



Sex Discrimination Act 1975 (repealed)

1975 CHAPTER 65

PART VII

ENFORCEMENT

General

[^{F1}62 **Restriction of proceedings for breach of Act.**

- (1) Except as provided by this Act no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of this Act.
- (2) Subsection (1) does not preclude the making of an order of certiorari, mandamus or prohibition.
- (3) In Scotland, subsection (1) does not preclude the exercise of the jurisdiction of the Court of Session to entertain an application for reduction or suspension of any order or determination, or otherwise to consider the validity of any order or determination, or to require reasons for any order or determination to be stated.]

Textual Amendments

F1 S. 62 substituted by [Race Relations Act 1976 \(c. 74\)](#), [Sch. 4 para. 3](#)

Modifications etc. (not altering text)

C1 S. 62 restricted by [Estate Agents Act 1979 \(c. 38\)](#), [ss. 5\(3\), 36\(2\)](#)

Status: Point in time view as at 01/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Sex Discrimination Act 1975 (repealed), Part VII. (See end of Document for details)

Enforcement in employment field

63 Jurisdiction of [F² employment tribunals].

- (1) A complaint by any person (“the complainant”) that another person (“the respondent”)
- (a) has committed an act of discrimination [F³ or harassment] against the complainant which is unlawful by virtue of Part II [F⁴ or section 35A or 35B], or
 - (b) is by virtue of section 41 or 42 to be treated as having committed such an act of discrimination [F³ or harassment] against the complainant,
- may be presented to an [F⁵ employment 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.

Textual Amendments

- F2** Words in s. 63 heading substituted (1.8.1998) by 1998 c. 8, s. 1(2)(b); S.I. 1998/1658, art. 2, Sch. 1 (with art. 3)
- F3** Words in s. 63(1) inserted (1.10.2005) by The Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), reg. 28(2)
- F4** Words in s. 63(1)(a) inserted (1.10.2005) by The Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), reg. 28(3) (with reg. 2(1))
- F5** Words in s. 63(1) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a); S.I. 1998/1658, art. 2, Sch. 1 (with art. 3)

[F⁶ 63A Burden of proof: employment tribunals

- (1) This section applies to any complaint presented under section 63 to an employment tribunal.
- (2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent—
- (a) has committed an act of discrimination [F⁷ or harassment] against the complainant which is unlawful by virtue of Part 2 [F⁸ or section 35A or 35B], or
 - (b) is by virtue of section 41 or 42 to be treated as having committed such an act of discrimination [F⁷ or harassment] against the complainant,
- the tribunal shall uphold the complaint unless the respondent proves that he did not commit, or, as the case may be, is not to be treated as having committed, that act.

Textual Amendments

- F6** S. 63A inserted (12.10.2001) by S.I. 2001/2660, reg. 5
- F7** Words in s. 63A(2) inserted (1.10.2005) by The Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), reg. 29(2)

Status: Point in time view as at 01/10/2005. This version of this part contains provisions that are not valid for this point in time.

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F8 Words in s. 63A(2)(a) inserted (1.10.2005) by [The Employment Equality \(Sex Discrimination\) Regulations 2005 \(S.I. 2005/2467\)](#), **reg. 29(3)**

F9 64]

Textual Amendments

F6 S. 63A inserted (12.10.2001) by [S.I. 2001/2660](#), **reg. 5**

F9 S. 64 repealed (22.8.1996) by [1996 c. 17](#), ss. 45, 46, **Sch. 3 Pt. I** (with s. 38)

65 Remedies on complaint under section 63.

(1) Where an [^{F10}employment 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) makes such order under subsection (1)(a) and such recommendation under subsection (1)(c) (if any) as it would have made if it had no power to make an order under subsection (1)(b); and
- (b) (where it makes an order under subsection (1)(a) or a recommendation under subsection (1)(c) or both) considers that it is just and equitable to make an order under subsection (1)(b) as well.
- (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.

[^{F11}(1A) In applying section 66 for the purposes of subsection (1)(b), no account shall be taken of subsection (3) of that section.

(1B) As respects an unlawful act of discrimination falling within [^{F12}section 1(2)(b)] or section 3(1)(b), if the respondent proves that the [^{F13}provision, criterion or practice] in question was not applied with the intention of treating the complainant unfavourably on the ground of his sex or marital status as the case may be, an order may be made under subsection (1)(b) only if the [^{F10}employment tribunal]—

- (a) makes such order under subsection (1)(a) and such recommendation under subsection (1)(c) (if any) as it would have made if it had no power to make an order under subsection (1)(b); and
- (b) (where it makes an order under subsection (1)(a) or a recommendation under subsection (1)(c) or both) considers that it is just and equitable to make an order under subsection (1)(b) as well.]

^{F14}(2)

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- (3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an ^{F10}employment tribunal] under subsection (1)(c), then, if they think it just and equitable to do so—
- (a) the tribunal may ^{F15} . . . 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) [^{F16}was not made], the tribunal may make such an order.

