services in section 27 where both sides are able to meet with a conciliator to resolve a dispute about discrimination and harassment in relation to the provision of goods, facilities and services, education and the exercise of public functions.

109. Subsection (5) prevents the CEHR from providing legal assistance in respect of the provisions of of the DDA (public transport).

110. Subsection (6) allows the CEHR to provide legal assistance in respect of any aspect of any proceedings which relate in part to a provision of the equality enactments. However such assistance must end if the proceedings cease to relate to a provision of the equality enactments.

111. Subsection (7) gives the Lord Chancellor an order-making power to enable the CEHR to provide assistance in respect of proceedings which have ceased to relate to the equality enactments, but which relate wholly or partly to any of the Convention rights (as defined in section 1 of the Human Rights Act 1998).

112. Subsection (8) gives the Secretary of State an order-making power to enable the CEHR to provide assistance in other proceedings (under legislation other than the equality enactments) where a disabled person seeks to rely on a matter relating to his disability. This could not, however, be used to permit assistance in respect of Part V of the DDA, which is expressly excluded under subsection (5) above.

113. Subsection (9) provides that the powers in subsections (7) and (8) may be exercised either in general terms, or in relation to particular types of proceedings or particular circumstances.

114. Subsection (11) disappplies any requirement in legislation for the CEHR, in providing legal assistance under this section to have in place a contract of insurance or indemnity in order for it to advise on compromise agreements.

115. Subsection (12) provides that the CEHR may support legal proceedings brought under domestic legislation (outside the equality enactments) that is either incompatible with or has failed to give effect to Community law on discrimination on the grounds listed (sex, (including reassignment of gender) racial origin, ethnic origin, religion, belief, disability, age or sexual orientation).

## Section 29: Legal assistance: costs

116. When a person who has been assisted by the CEHR becomes entitled to have his costs/expenses repaid to him by another party, this section entitles the CEHR to recover its expenses (the amount of which may be determined by regulations made by the Secretary of State) out of costs awarded or paid by agreement.

117. Under subsections (2) and (3) the CEHR is able to enforce the reimbursement as a debt, although the debt ranks after any obligation on the person to pay money to the Legal Services Commission in England or Wales and to the Scottish Legal Aid Board in Scotland.

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

118. Section 30 confirms that the CEHR has capacity to institute or intervene in legal proceedings where the proceedings are relevant to any of the CEHR's functions, subject to any limitations imposed under legislation or by rules of court, except that it makes provision to override the "victim test" in section 7 of the Human Rights Act.

119. Subsection (2) deems the CEHR to have the necessary title and interest in relation to any such legal proceedings in Scotland.

120. Subsection (3) enables the CEHR to rely on a breach of the Convention rights in any legal proceedings which it has instituted (or in which it has intervened) even if it is not itself a victim of the breach. However it may only do so if there are one or more persons who are (or, for a potential future breach, would be) victims. Were it not for this provision, the "victim" test in section 7 of the Human Rights Act would prevent the CEHR from relying on the Convention rights. No award of damages may be made to the CEHR in relation to a breach of the Convention rights. The terms "legal proceedings", "unlawful act" and "victim" used in this subsection are defined in section 7 of the HRA.

121. Subsection (4) ensures that, apart from subsection (3), this section does not create any cause of action or override any other limitation or restriction on who may bring proceedings.

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

122. Section 31 enables the CEHR to assess a public authority's compliance with the public sector duties for gender, race and disability.

123. Schedule 2 sets out the provisions relating to terms of reference, representations, evidence, reports and recommendations and effects of recommendations. Commentary on Schedule 2 can be found below.

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

124. Section 32 enables the CEHR to require a public authority to comply with its public sector duties for gender, race and disability.

125. Subsection (2) enables the CEHR to issue a notice requiring a public authority to comply and to provide within 28 days written information of steps taken or proposed to comply with the duty.

126. Subsection (3) provides that a notice issued under this section requiring information relevant to the CEHR for assessing compliance shall specify when and the manner and form in which the information is to be provided.

127. Subsection (4) requires the CEHR to have conducted an assessment provided for under section 31 before it can issue a compliance notice in respect of a breach of a public sector general duty.

128. Subsection (5) obliges the recipient of a compliance notice to comply with it.

129. Subsection (8) enables the CEHR to apply to a court for an order requiring the public authority to comply with the notice. Subsection (9) provides that the court referred to in subsection (8) is the High Court or Court of Session in respect of a general duty and a county or Sheriff's court in respect of specific duties.

130. Subsection (10) requires a compliance notice to specify a time limit before which the CEHR will not apply to a court for enforcement of a compliance notice.

131. Subsection (11) provides that enforcement of a breach of a public sector specific duty shall be by no other party than the CEHR and solely by means of a compliance notice.

### **Section 33: Equality and human rights enactments**

132. Subsection (1) defines "the equality enactments" which are referred to in sections 8(1)(d) and (e), 21(2), 28 and 34 as the existing pieces of legislation dealing with promoting equality and combating discrimination on the grounds of sex (including, in the field of employment, married status and gender reassignment), race, disability, sexual orientation and religion or belief, together with Part 2 of this Act and the regulations to be made under Part 3. The Secretary of State may add to, remove from or vary the list of equality enactments by using the power contained in subsection (3) — which, in accordance with section 39(4), is subject to the affirmative resolution procedure.

133. Subsection (2) defines the "equality and human rights enactments" which are referred to in sections 11(1) and 11(2)(a) and (b). The enactments falling within this definition are the equality enactments defined in subsection (1) and the HRA.

### **Section 34: Unlawful**

134. Section 34 defines "unlawful" as used in sections 8, 16, 20, 21, 23 and 24, as contrary to provisions of the equality enactments listed in section 33.

135. Subsection (2) excludes certain activities which would otherwise meet the definition of unlawful in subsection (1). This includes breach of the public sector duties under the SDA, RRA and the DDA and breach of the public transport provisions in Part V of the DDA.

### **Section 35: General**

136. Section 35 sets out various definitions of terms used in Part 1 of the Act. The section provides that "act" includes deliberate omission. This is the definition used in the existing equality enactments.

137. "Race" includes colour, nationality, ethnic origin and national origin. This follows the definition of racial grounds, racial group etc in section 3(1) of the RRA.

### **Section 36: Dissolution**

138. Section 36 provides for the Secretary of State, by order, to dissolve the EOC, CRE and DRC (collectively referred to in relevant subsequent sections as "the former Commissions") or to remove specified functions from them.

139. Subsection (3) requires the Secretary of State to have exercised the order-making power in subsection (1) to ensure that all the former Commissions cease to exist by 31st March 2009.

### **Section 37: Transfer of property, &c.**

140. Subsection (1) enables the Secretary of State, by an order under section 36(1), to provide for the transfer of specified property, rights and liabilities from the former Commissions to the CEHR.

141. Subsection (2) empowers the Secretary of State to direct any of the former Commissions to provide information in respect of property, rights and liabilities and in relation to the exercise of any of their functions. It also provides for the Secretary of State to direct that a former Commission should transfer specified property, rights and liabilities to a specified person. The former Commissions can also be directed to make staff, property or facilities available to the CEHR. The Secretary of State can also direct the former Commissions to stop taking certain specified action.

142. Under subsection (3) the Secretary of State may direct a former Commission to prepare a scheme for the transfer of specified property, rights and liabilities to the CEHR or to any other person.

143. In preparing a scheme to transfer property, rights and liabilities, subsection (4) provides that the former Commissions must consult with either the CEHR or the person to whom the transfer is to be made. The transfer will come into effect once approved by the Secretary of State, subject to any modifications made.

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

144. Section 38 is linked to the direction-making power in section 37. It stipulates that any direction by the Secretary of State under section 37 must be made in writing, and only following consultation with the relevant former Commission and, if appropriate, the CEHR.

145. The direction can only be varied or revoked by a further direction.

146. Subsection (2) ensures that any action taken or in the process of being taken by a former Commission immediately prior to the transfer shall have the same effect after the transfer as if done by the CEHR (including any legal action).

147. Any references to the former Commissions in agreements or other documents shall be taken as a reference to the CEHR after transfer.

148. Subsection (4) allows for property, rights and liabilities to be automatically transferred irrespective of any requirement for consent or agreement that would ordinarily apply.

149. Subsection (5) provides for the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) to apply to the transfer of staff from the former Commissions to the CEHR. The regulations safeguard the terms and conditions of staff. Subsection (5) provides that any scheme or order made under section 37 must provide that continuity of employment is preserved for any purpose relating to an employee of a former Commission. This will protect existing pension arrangements.

### **Section 39: Orders and regulations**

150. Section 39 sets conditions under which a Minister of the Crown may make secondary legislation under Part 1 of the Act. Subsection (1) requires all orders and regulations to be made by statutory instrument, and subsection (2) provides that any order or regulations may make provision generally or for specified purposes, may make different provision for different purposes, and may include transitional, incidental or consequential provisions.

151. Subsection (3) provides that certain orders and regulations are subject to the negative resolution procedure, namely:

- any order revoking a code of practice issued by the CEHR (under section 15(3));
- any order extending the range of proceedings in which the CEHR may provide assistance (under section 28);

- regulations concerning the calculation of the CEHR's expenses in legal proceedings (under section 29(5));
- any order dissolving an existing Commission (under section 36(1));
- an order dissolving the Disability Committee (under Part 5 of Schedule 1).

152. Subsection (4) lists the order-making powers which are to be subject to the affirmative resolution procedure, namely those which

- add or vary any entry in the list defining groups for the purposes of section 10 (under section 10(6));
- add, remove or vary any entry in the list of enactments in connection with which the CEHR can issue a code of practice (under section 15(6));
- add, remove or vary any entry in the list of enactments in relation to which the CEHR can provide conciliation services (under section 27(10));
- add, remove or vary any entry in the list of equality enactments (under section 33(3)).

