



# Sex Discrimination Act 1975

## 1975 CHAPTER 65

### PART VII

#### ENFORCEMENT

##### *General*

#### **62 No further sanctions for breach of Act**

- (1) A contravention of this Act shall incur as such no sanction, whether civil or criminal, except to the extent (if any) expressly provided by this Act.
- (2) In subsection (1) "sanction" includes the granting of an injunction or declaration, but does not include the making of an order of certiorari, mandamus or prohibition.
- (3) Subsection (2) does not affect the remedies available under section 66(2), notwithstanding that subsection (2) would prevent those remedies being obtainable in the High Court.
- (4) In relation to Scotland in subsection (1) "sanction" includes the granting of an interdict or of a declarator or a decree ad factum praestandum, but otherwise nothing in this Act shall affect any right to bring any proceedings, whether civil or criminal, which might have been brought if this Act had not been passed.

##### *Enforcement in employment field*

#### **63 Jurisdiction of industrial tribunals**

- (1) A complaint by any person ("the complainant") that another person ("the respondent")
  - (a) has committed an act of discrimination against the complainant which is unlawful by virtue of Part II, or
  - (b) is by virtue of section 41 or 42 to be treated as having committed such an act of discrimination against the complainant,

may be presented to an industrial tribunal.

- (2) Subsection (1) does not apply to a complaint under section 13(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

#### **64 Conciliation in employment cases**

- (1) Where a complaint has been presented to an industrial tribunal under section 63, or under section 2(1) of the Equal Pay Act 1970, and a copy of the complaint has been sent to a conciliation officer, it shall be the duty of the conciliation officer—
- (a) if he is requested to do so both by the complainant and the respondent, or
  - (b) if, in the absence of requests by the complainant and the respondent, he considers that he could act under this subsection with a reasonable prospect of success,

to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.

- (2) Where, before a complaint such as is mentioned in subsection (1) has been presented to an industrial tribunal, a request is made to a conciliation officer to make his services available in the matter by a person who, if the complaint were so presented, would be the complainant or respondent, subsection (1) shall apply as if the complaint had been so presented and a copy of it had been sent to the conciliation officer.
- (3) In proceeding under subsection (1) or (2), a conciliation officer shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
- (4) Anything communicated to a conciliation officer in connection with the performance of his functions under this section shall not be admissible in evidence in any proceedings before an industrial tribunal except with the consent of the person who communicated it to that officer.

#### **65 Remedies on complaint under section 63**

- (1) Where an industrial tribunal finds that a complaint presented to it under section 63 is well-founded the tribunal shall make such of the following as it considers just and equitable—
- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
  - (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court or by a sheriff court to pay to the complainant if the complaint had fallen to be dealt with under section 66;
  - (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates.
- (2) The amount of compensation awarded to a person under subsection (1)(b) shall not exceed the amount for the time being specified in paragraph 20(1)(b) of Schedule 1 to the Trade Union and Labour Relations Act 1974.

- (3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an industrial tribunal under subsection (1)(c), then, if they think it just and equitable to do so—
- (a) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under subsection (1)(b), or
  - (b) if an order under subsection (1)(b) could have been made but was not, the tribunal may make such an order.

### *Enforcement of Part III*

## **66 Claims under Part III**

- (1) A claim by any person (" the claimant") that another person (" the respondent ")—
- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part III, or
  - (b) is by virtue of section 41 or 42 to be treated as having committed such an act of discrimination against the claimant,
- may be made the subject of civil proceedings in like manner as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.
- (2) Proceedings under subsection (1)—
- (a) shall be brought in England and Wales only in a county court, and
  - (b) shall be brought in Scotland only in a sheriff court,
- but all such remedies shall be obtainable in such proceedings as, apart from this subsection, would be obtainable in the High Court or the Court of Session, as the case may be.
- (3) As respects an unlawful act of discrimination falling within section 1(1)(b) (or, where this section is applied by section 65(1)(b), section 3(1)(b)) no award of damages shall be made if the respondent proves that the requirement or condition in question was not applied with the intention of treating the claimant unfavourably on the ground of his sex or marital status as the case may be.
- (4) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act of discrimination may include compensation for injury to feelings whether or not they include compensation under any other head.
- (5) Civil proceedings in respect of a claim by any person that he has been discriminated against in contravention of section 22 or 23 by a body to which section 25(1) applies shall not be instituted unless the claimant has given notice of the claim to the Secretary of State and either the Secretary of State has by notice informed the claimant that the Secretary of State does not require further time to consider the matter, or the period of two months has elapsed since the claimant gave notice to the Secretary of State; but nothing in this subsection applies to a counterclaim.
- (6) For the purposes of proceedings under subsection (1)—
- (a) section 91(1) (power of judge to appoint assessors) of the County Courts Act 1959 shall apply with the omission of the words " on the application of any party ", and