153. These orders may make consequential amendments to any enactment, including an enactment in or under an Act of the Scottish Parliament.

#### **Section 40: Consequential amendments**

154. Section 40 gives effect to the consequential amendments set out in Schedule 3.

#### **Section 41: Transitional: the Commission**

155. Section 41 creates a transitional period during which time only selected provisions dealing with the formation of the CEHR will take effect. The transitional period starts from the commencement of any of the establishment sections (sections 1 to 3) and Schedule 1. The transitional period ends when any of the CEHR's duties and powers in sections 8 to 32 comes into effect.

156. During the transitional period, the minimum number of Commissioners will be five, instead of ten as stated in paragraph 1 of Schedule 1. This will allow the CEHR to begin making decisions, at an early stage, in respect of establishing the CEHR.

157. As soon as possible after the first appointments to the CEHR Board, the Secretary of State is required to appoint the three transitional Commissioners, as nominated by each chair of the former Commissions. The conditions of appointment of the three transitional Commissioners will mirror other Commissioners, although their positions will cease to exist not more than two years after the relevant former Commission loses its principal functions or ceases to exist.

158. The purpose of these transition appointments is to provide a link between the former Commissions and the nascent CEHR to ensure the smooth transition of functions, duties and staff from the former Commissions to the CEHR.

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

159. Under section 42, the order making power in section 36(1) can also provide for a former Commission to continue an action (referred to as a 'transitional case') it has started (for example, a consultation exercise, code of practice, guidance etc) when the relevant related function transfers to the CEHR, or for the CEHR to exercise a function of a former Commission in relation to the transitional case, as specified in the order.

160. Subsection (2) ensures that a commencement order made to bring into force a provision of Schedule 3 or 4 may include any provision applying, disapplying or modifying a provision in this

Act or any another enactment to ensure that a provision in subsection (1) relating to an order made under section 36(1) is able to take effect.

161. Subsection (3) ensures that codes of practice issued by a Commission that ceases to exist under section 36(1) or where the function that relates to a specific code has been removed shall continue to have effect until the code is revoked, by order, subject to the negative resolution procedure, by the Secretary of State, at the request of the CEHR. Any codes prepared by the former commissions can be revised by the CEHR as if they had been issued by the CEHR under section 14.

162. Any consultation exercises already undertaken by a former Commission in respect of revising or issuing a code of practice will still apply as if undertaken by the CEHR under section 14.

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

163. Section 43 enables the DRC to provide conciliation services and legal assistance and to issue codes of practice in relation to the making of disability related works in Scotland. This will ensure that the DRC can exercise these powers pending the establishment of the CEHR.

164. Subsection (1) inserts a new section 49I in the DDA, which gives the DRC powers to make provision for conciliation services to be provided in respect of disputes about the making of disability related works in Scotland.

165. Subsection (2)(a) inserts a new section 53A(1F) in the DDA. This gives the DRC powers to issue a code of practice giving practical guidance about the making of disability related works in Scotland.

166. Subsection (2)(b) inserts a new section 53A(4B) in the DDA. This requires the Secretary of State to consult the Scottish Ministers before deciding whether to approve a DRC code prepared under new section 53A(1F).

167. Subsection (2)(c) inserts a new section 53A(6B) in the DDA. This requires the Secretary of State to consult the Scottish Ministers before appointing a day for the coming into effect of a DRC code prepared under new section 53A(1F).

168. Subsection (2)(d) inserts a new section 53A(8B) in the DDA. In the case of a code issued under new section 53A(1F), this amendment disapplies the requirement in section 53A(8A) for a court, tribunal or other body to take account of a DRC code where it considers it relevant in certain proceedings, including those concerning improvements. However, the Housing (Scotland) Act 2006 provides for the Scottish courts and tribunals to take account of DRC codes on the making of disability related works.

169. Subsection (3) inserts a new section 7(1)(ab) in the DRCA. This gives the DRC powers to provide legal assistance in respect of proceedings in Scotland about the making of disability related works.

## **Part 2: Discrimination on Grounds of Religion or Belief**

### **Section 44: Religion and belief**

170. Section 44 defines what is meant by “religion or belief” for the purposes of this Act. Section 44(a) defines “religion” as “any religion”, a broad definition in line with the freedom of religion guaranteed by Article 9 of the ECHR. It includes those religions widely recognised in this country such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha'is, Zoroastrians and Jains. Equally, denominations or sects within a religion can be considered as a religion or religious belief, such as Catholics or Protestants within Christianity. The main limitation

on what constitutes a “religion” for the purposes of Article 9 of the ECHR is that it must have a clear structure and belief system.

171. Section 44(b) defines “belief” as “any religious or philosophical belief”.

172. Section 44(c) and (d) state that “lack of religion” and “lack of belief” are also covered by the phrase “religion or belief”.

#### Section 45: **Discrimination**

173. Section 45 defines discrimination on the grounds of religion or belief for the purposes of this Part. Subsections (1) & (2) define **direct discrimination**. This occurs where, on grounds of religion or belief, person A treats person B less favourably than he would treat others. For the purposes of the comparison which has to be made to determine whether one person has been treated less favourably than another, the relevant circumstances in each case must not be materially different. Subsection (1) provides that direct discrimination can occur even if it is not person B's religion or belief, but another person's religion or belief, which constitutes the grounds for discrimination. For example, it would apply if a shopkeeper refuses to serve a customer, not because of the customer's religion, but because of the religion of his friend who is in the shop with him. However, it does not apply where the less favourable treatment occurs solely on grounds of A's religion or belief — for example where A feels motivated to take particular action because of what his religion or belief requires. Additionally, subsection (1) clarifies that person A will still have unlawfully discriminated, even if they subscribe to the same religion or belief as that of the victim of discrimination. Subsection (2) indicates that discrimination can also occur even if A is mistaken as to B's religion: i.e. if person B is not of the religion presumed by person A. So if a shopkeeper refuses to serve a customer because he believes that he belongs to a certain religion, it is irrelevant whether or not the customer is actually of that religion, he could still use this Part to bring a case of religious discrimination against the shopkeeper.

174. Subsection (3) defines **indirect discrimination**. This occurs where person A applies to person B a provision, criterion or practice, which he applies equally to other people, but which puts people of person B's religion or belief at a disadvantage compared with some or all other people. Person B must also have personally suffered a disadvantage compared to some or all persons not of his religion or belief. It would not be unlawful however if the action causing disadvantage to person B could be reasonably justified by reference to matters other than B's religion or belief: for example, if it was performed to meet security or health and safety concerns, or if the efficiency of a business would be seriously jeopardised by failure to take the action complained about.

175. Subsections (4) and (5) define **victimisation**. This occurs where person A treats person B less favourably than others because person B: has brought, or intends to bring, proceedings under these religious discrimination provisions; has given or provided, or intends to give or provide, evidence or information in connection with such proceedings; or has done, or intends to do, any other thing in connection with this Part (including an allegation that a person has contravened it). Victimisation will also have taken place if person A treats person B less favourably than others because he suspects that person B has done any of these things. It will not be victimisation however, if person A's treatment of person B relates to B's making, other than in good faith, a false allegation.

#### Section 46: **Goods, facilities and services**

176. Under section 46, discrimination on the grounds of religion or belief in the provision of goods, facilities and services (by a person whose business or concern it is to provide them to the public or

a section of the public) is made unlawful. Thus it will be unlawful for such a person, on the grounds of religion or belief, to:

- refuse to provide goods, facilities or services to a person who seeks to obtain or use them;
- provide such a person with goods, facilities or services of inferior quality to those which would normally be provided to members of the public or to a section of the public to which the recipient belongs;
- provide goods, facilities or services in a different manner (for example more hostile or less courteous) than they would normally be provided to members of the public or to a section of the public to which the recipient belongs; or
- provide goods, facilities or services on different terms (for example less favourable) than those on which they would normally be provided to members of the public or to a section of the public to which the recipient belongs.

177. Subsection (2) lists examples of the types of facilities and services in relation to which discrimination under subsection (1) would be unlawful.

178. Subsection (3) ensures that, where a person exercises a skill in a particular way for the purposes of a particular religion (for example the preparation of food), he will not be compelled by this section to exercise it in a different manner for the purposes of another religion.

179. Subsection (4) ensures that this section will not apply in relation to the provision of goods, facilities and services by a person exercising a public function (these are covered in a later section) or where discrimination in the provision of goods, facilities and services is addressed by another provision of Part 2 or the Employment Equality (Religion or Belief) Regulations 2003, which prohibit discrimination on the grounds of religion or belief in the fields of employment and vocational training.

180. Subsection (5) clarifies that the provision of goods, facilities and services will be caught by this Part irrespective of whether or not the recipient has to pay for them.

#### **Section 47: Premises**

181. Section 47 covers the disposal and management of premises, making it unlawful for anyone selling or letting premises to discriminate against potential buyers or tenants because of their religion or belief and for landlords or other managers of premises to discriminate against tenants or other occupiers. This would include refusing to dispose of premises to people of a certain religion or belief; offering less generous terms to people of a certain religion or belief; or deliberately discriminating against people of a certain religion or belief on a list of those requiring housing.

182. Subsection (2) refers specifically to managers of premises (which would include landlords) and their treatment of tenants. It makes unlawful any discriminatory behaviour by a manager of premises on account of the religion or belief of a tenant or other occupier (for example a licensee). This would cover all aspects of a manager's duties towards a tenant or other occupier, including the facilities he would provide and the terms under which he would evict a person.