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- (b) the remuneration of assessors appointed under the said section 91(1) shall be at such rate as may be determined by the Lord Chancellor with the approval of the Minister for the Civil Service.
- (7) For the purpose of proceedings before the sheriff, provision may be made by act of sederunt for the appointment of assessors by him, and the remuneration of any assessors so appointed shall be at such rate as the Lord President of the Court of Session with the approval of the Minister for the Civil Service may determine.
- (8) A county court or sheriff court shall have jurisdiction to entertain proceedings under subsection (1) with respect to an act done on a ship, aircraft or hovercraft outside its district, including such an act done outside Great Britain.

*Non-discrimination notices*

**67 Issue of non-discrimination notice,**

- (1) This section applies to—
  - (a) an unlawful discriminatory act, and
  - (b) a contravention of section 37, and
  - (c) a contravention of section 38, 39 or 40, and
  - (d) an act in breach of a term modified or included by virtue of an equality clause, and so applies whether or not proceedings have been brought in respect of the act.
- (2) If in the course of a formal investigation the Commission become satisfied that a person is committing, or has committed, any such acts, the Commission may in the prescribed manner serve on him a notice in the prescribed form (" a non-discrimination notice ") requiring him—
  - (a) not to commit any such acts, and
  - (b) where compliance with paragraph (a) involves changes in any of his practices or other arrangements—
    - (i) to inform the Commission that he has effected those changes and what those changes are, and
    - (ii) to take such steps as may be reasonably required by the notice for the purpose of affording that information to other persons concerned.
- (3) A non-discrimination notice may also require the person on whom it is served to furnish the Commission with such other information as may be reasonably required by the notice in order to verify that the notice has been complied with.
- (4) The notice may specify the time at which, and the manner and form in which, any information is to be furnished to the Commission, but the time at which any information is to be furnished in compliance with the notice shall not be later than five years after the notice has become final.
- (5) The Commission shall not serve a non-discrimination notice in respect of any person unless they have first—
  - (a) given him notice that they are minded to issue a non discrimination notice in his case, specifying the grounds on which they contemplate doing so, and
  - (b) offered him an opportunity of making oral or written representations in the matter (or both oral and written representations if he thinks fit) within a period of not less than 28 days specified in the notice, and

- (c) taken account of any representations so made by him.
- (6) Subsection (2) does not apply to any acts in respect of which the Secretary of State could exercise the powers conferred on him by section 25(2) and (3); but if the Commission become aware of any such acts they shall give notice of them to the Secretary of State.
- (7) Section 59(4) shall apply to requirements under subsection (2)(b), (3) and (4) contained in a non-discrimination notice which has become final as it applies to requirements in a notice served under section 59 (1).

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

- (1) Not later than six weeks after a non-discrimination notice is served on any person he may appeal against any requirement of the notice—
  - (a) to an industrial tribunal, so far as the requirement relates to acts which are within the jurisdiction of the tribunal;
  - (b) to a county court or to a sheriff court so far as the requirement relates to acts which are within the jurisdiction of the court and are not within the jurisdiction of an industrial tribunal.
- (2) Where the court or tribunal considers a requirement in respect of which an appeal is brought under subsection (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the court or tribunal shall quash the requirement.
- (3) On quashing a requirement under subsection (2) the court or tribunal may direct that the non-discrimination notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.
- (4) Subsection (1) does not apply to a requirement treated as included in a non-discrimination notice by virtue of a direction under subsection (3).

## **69 Investigation as to compliance with non-discrimination notice**

- (1) If—
  - (a) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of a non-discrimination notice are being or have been carried out, but section 59(2)(b) does not apply, and
  - (b) section 58(3) is complied with in relation to the investigation on a date (" the commencement date ") not later than the expiration of the period of five years beginning when the non-discrimination notice became final,the Commission may within the period referred to in subsection (2) serve notices under section 59(1) for the purposes of the investigation without needing to obtain the consent of the Secretary of State.
- (2) The said period begins on the commencement date and ends on the later of the following dates—
  - (a) the date on which the period of five years mentioned in subsection (1)(b) expires;
  - (b) the date two years after the commencement date.

**70 Register of non-discrimination notices**

- (1) The Commission shall establish and maintain a register ("the register") of non-discrimination notices which have become final.
- (2) Any person shall be entitled, on payment of such fee (if any) as may be determined by the Commission.—
  - (a) to inspect the register during ordinary office hours and take copies of any entry, or
  - (b) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.
- (3) The Commission may, if they think fit, determine that the right conferred by subsection (2)(a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.
- (4) The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

*Other enforcement by Commission***71 Persistent discrimination**

- (1) If, during the period of five years beginning on the date on which either of the following became final in the case of any person, namely.—
  - (a) a non-discrimination notice served on him,
  - (b) a finding by a court or tribunal under section 63 or 66, or section 2 of the Equal Pay Act 1970, that he has done an unlawful discriminatory act or an act in breach of a term modified or included by virtue of an equality clause,it appears to the Commission that unless restrained he is likely to do one or more acts falling within paragraph (b), or contravening section 37, the Commission may apply to a county court for an injunction, or to the sheriff court for an order, restraining him from doing so; and the court, if satisfied that the application is well-founded, may grant the injunction or order in the terms applied for or in more limited terms.
- (2) In proceedings under this section the Commission shall not allege that the person to whom the proceedings relate has done an act which is within the jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

**72 Enforcement of ss. 38 to 40**

- (1) Proceedings in respect of a contravention of section 38, 39 or 40 shall be brought only by the Commission in accordance with the following provisions of this section.
- (2) The proceedings shall be—
  - (a) an application for a decision whether the alleged contravention occurred, or
  - (b) an application under subsection (4) below,or both.
- (3) An application under subsection (2)(a) shall be made—
  - (a) in a case based on any provision of Part II, to an industrial tribunal, and

- (b) in any other case to a county court or sheriff court.
- (4) If it appears to the Commission—
- (a) that a person has done an act which by virtue of section 38, 39 or 40 was unlawful, and
  - (b) that unless restrained he is likely to do further acts which by virtue of that section are unlawful,
- the Commission may apply to a county court for an injunction, or to a sheriff court for an order, restraining him from doing such acts; and the court, if satisfied that the application is well-founded, may grant the injunction or an order in the terms applied for or more limited terms.
- (5) In proceedings under subsection (4) the Commission shall not allege that the person to whom the proceedings relate has done an act which is unlawful under this Act and within the jurisdiction of an industrial tribunal unless a finding by an industrial tribunal that he did that act has become final.

### **73 Preliminary action in employment cases**

- (1) With a view to making an application under section 71(1) or 72(4) in relation to a person the Commission may present to an industrial tribunal a complaint that he has done an act within the jurisdiction of an industrial tribunal, and if the tribunal considers that the complaint is well-founded they shall make a finding to that effect and, if they think it just and equitable to do so in the case of an act contravening any provision of Part II may also (as if the complaint had been presented by the person discriminated against) make an order such as is referred to in section 65(1)(a), or a recommendation such as is referred to in section 65(1)(c), or both.
- (2) Subsection (1) is without prejudice to the jurisdiction conferred by section 72(2).
- (3) Any finding of an industrial tribunal under—
- (a) this Act, or
  - (b) the Equal Pay Act 1970,
- in respect of any act shall, if it has become final, be treated as conclusive—
- (i) by the county court or sheriff court on an application under section 71(1) or 72(4) or in proceedings on an equality clause,
  - (ii) by an industrial tribunal on a complaint made by the person affected by the act under section 63 or in relation to an equality clause.
- (4) In sections 71 and 72 and this section, the acts " within the jurisdiction of an industrial tribunal" are those in respect of which such jurisdiction is conferred by sections 63 and 72 and by section 2 of the Equal Pay Act 1970.