183. Subsection (3) relates to a situation where a person's permission is required for the disposal of someone else's interest in a property — the executor of someone's will for example — and it ensures that such permission cannot be withheld in a discriminatory way.

184. Subsection (4) restricts the operation of this section to premises in Great Britain. It does not extend to premises abroad, even if the actual sale or letting of the property takes place in this country.

**Section 48:Section 47: exceptions**

185. Section 48 creates an exception to the provisions in section 47. Subsection (1) provides that it will not be unlawful for a landlord to discriminate in who he rents out a part of his premises to, if:

- he or a near relative lives in another part of the same premises (and intends to continue to do so);
- the premises include parts that he or a near relative would share with the tenant such as a bathroom or kitchen; and
- the premises are of a size where no more than two households, or six individuals, can live in the premises in addition to the landlord or a near relative.

186. Subsection (2) defines what “near relative” means for the purposes of subsection (1).

187. Subsection (3) lists other circumstances where the provisions in section 47 will not apply, and religious discrimination in the disposal of premises will not be unlawful: namely, where a person owns an estate or interest in the premises, or occupies the whole of the premises, and does not use an estate agent to dispose of the premises and does not arrange for publication of an advertisement for the purposes of disposing of the premises.

**Section 49: Educational establishments**

188. Section 49 extends the prohibition against discrimination on the ground of religion or belief to the educational establishments listed in the Table set out in the section. This Table also indicates who is the responsible body for the purposes of this Part of the Act, in relation to each educational establishment listed. The Table does not extend to educational institutions or establishments in the further or higher education sectors as these are covered by existing secondary legislation.<sup>[57]</sup>

189. The section makes it unlawful for an educational institution to discriminate against a person in respect of the terms on which it offers him/her admission as a pupil or by refusing to accept an application to admit him/her as a pupil. Where a person is already a pupil of the establishment it is unlawful to discriminate against him/her in the way the establishment affords him/her access to any benefit, facility or service or by refusing such access. It is also unlawful to exclude a pupil or subject him/her to any other detriment. A pupil of the establishment includes any person who receives education at the establishment.

190. Subsection (2) requires that, for England and Wales, the terminology used in any of the Education Acts would have the same meaning in this Part. Subsection (3) requires that, for Scotland, the terminology used in the Education (Scotland) Act 1980 (c.44) would have the same meaning in this Part.

**Section 50:Section 49: exceptions**

191. Subsection (1) of this section exempts maintained schools which have a religious character (often referred to as faith schools) from the prohibition on discrimination in subsection (1) of the previous section (apart from two subsections: (1)(c)(iii) which makes exclusion from a school unlawful, and (1)(c)(iv) which prohibits the subjection of a pupil to any other detriment). It also exempts to the same extent independent schools if such schools have a religious ethos, schools conducted in the interest of a church or denominational body, and, in Scotland, independent schools that admit only pupils who belong — or whose parents belong — to one or more particular

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<sup>57</sup> SI 2003/1660 Employment Equality (Religion or Belief) Regulations 2003

denominations. The provision will therefore allow all such schools with a religious ethos to admit pupils or set admission terms for pupils based on the religious character or religious ethos of the school. It will also allow such schools to conduct themselves in a way which is compatible with their religious character or ethos.

192. Subsection (2) provides that the discrimination provisions in section 49 that relate to pupils' access to benefits, facilities and services will not apply to anything done in connection with the school curriculum or to acts of worship or other religious observance organised by or on behalf of an educational establishment. The reference to curriculum bears its ordinary English meaning and accordingly is to the basic curriculum as delivered in educational establishments, which includes the National Curriculum, together with elements such as Religious Education which is not part of the National Curriculum but is required by legislation to be taught in state schools. It also includes elements such as the provision of school library books, which are aimed at the delivery of a broad-based and balanced education to pupils. This particular exemption reflects the need to avoid any conflict with the existing legislative framework in respect of the content of the curriculum and religious worship. Existing education legislation allows for parents to withdraw their children from sex education and religious education, but not from other parts of the curriculum covered by subsection (2)(a). While parents can remove their children from collective worship, educational institutions are under no obligation to provide opportunities for separate worship of different religions and beliefs represented among its pupils. The exception in subsection (2)(b) maintains that position.

193. Subsection (3) provides for an order-making power by which the Secretary of State for Education and Skills can amend or repeal an exception set out in this section, or can create a new exception from the prohibitions in section 49. The subsection also permits the Secretary of State to make provision about the construction or application of the defence of objective justification to a charge of indirect discrimination. Subsection (4) specifies the conditions required for the Secretary of State to make any such order, including the need for consultation with appropriate bodies and the approval of both Houses of Parliament.

### Section 51: Local education authorities and education authorities

194. Section 51 makes unlawful discrimination by Local Education Authorities (LEAs) in England and Wales, and Education Authorities in Scotland, except in the areas listed in subsections (2), (England and Wales) and (3) (Scotland), namely:

- **The provision of schools** — section 14 of the Education Act 1996 (and, for Scotland, section 17 of the Education (Scotland) Act 1980) defines the LEA function of providing primary and secondary schools for children in a given catchment area. Section 51, subsection (2)(a) ((3)(a) for Scotland) allows discrimination in this area, to prevent an LEA being bound to provide schools for pupils of different faiths, or of no faith, in the catchment area.
- **Transport** — LEAs often provide subsidised transport for pupils of a particular (often faith) school that is located outside the local area although it is not the nearest suitable school. This may be because a parent wishes a child to attend a school of their own faith, or because the nearest school has a religious ethos which a parent thinks is inappropriate for their child. Subsection (2)(b) ((3)(b) for Scotland) allows discrimination in this area so that LEAs do not have to provide subsidised transport for all children attending faith or non-faith schools.
- **General responsibilities** — section 13 of the Education Act 1996 (and equivalent provision in legislation for education in Scotland) describes the responsibilities incumbent on LEAs

to contribute to the spiritual, moral, mental and physical development of the community through their provision of education to children. Section 51, subsection (2)(c) ((3)(c) for Scotland) allows discrimination in the exercise of these responsibilities in so far as they relate to the two previous points: provision of schools and transport.

195. Subsection (2)(d) ((3)(e) for Scotland) refers to the Table featured in section 49. It means that section 51(1) does not apply to discrimination by LEAs and EAs in the exercising of their specific functions as responsible bodies for the educational establishments listed in the Table, as section 50 covers them in that respect.

### Section 52: **Public authorities: general**

196. Subsection (1) prohibits discrimination on grounds of religion or belief in the exercise of the functions of all public authorities.

197. Subsection (2) defines “public authority” as including any person who has functions of a public nature and “function” as any function of a public nature.

198. Exceptions to these provisions are set out in subsections (3) and (4). Subsection (3) follows the pattern of similar legislation and excepts a list of bodies, such as the Houses of Parliament, the Security Services and GCHQ.

199. Subsections (4)(a) to (e) exclude the exercise of judicial functions and legislative processes (including those of the General Synod of the Church of England). Subsection (4)(f) excepts a decision to prevent someone entering the country, or to deport someone from the country, where this decision is made on the grounds that it is conducive to the public good, or that it is undesirable to permit the person to remain in the United Kingdom. Subsection (4)(g) extends the exception on immigration matters to cover people entering the country to provide services in connection with a religion or belief, such as a minister or clergyman. This exception is required because the immigration services necessarily discriminate against certain religious groups for the purposes of recognising people as entering the country to provide religious services.

200. Subsection (4)(j) excepts a decision related to criminal proceedings, where a decision has been taken not to prosecute.

201. Subsections (4)(k) (i), (iii), (v) and (vi) except from the prohibition on discrimination (insofar as it is not excepted elsewhere), the exercise of any public functions in a number of areas that relate to faith and non-faith educational institutions. Those areas are:

- **The Curriculum** — the prohibitions in this section will not apply to action in relation to the school curriculum. See the note for section 50(2)(a).
- **Collective worship** — the prohibitions in this section will not apply to acts of worship or other religious observance organised by or on behalf of an educational institution. See the note for section 50(2)(b).
- **Transport** — an LEA or other responsible body can provide subsidised transport to a faith or non-faith school for those pupils who live a distance away and whose parents wish them to attend such a school for reasons related to belief or non-belief. They will not be obliged by this legislation to provide a similar service for pupils who choose for other reasons to attend a school which is not close to their home.
- **Establishment, alteration or closure** — a public authority will not have to answer discrimination charges as a result of its decision to establish, alter or close any particular school.

202. Subsections (4)(k)(ii) and (iv) except further exercises of public functions from the prohibition on discrimination in this section, but only in respect of those schools which have a religious ethos. Those functions are:

- **Admissions** — faith schools can operate a selective admissions policy, prioritising those children of a specific religion or belief.
- **Governing bodies** — religion or belief can be legitimate criteria in the selection of governors for schools with a religious ethos, and places on the governing body may be restricted to or reserved for people of that religion or belief.

203. Subsection (4)(l) excepts from the effect of this section the exercising of the power under section 2 of the Local Government Act 2000 which provides for local authorities to promote the economic, social and environmental well-being of their area.

204. Subsection 4(m) excepts from this section actions which are provided for by the provisions in the Employment Equality (Religion or Belief) Regulations 2003 or by another provision of this Part. Where actions would be unlawful by virtue of section 46 but for an express exemption, those actions are not excepted from section 50 by subsection (4)(m). This ensures that goods, facilities and services provided by public authorities will be covered by section 50 if they are exempted under section 46 but not covered by any of the exemptions in relation to section 51.

205. When the court is hearing a case brought in respect of section 52, it cannot grant an injunction unless it is satisfied that to do so will not prejudice any criminal proceedings or a criminal investigation. Similarly, a court must stay or desist proceedings brought in respect of section 52 when there is a risk that criminal proceedings or a criminal investigation could be prejudiced by the case continuing.