#### *Help for persons suffering discrimination*

### **74 Help for aggrieved persons in obtaining information etc.**

- (1) With a view to helping a person ("the person aggrieved") who considers he may have been discriminated against in contravention of this Act to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Secretary of State shall by order prescribe—

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- (a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant;
  - (b) forms by which the respondent may if he so wishes reply to any questions.
- (2) Where the person aggrieved questions the respondent (whether in accordance with an order under subsection (1) or not)—
- (a) the question, and any reply by the respondent (whether in accordance with such an order or not) shall, subject to the following provisions of this section, be admissible as evidence in the proceedings;
  - (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within a reasonable period or that his reply is evasive or equivocal, the court or tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.
- (3) The Secretary of State may by order—
- (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (2)(a), and
  - (b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.
- (4) Rules may enable the court entertaining a claim under section 66 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this section or not.
- (5) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a county court, sheriff court or industrial tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.
- (6) In this section "respondent" includes a prospective respondent and "rules"—
- (a) in relation to county court proceedings, means county court rules;
  - (b) in relation to sheriff court proceedings, means sheriff court rules.

## **75 Assistance by Commission**

- (1) Where, in relation to proceedings or prospective proceedings either under this Act or in respect of an equality clause, an individual who is an actual or prospective complainant or claimant applies to the Commission for assistance under this section, the Commission shall consider the application and may grant it if they think fit to do so on the ground that—
- (a) the case raises a question of principle, or
  - (b) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided,
- or by reason of any other special consideration.
- (2) Assistance by the Commission under this section may include—
- (a) giving advice;
  - (b) procuring or attempting to procure the settlement of any matter in dispute;
  - (c) arranging for the giving of advice or assistance by a solicitor or counsel;



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- (d) arranging for representation by any person including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings,
- but paragraph (d) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address the court in, any proceedings.
- (3) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this section the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules or regulations) shall constitute a first charge for the benefit of the Commission—
- (a) on any costs or expenses which (whether by virtue of a judgment or order of a court or tribunal or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given, and
- (b) so far as relates to any costs or expenses, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.
- (4) The charge conferred by subsection (3) is subject to any charge under the Legal Aid Act 1974, or any charge or obligation for payment in priority to other debts under the Legal Aid and Advice (Scotland) Acts 1967 and 1972, and is subject to any provision in any of those Acts for payment of any sum into the legal aid fund.
- (5) In this section "respondent" includes a prospective respondent and "rules or regulations"—
- (a) in relation to county court proceedings, means county court rules;
- (b) in relation to sheriff court proceedings, means sheriff court rules;
- (c) in relation to industrial tribunal proceedings, means regulations made under paragraph 21 of Schedule 1 to the Trade Union and Labour Relations Act 1974.

*Period within which proceedings to be brought*

**76 Period within which proceedings to be brought**

- (1) An industrial tribunal shall not consider a complaint under section 63 unless it is presented to the tribunal before the end of the period of three months beginning when the act complained of was done.
- (2) A county court or a sheriff court shall not consider a claim under section 66 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning—
- (a) when the act complained of was done, or
- (b) in a case to which section 66(5) applies, when the restriction on the institution of proceedings imposed by that provision ceased to operate.
- (3) A county court or sheriff court shall not consider an application under section 72 unless it is made before the end of the period of six months beginning when the act to which it relates was done.

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- (4) An industrial tribunal shall not consider a complaint under section 73(1) unless it is presented to the tribunal before the end of the period of six months beginning when the act complained of was done.
- (5) A court or tribunal may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (6) For the purposes of this section—
- (a) where the inclusion of any term in a contract renders the making of the contract an unlawful act that act shall be treated as extending throughout the duration of the contract, and
  - (b) any act extending over a period shall be treated as done at the end of that period, and
  - (c) a deliberate omission shall be treated as done when the person in question decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this section to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.