206. Subsection (6) refers to section 70(4). It relates to the answers that a person, accused of an unlawful act under this Part, may give to a questionnaire prescribed by the Secretary of State, and the inferences that can be drawn from a failure to answer, or from an evasive or equivocal answer. Under subsection (6), inferences cannot be drawn from an absent or evasive answer if:

- the person questioned reasonably asserts that there was a risk of prejudicing criminal proceedings or a criminal investigation, or of revealing the reason for not instituting or not continuing criminal proceedings; or
- the reply is of a kind, or is given or withheld in circumstances specified, in an order by the Secretary of State.

### Section 53: Discriminatory practices

207. Section 53 makes it unlawful to operate a practice which results in unlawful discrimination, or which is likely to result in unlawful discrimination if applied to persons of any religion or belief. Subsection (2) also makes it unlawful to adopt or maintain a practice or arrangement which has the potential to result in a practice which is unlawful under this section.

208. Subsection (3) makes clear that the unlawful discrimination referred to in this section is that which is unlawful under the preceding provisions of this Part.

209. Subsection (4) provides that the CEHR is to be the only body entitled to bring proceedings in respect of discriminatory practices, and must do so by means of its powers in sections 20 to 24 of the Act (investigations, unlawful act notices and action plans, agreements and applications to court to enforce these).

### Section 54: Discriminatory advertisements

210. Section 54 makes it unlawful to publish or cause to be published an advertisement which indicates an intention to discriminate unlawfully. For example an advertisement for a car for sale in which it was expressed that persons of a certain religion would not be welcome to respond. The unlawful discrimination referred to in this section is that which is unlawful under the preceding provisions of sections 46 to 52.

211. Subsection (3) makes it clear that only the CEHR is to be entitled to bring proceedings in respect of unlawful advertisements and must do so in accordance with its powers set out in section 25. Subsection (4) provides a defence for the publisher of an unlawful advertisement, where it was reasonable for him to rely on a statement by the person causing the advertisement to be published, that the prohibition in subsection (1) would not apply.

#### **Section 55: Instructing or causing discrimination**

212. Section 55 makes it unlawful to instruct, cause or induce, or attempt to cause or induce, another person to discriminate unlawfully.

213. Subsection (5) makes clear that the discrimination referred to in this section is that under earlier sections in this Part.

214. Subsection (6) provides that only the CEHR is entitled to bring proceedings in respect of a contravention of this section and must do so in accordance with its powers set out in section 25.

#### **Section 56: Statutory requirements**

215. Section 56 provides a general exception from this Part for anything done for the purpose of complying with legislation made by Parliament, Ministers or other bodies in Great Britain empowered to make legislation.

#### **Section 57: Organisations relating to religion or belief**

216. Section 57 creates an exception from this Part for organisations whose purpose is to practice, advance or teach a religion or belief, to enable people of a certain religion or belief to benefit from or engage in religious activities, or to improve relations, or maintain good relations, between people of different religions or beliefs. This does not include an organisation whose sole or main purpose is commercial.

217. Subsection (3) provides that it is not unlawful under this Part for an organisation, or anyone acting on behalf of or under the auspices of an organisation;

- to restrict membership of the organisation;
- to restrict participation in activities undertaken by the organisation or on its behalf or under its auspices;
- to restrict the provision of goods, facilities and services in the course of its activities or on its behalf or under its auspices; or
- to restrict the use or disposal of premises.

218. Subsection (4) provides that it is not unlawful under this section for a minister of religion (as defined in subsection (6)), acting in connection with an organisation to which this section relates:

- to restrict participation in activities carried on in the performance of his functions in relation to that organisation; or
- to restrict the provision of goods, facilities or services in the course of such activities,

219. Subsection (5) limits the restrictions described in subsections (3) and (4) to those imposed (a) by reason of or on the grounds of the organisation's purposes, or (b) in order to avoid causing offence on grounds of that organisation's religion or belief, to persons of that religion or belief.

#### **Section 58: Charities relating to religion or belief**

220. Section 58 provides an exception from this Part, where benefits are conferred on persons of a particular religion or belief in pursuance of a charitable instrument, and where restricting the benefit in this way is imposed by reason of or on the grounds of the provisions of the charitable instrument.

221. Subsection (2) creates an exception from the provisions of Part 2 for the Charity Commissioners (and, in Scotland, the Office of the Scottish Charity Regulator), which exempts these regulators from the provisions of Part 2 when they are exercising a function in relation to a charity in a manner which appears to them expedient in the interests of the charity.

#### **Section 59: Faith schools, etc**

222. Section 59 provides that it will not be unlawful under this Part for schools with a religious ethos to restrict the provision of goods, facilities or services or to restrict the use or disposal of their premises, to ensure that the purpose for which the premises would be used does not conflict with the tenets of the school's faith (or faiths).

223. Subsection (3) provides that references in this Part to the provision of facilities or services (for example in section 46) do not apply to the provision of educational facilities and services to students attending an educational institution.

#### **Section 60: Membership requirement**

224. Section 60 creates an exception from this Part, for charities that ask members, or prospective members, to assert their acceptance of a religion or belief as a requirement of membership of the charity.

225. Subsection (2) provides that this exception is only valid for charities which first imposed this requirement before 18 May 2005 and have continued to do so ever since.

#### **Section 61: Education, training and welfare**

226. Section 61 provides an exception from Part 2 for anything done to meet the special needs of people of particular religions or beliefs in relation to their education, training or welfare, or the provision of ancillary benefits in connection with meeting such needs.

#### **Section 62: Care within family**

227. Section 62 provides an exception from Part 2 where a person takes into his home, and treats as a member of his family, a person requiring a special degree of care and attention. An example would be the fostering of a child. The welfare of the child would take precedence over any question of religious discrimination.

#### **Section 63: National security**

228. Anything done for the purpose of safeguarding national security will be exempt from the prohibitions introduced by this Part, providing that the national security requirement justifies the action in question.

#### **Section 64: Amendment of exceptions**

229. Section 64 provides an order-making power by which the Secretary of State can add a new exception to the prohibitions against public authorities (section 52(1)) or change an existing exception in Part 2. Subsection (2) requires that the Secretary of State consult with the CEHR before making such an order, which is subject to the affirmative resolution procedure.

### **Section 65: Restriction of proceedings**

230. Section 65 provides that proceedings in respect of an act which will be unlawful under this Part, can only be brought in accordance with the provisions in this Act. This restriction will not however, prevent an application for judicial review; proceedings under any of the Immigration Acts, or the Special Immigration Appeals Commission Act 1997; or, in Scotland, the Court of Session exercising its jurisdiction with regard to an order or determination.

### **Section 66: Claim of unlawful action**

231. Section 66 relates to the mechanism for bringing a claim against someone in respect of an act made unlawful by this Part.

232. The claim is to be brought in a county court (in Scotland, a sheriff court) by way of proceedings in tort (or in Scotland for reparation) for breach of statutory duty.

233. In England and Wales, where a claim is brought against a local education authority or the responsible body of an educational establishment (as listed in the Table in section 49) by virtue of section 49 or 51 the claimant must give written notice to the Secretary of State.

234. In Scotland where a claim is brought against an education authority or the responsible body of an educational establishment (as listed in the Table in section 49) by virtue of section 49 or 51 the claimant must give written notice to the Scottish Ministers.

235. If the claimant provides the court with evidence from which the court could conclude, in the absence of a reasonable alternative explanation, that an unlawful act has been committed, the court is to assume that the act was unlawful unless the respondent can prove otherwise.

### **Section 67: Immigration**

236. Section 67 provides that proceedings may not be brought under section 66 in a county or sheriff court in respect of an act of a public authority, if the lawfulness of the act could be raised in immigration proceedings — that is, proceedings under any of the Immigration Acts or the Special Immigration Appeals Commission Act 1997 (c.68).

237. If, during immigration proceedings, a court or tribunal finds that an unlawful act has been committed by a public authority under section 52, then a county or sheriff court hearing proceedings, as per section 68, must accept that finding.

### **Section 68: Remedies**

238. Section 68 sets out the remedies available to a county court (the sheriff in Scotland) hearing proceedings as described under section 66:

- The court can, in addition to any remedy in tort, grant any remedy that the High Court (Court of Session in Scotland) can grant in proceedings for judicial review.
- The court cannot award damages to a claimant (a pursuer in Scotland) in a case of indirect discrimination (see section 45(3)), if the respondent (the defender in Scotland) proves that there was no intention to treat the claimant unfavourably on grounds of religion or belief.
- The court can award damages, by way of compensation, for injury to feelings.

- When the court is hearing a case brought in respect of section 52, it cannot grant an injunction unless it is satisfied that to do so will not prejudice any criminal proceedings or a criminal investigation. Similarly, a court must stay or desist proceedings brought in respect of section 52 when there is a risk that criminal proceedings or a criminal investigation could be prejudiced by the case continuing.

### Section 69: **Timing**

239. Proceedings under section 66, must be brought either within six months of the alleged unlawful act, or if later, with the permission of the court.

240. Subsection (2) specifies that for immigration cases — that is, proceedings brought under any of the Immigration Acts or the Special Immigration Appeals Commission Act 1997 (c.68) — the six month period starts from the first possible date that proceedings could begin under section 66.

### Section 70: **Information**

241. Section 70 indicates the way that information can be obtained by someone (a “claimant or potential claimant” in England and Wales and a “pursuer or potential pursuer” in Scotland), from the person who he thinks has acted unlawfully against him under this Part (a “respondent or potential respondent” in England and Wales and a “defender or potential defender” in Scotland), so as to assist in his decision about whether or not to take proceedings.

242. Subsection (2) refers to the question forms prescribed by the Secretary of State which a claimant (or pursuer) can use to question a respondent (or defender), and by which the respondent (or defender) can reply.

243. Under subsection (3), both the claimant's (or pursuer's) questions and the respondent's (or defender's) answers, will only be admissible as evidence in a case brought, if the questions were put within six months of the alleged unlawful act taking place and in a manner prescribed by an order of the Secretary of State (subject to negative resolution). The Secretary of State can amend that time period by an order, which is subject to the negative resolution procedure.

244. Under subsection (4), a court may draw an inference from a respondent's failure to reply within eight weeks, at all or unequivocally, to questions put to him by a potential claimant. See section 52(6) for exceptions to this in relation to questions which could affect criminal investigations or prosecutions.

### Section 71: **National security**

245. Section 71 provides for rules of court to make provision permitting a court to take various forms of action which are considered expedient in the interests of national security. This is equivalent to section 67A of the Race Relations Act 1976 (as inserted by the Race Relations (Amendment) Act 2000 (c. 34)). The power in this section will make it possible to make rules enabling the court, when considering proceedings brought under this Part of the Act:

- to exclude the claimant, the claimant's representatives or any assessors from part or all of the proceedings;
- to permit a claimant or representative who has been excluded to make a statement prior to any part of the proceedings from which they are excluded; and
- to ensure that part or all of the reasons for a decision are kept secret.

246. Where the claimant or representatives are excluded from part or all of proceedings under such rules, this section provides for the Attorney General or Advocate General for Scotland to appoint a special advocate to represent the interests of the claimant.

**Section 72: Validity and revision of contracts**

247. Section 72 provides that the term of a contract will be void where its inclusion would make the contract unlawful under this Part, where it is included in furtherance of an act that is unlawful under this Part, or where it provides for the doing of an act which would be unlawful under this Part.

248. Subsection (2) protects a person who is party to a contract and who would have been the victim of discrimination as a result of a term of that contract. It provides that the term will not be void in such a situation, as this would further disadvantage the person. However the offending term would not be enforceable against that person.

249. Under Subsection (3), a term purporting to exclude or limit a provision of Part 2 of the Act will be unenforceable by a party in whose favour it would operate.

250. Subsections (5) and (6) allow the courts to resolve disputes by removing or modifying a term to which subsection (1) applies.

**Section 73: Aiding unlawful acts**

251. Section 73 makes it unlawful knowingly to help someone (whether or not as his employee or agent) to do an act that is unlawful under this Part. Subsection (2) makes it an offence (punishable by a fine not exceeding level 5 on the standard scale) when requesting assistance from another person, to falsely state that a proposed act is lawful under Part 2.

**Section 74: Employers' and principals' liability**

252. Section 74 has the effect that an employer is liable for the acts of his employees, whether or not he knew or approved of those acts. Similarly, a principal will be liable for the acts of his agent.

253. An employer will not be liable if he can prove that he took all reasonable steps to ensure that the employee could not perform the discriminatory act.

254. This section will not apply to the offence of making a false statement in relation to a discriminatory advertisement under section 54.

**Section 75: Police, &c.**

255. Section 75 applies to members of police forces under the Police Act 1996 (c.16) or the Police (Scotland) Act 1967 (c.77), and special constables and police cadets appointed in accordance with either of those Acts.

256. Under subsection (2), such a person is treated as an employee of his chief officer of police for the purposes of this Part, and anything done by him in the course of his duties is to be treated as done in the course of that employment.

257. Under subsection (3), compensation, costs or expenses awarded against or incurred by a chief officer of police, in proceedings brought against him under this Part, will be paid out of the police fund. The police fund will also provide for any sums required by a chief officer of police for the settlement of a claim made against him under this Part.

258. Subsection (5) provides that a reference to the Equality Act will be included in the list of discrimination legislation at section 57 of the Serious Organised Crime and Police Act 2005 (c. 15). This list specifies the anti-discrimination legislation which applies to the Serious Organised Crime Agency.

**Section 76: Indirect provision of benefit, &c.**

259. Section 76 means that someone who has the power to facilitate access to a service, facility or benefit of any kind is subject to the prohibition in this Part as much as the actual provider of these things. An example would be a social worker who facilitates access to various counselling or welfare services. This provision would make it unlawful for such a person to refuse to facilitate this access to a particular family because of their religion or belief.

**Section 77: Employment Equality Regulations**

260. Section 77 is intended to ensure consistency, with regard to the definition of “religion or belief”, between this Part and the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660). It remains in accordance with the wording in Council Directive 2000/78/EC of 27th November 2000 establishing a general framework for equal treatment in employment, as implemented by those regulations.

**Section 78: Crown application**

261. Section 78 provides that the provisions of Part 2 are to apply to acts done on behalf of the Crown as they apply to acts done by a private person. In addition, section 52 binds the Crown whatever the nature of the acts. Subsection (3) indicates that acts are to be treated as done on behalf of the Crown, if done by — or on behalf of:

- a government minister or department (or, in Scotland, Scottish Ministers);
- a statutory body acting on behalf of the Crown;
- a statutory office holder acting on behalf of the Crown; or
- a statutory office holder in the Scottish Administration (within the meaning of section 126(7) of the Scotland Act 1998 (c.46)).

262. Subsections (4) and (5) provide that proceedings under the provisions of this Part cannot be brought against the Queen acting in her personal or private capacity.

**Section 79: Interpretation**

263. Subsection (1) defines “charity” for the purpose of this Part. It has the meaning given by the Charities Act 2005 and, for Scotland, it means a recognised body within the meaning given by section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40).

264. Subsection (2) indicates that in this Part, references to either action or refusal include a reference to deliberate omission.

**Section 80: Territorial application**

265. The provisions of this Part apply to anything done:

- in Great Britain; or
- on a British ship (a ship registered in Great Britain or owned or used for Crown purposes), hovercraft (a hovercraft registered in Great Britain), or aircraft (and in relation to the provision of facilities to travel on these).

266. Under subsection (3), section 52, which includes the function of granting someone entry into the UK, applies to anything done inside or outside the UK.

267. Under subsection (5), the provisions of this Part will not apply to anything done in or over a country other than the UK, or in or over the territorial waters of a country other than the UK, if it is done to comply with the law of that country.

### **Part 3: Discrimination on Grounds of Sexual Orientation**

#### **Section 81: Regulations**

268. Section 81 provides a power under which the Secretary of State can make regulations that prohibit sexual orientation discrimination (including indirect discrimination, victimisation and harassment). The regulations may make provision similar to Part 2, which means that the regulations may prohibit — either generally or in specified circumstances — discrimination in the provision of goods, facilities and services; the exercise of public functions; education and the disposal of premises.

269. Section 81 also makes clear that the regulations will be able to prohibit discriminatory advertisements and instructing or causing discrimination or harassment. It will also be possible to provide general or specific exceptions to the prohibition on sexual orientation discrimination in the areas covered by the Regulations.

270. The regulations will be subject to the affirmative procedure. They will set out the remedies available to those who consider that their rights have been breached and otherwise provide for enforcement. Regulations will be able to allow individuals to bring cases via the county courts in England and the sheriff court in Scotland. Judicial review could also be made available in appropriate cases. The regulations will also be able to create criminal offences corresponding to those in other enactments relating to discrimination or equality and with the same maximum penalties.

#### **Section 82: Northern Ireland Regulations**

271. Section 82 provides a power under which the Office of the First Minister and deputy First Minister can make regulations that prohibit sexual orientation discrimination (including indirect discrimination, victimisation and harassment). The regulations may make provision similar to Part 3 of the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)), which means that the regulations may prohibit — either generally or in specified circumstances — discrimination in the provision of goods, facilities and services; the exercise of public functions; education and the disposal of premises.

272. Section 82 also makes clear that the regulations will be able to prohibit discriminatory advertisements and instructing or causing discrimination or harassment. It will also be possible to provide general or specific exceptions to the prohibition on sexual orientation discrimination in the areas covered by the regulations.

273. The regulations will be subject to the affirmative procedure in the Northern Ireland Assembly. They will set out the remedies available to those who consider that their rights have been breached and otherwise provide for enforcement. Regulations will be able to allow individuals to bring cases via the county courts in Northern Ireland. Judicial review could also be made available in appropriate cases. The regulations will also be able to create criminal offences corresponding to those in other enactments relating to discrimination or equality and with the same maximum penalties.

### **Part 4: Public Functions**

#### **Section 83: Prohibition of discrimination**

274. Section 83 inserts a new section 21A into Part III of the SDA. New section 21A will make it unlawful for a public authority to discriminate or commit acts of harassment on grounds of sex when carrying out its functions. In practice this will mean that Ministers, local authorities, the police, other governmental organisations and private bodies which have functions of a public nature are not permitted to discriminate or harass on the grounds of a person's sex when exercising their

public functions. This prohibition of sex discrimination in public functions (“the prohibition”) will bring the SDA into line with section 19B of the RRA. The Disability Discrimination Act 2005 also similarly extends the DDA by inserting a new section 21B into the DDA.

275. An individual who has been discriminated against contrary to new section 21A will be able to bring proceedings in a county court (or a sheriff court in Scotland) in accordance with section 66 of the SDA.

276. *New*subsection 21A(4) and the table of exceptions in subsection (9) set out the functions and actions which are excluded from the general prohibition. The new subsection (4) includes a provision that none of these exceptions permits anything prohibited by European Community law on discrimination. *New*subsection 21A(3) excludes the Houses of Parliament and the intelligence services from the requirement not to discriminate.

277. The exempted functions and actions in new subsection 21A(4) and the Table of Exceptions in new subsection 21A(9) include:

- acts related to the preparation and making of primary and secondary legislation made by a Minister of the Crown, the Scottish Ministers, the National Assembly for Wales, the Privy Council or the General Synod of the Church of England;
- acts which are necessary to comply with a statutory requirement;
- judicial functions and acts done on behalf of or on the instructions of a person exercising a judicial function — for example, complying with a court order;
- decisions related to criminal proceedings, where a decision has been taken not to prosecute;
- services only required by one sex, services more beneficially provided on a single-sex basis and acts done to compensate for disadvantage related to sex; and
- the Charity Commissioners for England and Wales (or, in Scotland, the holder of the Office of Scottish Charity Regulator) when they are exercising their functions in relation to such charities which, under existing exemptions in section 43 of the SDA, are allowed to discriminate on grounds of sex.

278. The exceptions for services that are provided separately (items 8 to 12 in the Table of Exceptions at new subsection 21A(9)) allow public authorities to provide services only to one sex, or to provide separate or different services for men and women when the circumstances or need are such that it would not be reasonably practicable to do otherwise.

279. New section 21A also contains provisions to prevent there being any overlap between the new provision and the existing provisions of the SDA.

280. An order-making power in new subsection 21A(5) allows the Secretary of State to make additional exemptions after consultation with the CEHR and subject to affirmative resolution of each House of Parliament. (The consultation will be with the EOC until the CEHR takes on responsibility for sex discrimination issues and thereafter with the CEHR.)

281. *New*subsections 21A(6), (7) and (8) introduce changes to the enforcement provisions in section 66 of the SDA to ensure that proceedings brought under new section 21A will not prejudice the outcome of a related criminal investigation or criminal proceeding. They also amend the questionnaire procedure in section 74 of the SDA, so that a court will not be able to draw inferences from a failure to respond to a questionnaire if that was necessary to avoid prejudice to a criminal investigation or criminal proceedings.

#### **Section 84: General duty to promote equality, &c.**

282. Section 84 amends the SDA by inserting into that Act *new* section 76A. The effect of this provision is to impose on public authorities a duty to promote equality of opportunity that is similar to the duty imposed by section 71 of the RRA (as substituted by section 2 of the Race Relations (Amendment) Act 2000 (RRAA)) and the duty imposed by section 3 of the Disability Discrimination Act 2005 which inserts new section 49A into the DDA.

283. New subsection 76A(1) imposes a general duty on public authorities when carrying out their public functions, either as employers or service providers, to have due regard to the need to eliminate unlawful discrimination and harassment, and to promote equality of opportunity between men and women. This general duty will be enforceable through judicial review, rather than creating a cause of action for individuals in private law.

284. New subsection 76A(2) extends the definition of a public authority to include any person to the extent that he has functions of a public nature. This would include, for example, a private security firm contracted to provide a public function, for instance, to run a prison. It is only the public functions of private companies that are covered. Core public bodies like government departments, local authorities, the police and other governmental bodies are all public authorities. This subsection also confirms that the duty on public authorities to eliminate unlawful discrimination also covers contravention of the Equal Pay Act 1970.

285. New subsection 76A(3) excludes certain bodies from the definition of public authority, in particular the Houses of Parliament, Scottish Parliament, General Synod of the Church of England and the intelligence services. There is also a power for the Secretary of State, after consulting the Commission, to extend this list of bodies by order (subject to the negative resolution procedure).

286. Subsection 76A(4) exempts certain functions from the scope of the general duty: functions in connection with proceedings in the Houses of Parliament and the Scottish Parliament (though not the Scottish Parliamentary Corporate Body) and the exercise of judicial and related functions. There is also a power for the Secretary of State, after consulting the Commission, to extend this list of functions by order, also subject to the negative resolution procedure.

287. New subsection 76A(5) confirms that the general duty to promote equality of opportunity between men and women does not override any exception or limitation in law which permits sex discrimination.

### **Section 85: Specific duties**

288. Section 85 inserts new sections 76B and 76C into the SDA.

289. New section 76B empowers the Secretary of State to impose by order, specific duties on public authorities, other than certain Scottish bodies, to ensure the better performance by them of the general duty in new section 76A(1). This order will be subject to the negative resolution procedure. The Secretary of State is obliged to consult the Commission before making such an order. The provision does not confer rights on individuals to complain about a failure by a public authority to comply with a specific duty.

290. In respect of specific duties being imposed in Wales, new subsection 76B(3) confirms that the Secretary of State must (i) consult the National Assembly for Wales before imposing specific duties on any person exercising functions in relation to Wales; and (ii) gain the consent of the National Assembly for Wales before imposing specific duties on a person all of whose functions are public functions in relation to Wales.

291. New section 76C includes provisions empowering Scottish Ministers to set specific duties in respect of certain Scottish bodies, to ensure the better performance by them of the general duty. In the case of cross-border public authorities (within the meaning of section 88(5) of the Scotland Act 1998), the Secretary of State may impose, by order, duties in respect of the functions which are not Scottish functions (i.e. those which are not devolved), and the Scottish Ministers may impose, by order, duties in respect of their Scottish functions (i.e. those which are devolved). New section 76C(6) also requires that, before placing cross-border public authorities under specific duties, the Secretary of State must consult Scottish Ministers. Similarly, new section 76C(7) requires that, before placing cross-border public authorities under specific duties, the Scottish Ministers must consult the Secretary of State.

292. New section 76D sets out the framework for the enforcement of specific duties imposed by order under 76B(1) or 76C. The Commission may serve a compliance notice on a public authority where it is satisfied that the authority is not complying with any specific duty. A compliance notice will require the public authority to (i) comply with the duty and (ii) inform the Commission within 28 days (beginning with the date on which the notice is given), of action it intends to comply with the duty. The notice could also require the public authority to provide the CEHR with information additionally specified in the notice in order to verify that the duty has or is being complied with. This new section also enables the Commission to apply to a county court for an order to require the public authority to comply with the notice, if the Commission thinks that the public authority has not done so.

#### **Section 86: Codes of practice**

293. Section 86 inserts a new section 76E into the SDA

294. New Section 76E gives the Commission the power to draw up and issue a code of practice about performance of both the general duty in section 84 and the specific duties to be imposed by section 85. There is also a requirement for the Secretary of State to consult Scottish Ministers and the National Assembly for Wales before approving a draft code or commencing a code. Recognising that codes of practice on the gender duty will go beyond the employment field, provision is made in this section for a code of practice on the gender duty to be admissible in evidence in relevant proceedings before all courts and tribunals.

295. In respect of sections 84 and 85 (which introduce new sections 76A to 76D into the SDA), before the CEHR becomes operational, any requirement for the Secretary of State to consult the Commission will mean a requirement to consult the EOC. The EOC will also have responsibility for enforcing the general duty and the specific duties to be imposed by secondary legislation. During this interim period, the EOC will additionally be responsible for preparing and issuing codes of practice under new section 76E in relation to the general duty and the specific duties. The procedural requirements applying to codes of practice prepared under section 56A of the SDA are to apply with the adjustment made by section 86 to the issuing of codes whilst the EOC is responsible for issuing the codes of practice on the gender duty.

#### **Section 87: National Security**

296. Section 87 inserts a new section 66B into the SDA.

297. New Section 66B allows for county and sheriff court rules to make provision permitting a court to take various forms of action which are considered expedient in the interests of national security. This is equivalent to section 67A of the RRA which was introduced by the RRAA. The

power in section 66B will allow rules to be made to allow the court, when considering proceedings brought under this part of the SDA:

- to exclude the claimant, the claimant's representatives or any assessors from part or all of the proceedings;
- to permit the claimant or representative to make a statement prior to the part of the proceedings from which they are excluded; and
- to keep part or all of the reasons for a decision secret.

298. Where the claimant or representatives are excluded from part or all of proceedings under such rules, *new*section 66B(2) allows the Attorney General or Advocate General for Scotland to appoint a special advocate to represent the interests of the claimant.

#### **Section 88: General duty: exceptions**

299. Section 88 makes a minor consequential amendment to the DDA.

300. Section 49C(4) of the DDA permits any or all of subsections (a) to (d) of the general duty to promote equality for disabled people to be disappplied from prescribed acts. This amendment would ensure that, should it be necessary to disapply subsections (e) or (f) of the duty, this could also be done — for example, to clarify the situation where there was doubt as to whether an act was covered or not, or to exclude particular types of act from those duties where there would be good policy reasons as to why they should not be covered.

#### **Section 89: National Security**

301. Section 89 inserts a new section 59A into the DDA that is analogous to new section 66B of the SDA, inserted by section 87.

#### **Section 90: National Security**

302. Section 90 makes an amendment to the equivalent provision in the RRA to ensure that a special advocate may be appointed where either the claimant or the representatives or both are excluded. As currently drafted, the RRA provision only allows for the appointment of a special advocate where both the claimant and the representatives are excluded.

### **Part 5: General**

#### **Section 91: Repeals**

303. Section 91 gives effect to the repeals set out in Schedule 4.

#### **Section 92: Crown application**

304. Section 92 provides that Ministers of the Crown, government departments and other agents of the Crown are bound by the Act. The CEHR will therefore be able, *inter alia*, to investigate Government and other public bodies and use its powers to require them to give information. This Act will however not affect Her Majesty in Her private capacity or in right of Her Duchy of Lancaster or the Duke of Cornwall.

#### **Schedule 1: The Commission: Constitution, &c.**

305. Schedule 1 sets out provisions relating to: the constitution of the CEHR; its members (the Commissioners) and their tenure of office; the tenure of office of the Chairman and the deputy Chairman; regulation of its proceedings; appointment of its Chief Executive and other staff; appointment of its Investigating Commissioners; its powers of delegation and committees (including

the Scotland, Wales, and Disability Committees); preparation of its annual report; remuneration of Commissioners and staff; its financial arrangements; and its status. In particular:

#### Schedule 1, Part 1: **Constitution**

306. Paragraph 1(1) establishes that there shall be no less than 10, and no more than 15, members of the CEHR, who shall be known as Commissioners, and who shall be appointed by the Secretary of State. In addition to these Commissioners, the chief executive of the CEHR will also be a Commissioner by virtue of holding that office.

307. Paragraph 2(1) requires that the Secretary of State appoint only individuals who have knowledge or experience of a relevant matter, or who are suitable for some other special reason. When appointing Commissioners, the Secretary of State is required to have regard to the desirability of the Commissioners together having knowledge and experience of the relevant matters.

308. Paragraph 2(2) sets out the relevant matters to which the appointments refer. This includes the Commission's functions (including its work with business, employee organisations, and the public sector), in particular on discrimination and human rights.

309. Paragraph 2(3)(a) requires the Secretary of State to appoint at least one Commissioner who is or has been a disabled person.

310. Paragraph 2(3)(b) requires the Secretary of State to appoint, with the consent of Scottish Ministers, one Commissioner who knows about conditions in Scotland.

311. Paragraph 2(3)(c) requires the Secretary of State to appoint, with the consent of the National Assembly for Wales, one Commissioner who knows about conditions in Wales.

312. Paragraph 3 provides that a Commissioner can be appointed for a specified period of between two and five years, and that reappointment can be made once this term has expired. It requires a Commissioner to give notice in writing to the Secretary of State if he or she wishes to resign, and enables the Secretary of State to dismiss any Commissioner who is unable, unfit or unwilling to fulfil his or her functions.

313. Paragraph 4 provides for the terms of appointment of the Chairman and deputy Chairman. It sets out the functions of the Chairman, and deputy Chairman, and the procedures necessary should they vacate office or resign their post. It also specifies that the chief executive cannot be appointed Chairman or deputy Chairman of the CEHR.

#### Schedule 1, Part 2: **Proceedings**

314. Paragraphs 5 and 6 allow the CEHR to regulate its own proceedings. A minimum of five Commissioners must be present when the procedure regarding quorum for meetings is established.

315. Paragraphs 7 and 8 require the CEHR to appoint, with the approval of the Secretary of State, a chief executive and it may appoint other staff as appropriate. The Secretary of State must also approve the overall number of staff and terms and conditions of appointment.

316. Paragraph 9 permits the CEHR to also appoint an Investigating Commissioner to carry out an investigation, other enforcement action, and inquiries.

317. The CEHR may delegate any of its functions to another Commissioner or to staff. The CEHR can also establish advisory or decision-making committees, which can be made up of Commissioners, staff and external members. Decision-making committees must be chaired by a Commissioner and can have any function delegated to them.

318. Paragraphs 16 to 31 set out the requirements for the CEHR to establish a Scotland Committee and a Wales Committee. Each Committee shall be chaired by the relevant Commissioner with knowledge of conditions in Scotland or Wales. The Committees must be established before any of the general duties (sections 8 to 12) come into force. The Committees have an advisory role in respect of the CEHR's functions insofar as they affect Scotland and Wales respectively. The CEHR is obliged to consult the Scotland or Wales Committee before undertaking a function that, in its opinion, may affect people in Scotland and Wales respectively.

319. The Committees have delegated decision-making powers in respect of the activities listed in section 13 in so far as the activities, in the opinion of the CEHR, affect Scotland and Wales. They will also have delegated power under section 11(2)(c) and section 11(2)(d) to provide advice to the devolved administrations in respect of law which, in the opinion of the CEHR, affects only Scotland or Wales respectively. The CEHR is unable, therefore, to undertake these activities to the extent that they are delegated to the Committees. The Scotland and Wales Committees are not able to exercise these decision-making powers where they have been delegated to the Disability Committee under Part 5 of Schedule 1: in those circumstances, the Disability Committee is obliged by paragraph 52(4) and (5) to consult the Scotland or Wales Committees before exercising the powers.

320. Notwithstanding the delegation of section 13, the CEHR may provide advice or guidance on a GB-wide basis, such as, for example, through a helpline or the publication of advice leaflets or contract with another party to provide this service.

321. Paragraph 32 requires the CEHR to prepare and publish an annual report, including in relation to its activities in Scotland and Wales, and submit it to the Secretary of State. The Secretary of State must lay the annual report before Parliament. The annual report must also be sent to the Scottish Parliament and the National Assembly for Wales.

322. Paragraphs 33 and 34 allow the CEHR to continue proceedings irrespective of whether there is an outstanding vacancy (including the Chair) or whether there is an irregularity in respect of an appointment on either the CEHR Board or a committee.

#### Schedule 1, Part 3: **Money**

323. Paragraphs 35 to 37 set out the remuneration arrangements for the CEHR Board, staff members or members of an advisory or decision-making committee. It also allows for the CEHR to be listed as part of the Superannuation Act 1972 in respect of pension arrangements for staff.

324. Paragraph 38 requires the Secretary of State to determine and provide funds that are reasonably sufficient to enable the CEHR to perform its functions 307. Paragraph 39 allows the CEHR to charge for a service provided under section 13 (Information, advice etc), or section 27 (Conciliation).

325. Paragraphs 40 and 41 requires the CEHR to prepare a statement of accounts on an annual basis which is examined, certified and reported on by the Comptroller and Auditor General. The first financial year to which this obligation relates begins when section 1 of the Act is brought into force and ends on the second following 31st March. Subsequent financial years run from 1st April to 31st March (as does the first financial year if section 1 is brought into force on 1st April).

#### Schedule 1, Part 4 — **Status &c.**

326. Paragraph 42 establishes the status of the CEHR in relation to the Crown. It confirms that Commissioners and employees of the CEHR are not employed as civil servants.

327. Paragraph 42(3) requires the Secretary of State to have regard to the desirability of ensuring that the Commission is under as few constraints as reasonably possible in determining its activities, timetables and priorities.

328. This Part of Schedule 1 also amends a number of Acts of Parliament to ensure the CEHR is subject to them. These provisions ensure that the CEHR is subject to the requirements of the Parliamentary Commissioner Act 1967, relating to departments subject to investigation; the House of Commons Disqualification Act 1975 and similar provisions barring members of the House of Commons, Northern Ireland Assembly, and National Assembly for Wales from being members of the CEHR, including as an Investigating Commissioner or member of a decision-making committee. It also subjects the CEHR to the provisions of the Public Records Act 1958 and the Freedom of Information Act 2000.

#### Schedule 1, Part 5 — **Disability Committee**

329. Paragraph 49 requires the CEHR to establish a Disability Committee before either the equality and diversity duties set out in section 8 or the duties with regard to groups set out in section 10 of the Act comes into force, in either case in so far as they relate to disability

330. Paragraph 50 sets out the requirements for the number of members of the Disability Committee. Members of the Committee may be Commissioners, staff or other non-Commissioners by virtue of paragraph 12(2) of Schedule 1 to the Act. Paragraphs 50(b) and (c) require that the Chairman and at least half of the members of the Disability Committee are or have been disabled people. This reflects a requirement in the Disability Rights Commission Act concerning the composition of the DRC. By virtue of paragraph 50(c) of Schedule 1 in conjunction with paragraph 12(3) of Schedule 1 to the Act, the Chairman of the Committee must be a Commissioner who is or has been a disabled person. The Chairman need not be the same Commissioner appointed to give effect to the requirement in paragraph 2(3)(a) of Schedule 1. “Disabled person” for the purposes of paragraph 50 bears the same meaning as in section 8(4) of the Act. Paragraph 50 (2) provides that the DRC Transition Commissioner appointed under section 41 may not be a member (or Chairman) of the Committee.

331. Paragraph 51 sets a period of two to five years as the term of office of members of the Disability Committee, subject to the possibility of reappointment, or dismissal, or in accordance with paragraph 51(c) lapsing of the appointment of members of the Committee when the Committee is dissolved following the process set out in paragraphs 57 to 62.

332. Paragraph 52 sets out the functions of the CEHR which are delegated to the Disability Committee. These are the duties under section 8 of the Equality Act 2006 (equality and diversity) and duties under section 10 of the Equality Act 2006 (groups) in so far as they relate to “disability matters”. “Disability matters” is defined in paragraph 52(3) as matters provided for under Parts 1, 3, 4, 5 and 5B of the DDA, sections 8 and 10 Equality Act 2006 in so far as they relate to disability; and sections 14(3) and (4), 27(2) and (3) and 29((2) and (3) of the Equality Act 2006. Part 1 of the DDA sets out the meaning of “disabled person” and “disability”; Part 3 of the DDA sets out the duties on providers of goods, facilities, services and premises to the public, public authorities exercising their functions; and associations providing benefits, facilities and services to applicants for membership, members, associates and guests; Part 4 of the DDA sets out the duties in relation to education; and Part 5 of the DDA provides powers for the Secretary of State to make accessibility regulations in respect of taxis, public service vehicles, and rail vehicles; Part 5B of the DDA makes procedural and evidential provision with regard to consent to improvements to let dwelling houses in England and Wales; and sections 14(3) and (4), 27(2) and (3) and 29((2) and (3) of the Equality

Act 2006 make provision for the CEHR to provide conciliation services and legal assistance and to issue codes of practice in relation to the making of disability related works in Scotland. Matters provided for in Part 2 of the DDA, which deals with discrimination and harassment in the employment field will not be delegated to the Disability Committee. The Committee's remit with regard to Part 2 of the DDA is set out in paragraphs 53 and 54.

333. In carrying out the duties of the CEHR under sections 8 and 10, so far as they relate to disability, or in relation to disability matters generally (as defined in paragraph 52(3)), the Disability Committee may exercise any of the powers listed in paragraph 52(1)(a).

334. For example, the Disability Committee will be able to issue codes of practice (delegated by virtue of paragraph 52(1)(a)(ii)) which deal with disability discrimination in the provision of goods, facilities, services and premises or education, as provided for in Parts 3 and 4 of the DDA respectively, as the latter fall within the definition of "disability matters" in paragraph 52(3) of Schedule 1.

335. Paragraph 52(2) allows the CEHR to exercise the powers and fulfil the duties delegated to the Disability Committee, where they relate partly to disability and partly to other matters. This would allow the CEHR, for instance, to establish a GB-wide helpline offering advice on all of the equality enactments listed at section 33. However, the CEHR is required under paragraph 53 to consult the Committee before doing so.

336. Paragraph 53 imposes a duty on the CEHR to consult the Disability Committee before taking action on matters affecting disabled people, in particular where such action affects Part 2 of the DDA (employment field). This means that, for example, if the CEHR were to prepare a code of practice relating to discrimination in employment across all equality strands, it would be required to involve the Disability Committee by seeking their advice and expertise on all areas of the proposed code affecting disabled people, such as reasonable adjustments for disabled people in the workplace. Or, for example, if drawing up a programme of investigations and inquiries which would impact on disabled people, the CEHR would be required to consult the Disability Committee prior to doing so.

337. Paragraph 54 imposes a corresponding duty on the Disability Committee to provide advice to the CEHR on the exercise of any of the CEHR's functions affecting disabled people.

338. Paragraph 55 requires the CEHR to allocate a sufficient share of its total allocated resources (which will include staff and funding) to the Disability Committee to enable it to carry out its delegated functions effectively.

339. Paragraphs 57 to 59 make provision for a mandatory review of the Disability Committee to assess whether it is expedient for the Committee to continue. The review is to take place after the Disability Committee has been operating for five years.

340. Paragraph 58 lists the persons who are excluded from participating in the review, to ensure that the review will be carried out independently of the CEHR.

341. Paragraph 59 requires the CEHR to ensure that the review involves a consultation with disabled people and other interested parties, and that a report of the findings of the review is submitted to the CEHR and published. The report must include a recommendation by the reviewing body on how long the Committee should continue in existence.

342. Paragraph 60 requires the CEHR, after receiving the report, to make a recommendation to the Secretary of State on how long the Disability Committee should continue in existence.

343. Paragraph 61 requires the Secretary of State to make an order specifying the date on which the dissolution of the Disability Committee will take effect, which may be after a period of continuation. In accordance with section 39(3)(e) such an order is subject to the negative resolution procedure.

344. Paragraph 62 provides that an order made by the Secretary of State under paragraph 59 may also make provision in relation to the Committee's conduct of its business prior to dissolution. For example, this may include provision about activities the Committee must complete before it is dissolved. The order may also make provision as to how the CEHR will carry out functions that were previously delegated to the Committee before its dissolution.

345. Paragraph 63 clarifies that paragraphs 12–15 of Schedule 1 to the Act allow the CEHR to create a subsequent committee with responsibility for disability issues, or to delegate to another committee any functions that were originally delegated to the Disability Committee, after the Disability Committee has been dissolved.

346. Paragraph 64 ensures that the Disability Committee can only be dissolved following the review process set out in paragraphs 57 to 62.

## **Schedule 2: Inquiries, Investigations and Assessments**

347. Schedule 2 sets out the provisions relating to terms of reference, representations, evidence, adjournments, reports and recommendations and effects of recommendations relating to inquiries, investigations and assessments.

348. Paragraph 9 allows the CEHR to give a notice to any person, in the course of an inquiry, investigation or assessment.

349. Paragraph 10 provides that the notice may require a person to provide the CEHR with information or documents in his possession or to give oral evidence to it.

350. Paragraph 11 provides the grounds on which a person served with a notice to provide information can apply to the court to overturn the notice.

351. Paragraph 12 enables the CEHR to apply to a county court (or to a sheriff in Scotland) for an order requiring a person to provide the information required.

352. Paragraph 13 creates three summary criminal offences: one of failing to provide information requested under paragraph 9 or ordered by a court under paragraph 12; second, falsifying such information and third, making a false statement in oral evidence to the CEHR, following a request to give oral evidence under paragraph 9. A person who is guilty of an offence under paragraph 13 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

353. Paragraph 14 provides for a person to disregard a notice issued under paragraph 9 if it would require the disclosure of information prejudicial to national security. It also provides that in the event of a person disregarding such a notice the CEHR may apply to the Investigatory Powers Tribunal which shall consider the application by applying the principles of judicial review.

354. Paragraph 15 sets out the requirements on the CEHR to prepare and publish a report of an inquiry, investigation or assessment.

355. Paragraph 16 sets out the powers of the CEHR to make recommendations and provides that these may be addressed to any class of person.

356. Paragraph 17 sets out that a court or tribunal may have regard to the finding of an inquiry, investigation or assessment but shall not treat it as conclusive.

357. Paragraph 19 sets out the exemption from the requirements by courts and tribunals.

358. Paragraph 20 specifies that an inquiry may not consider whether an intelligence service is acting in a way that is incompatible with human rights or other matters concerning human rights in relation to an intelligence service.

### **Schedule 3: Amendments consequential on Part 1**

359. Schedule 3 makes a number of consequential amendments to legislation. These include substituting the CEHR for the existing equality Commissions where they have rights or obligations under existing legislation: for example, the CRE's right to be consulted in respect of codes made by the Secretary of State under the Asylum and Immigration Act 1996.

### **Schedule 4: Repeals**

360. Schedule 4 lists the repeals made by the Act.

### **TERRITORIAL EXTENT**

361. The Act extends to Great Britain only, with the exception of section 82 which extends only to Northern Ireland.

362. Equal opportunities are in principle reserved to the Westminster Parliament, but the encouragement of equal opportunities is an exception to this rule and falls within the devolved competence of the Scottish Parliament. Some sections of this Act fall partly within the competence of the Scottish Parliament. These include sections relating to promotion of equality and diversity in Part 1, the promotion of equal opportunities in the gender duty and duties imposing functions on Scottish Ministers in Part 4. The Scottish Parliament agreed that it was content for Parliament to legislate for Scotland in this devolved area. Human rights as a topic is neither reserved nor devolved — a human rights issue falls within the competence of the Scottish Parliament if the underlying subject matter is not reserved. The CEHR's human rights role in Scotland is intended to be limited in practice to human rights issues on reserved topics.

363. Under the Welsh devolution settlement the subject matter of equal opportunities is not transferred to Wales.

364. Except for Clause 82 and amendments consequential upon it, the Act does not extend to Northern Ireland since equal opportunities are “transferred matters” under the Northern Ireland Act 1998. But the Act will make a small number of consequential amendments and repeals to legislation which applies in Northern Ireland, and so the Act will extend to Northern Ireland to that limited extent.

### **TRANSPOSITION OF EU DIRECTIVES**

365. The Race Directive (2000/43/EC) and the Equal Treatment Amendment Directive (2002/73/EC) require Member States to create equality institutions for the promotion of equal treatment on the grounds of race and sex. The bodies' competencies must include providing assistance to victims of discrimination in pursuing complaints, conducting independent reports and making recommendations on any issue relating to discrimination. The EOC and CRE currently have the competencies required by the directives. These competencies will be carried forward to the CEHR.

366. The Employment Directive (2000/78/EC) (which prohibits discrimination on the grounds of disability, sexual orientation, religion or belief and age) does not require Member States to create an equality institution for the promotion of equal treatment on those grounds. However, where an organisation exists which has a legitimate interest in ensuring that the Employment Directive is complied with, the organisation should be permitted to engage in litigation on behalf or in support of complainants, in accordance with criteria laid down in national law. Once created, the CEHR will be such an organisation and will be able to engage in litigation in support of complainants, as required by the Employment Directive.

367. The Employment Directive has been implemented (in respect of the religion or belief strand) by the Employment Equality (Religion or Belief) Regulations 2003. This Act will slightly modify the definitions used in those Regulations in order to provide consistency between the Regulations and the new religious discrimination provisions contained in Part 2 of the Act. The changes do not however have a substantive effect on the scope of the Regulations.

### COMMENCEMENT

368. The provisions of the Act and the Schedules will be brought into force on a day or days appointed by commencement order of the Secretary of State. As provided for in section 36(3), each of the existing equality Commissions is to cease to exist by 31<sup>st</sup> March 2009, and the commencement orders and dissolution orders to be made under sections 93 and 36(1) respectively will achieve this.

### HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
House of Lords		
Introduction	18 May 2005	Vol. 672 Col 25
Second Reading	15 June 2005	Vol. 672 Cols. 1219–1308
Committee	6 July 2005 11 July 2005 13 July 2005	Vol. 673 Cols. 633–704 and 719–730 Vol 673 Cols 883–899, 918–955 and 970–984 Vol 673 Cols 1105–1170 and 1182–1208
Report	19 October 2005	Vol 674 Cols 751–832 and 848–876
Third Reading	9 November 2005	Vol 675 Cols 620–679
Lords Consideration of Commons Amendments	13 February 2006	Vol 678 Cols 999–1014
House of Commons		
Introduction	11 November 2005	
Second Reading	21 November 2005	Vol 439 Cols 1237–1341
Committee	29 November 2005, 1 December 2005, 6 December 2005 and 8 December 2005 (Eight sittings)	Hansard Standing Committee A
Report and Third Reading	16 January 2006	Vol. 441 Cols. 566–669

**Royal Assent** — 16 February 2006

House of Lords Hansard Vol. 678 col.1253

*(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)*

House of Commons Hansard Vol. 442 Col. 1579