Textual Amendments

- F10** Words in s. 65(1)(1B)(3)(b) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a); S.I. 1998/1658, art. 2, Sch. 1 (with art. 3)
- F11** S. 65(1A)(1B) inserted (25.3.1996) by S.I. 1996/438, reg. 2(2)
- F12** Words in s. 65(1B) substituted (12.10.2001) by S.I. 2001/2660, reg. 8(3)(a)
- F13** Words in s. 65(1B) substituted (12.10.2001) by S.I. 2001/2660, reg. 8(3)(b)
- F14** S. 65(2) repealed (22.11.1993) by S.I. 1993/2798, reg. 2
- F15** Words inserted by Race Relations Act 1976 c. 74, Sch. 4, para. 4 and repealed (22.11.1993) by S.I. 1993/2798, reg. 1(3), Sch. para. 1
- F16** Words in s. 65(3)(b) substituted (25.3.1996) by S.I. 1996/438, reg. 2(3)

Modifications etc. (not altering text)

- C2** S. 65 amended by Employment Protection (Consolidation) Act 1978 (c. 44), s. 76

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 [^{F17}or harassment] against the claimant which is unlawful by virtue of Part III, [^{F18}other than section 35A or 35B,] or
 - (b) is by virtue of section 41 or 42 to be treated as having committed such an act of discrimination [^{F17}or harassment] 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 [^{F19}and section 62(1)], 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) ^{F20} . . . 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 ^{F21} . . .
- ^{F22}(3A) Subsection (3) does not affect the award of damages in respect of an unlawful act of discrimination falling within section 1(2)(b).]

Status: Point in time view as at 01/10/2005. This version of this part contains provisions that are not valid for this point in time.

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- (4) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act of discrimination [^{F23}or harassment] 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 [^{F24}, or subjected to harassment,] 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.
- [^{F25}(5A) In Scotland, when any proceedings are brought under this section, in addition to the service on the defender of a copy of the summons or initial writ initiating the action a copy thereof shall be sent as soon as practicable to the Commission in a manner to be prescribed by Act of Sederunt.]
- (6) For the purposes of proceedings under subsection (1)—
- (a) [^{F26}section 63(1) (assessors) of the County Courts Act 1984] shall apply with the omission of the words “on the application of any party”, and
 - (b) the remuneration of assessors appointed under the said section [^{F27}63(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 [^{F28}the Treasury] 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.

Textual Amendments

- F17** Words in s. 66(1) inserted (1.10.2005) by The Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), **reg. 30(2)**
- F18** Words in s. 66(1)(a) inserted (1.10.2005) by The Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), **reg. 30(3)** (with reg. 2(1))
- F19** Words inserted by Race Relations Act 1976 (c. 74), **Sch. 4 para. 5(1)**
- F20** Words in s. 66(3) omitted (25.3.1996) by virtue of S.I. 1996/438, **reg. 2(4)**
- F21** Words in s. 66(3) omitted (25.3.1996) by virtue of S.I. 1996/438, **reg. 2(4)**
- F22** S. 66(3A) inserted (12.10.2001) by S.I. 2001/2660, **reg. 7**
- F23** Words in s. 66(4) inserted (1.10.2005) by The Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), **reg. 30(4)**
- F24** Words in s. 66(5) inserted (1.10.2005) by The Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), **reg. 30(5)**
- F25** S. 66(5A) inserted by Race Relations Act 1976 (c. 74), **Sch. 4 para. 5(2)**
- F26** Words substituted by County Courts Act 1984 (c. 28, SIF 34), **Sch. 2 para. 55(a)**
- F27** “63(1)” substituted by County Courts Act 1984 (c. 28, SIF 34), **Sch. 2 para. 55(b)**
- F28** Words substituted by S.I. 1981/1670, **arts. 2(2), 3(5)**

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Modifications etc. (not altering text)

C3 S. 66(5): transfer of functions (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

[^{F29}66A Burden of proof: county and sheriff courts

- (1) This section applies to any claim brought under section 66(1) in a county court in England and Wales or a sheriff court in Scotland.
- (2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this section, conclude in the absence of an adequate explanation that the respondent—
 - [^{F30}(a) has committed an act of discrimination or harassment against the claimant which is unlawful by virtue of any provision of Part 3 so far as it applies to vocational training, or]
 - (b) is by virtue of section 41 or 42 to be treated as having committed such an act of discrimination [^{F31}or harassment] against the claimant,
 the court shall uphold the claim unless the respondent proves that he did not commit, or, as the case may be, is not to be treated as having committed, that act.]

Textual Amendments

F29 S. 66A inserted (12.10.2001) by S.I. 2001/2660, reg. 6

F30 S. 66A(2)(a) substituted (1.10.2005) by The Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), reg. 31(2)

F31 Words in s. 66A(2)(b) substituted (1.10.2005) by The Employment Equality (Sex Discrimination) Regulations 2005 (S.I. 2005/2467), reg. 31(3)

VALID FROM 18/04/2006

[^{F32}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.
- (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).

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- (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.]

Textual Amendments

F32 S. 66B inserted (18.4.2006) by Equality Act 2006 (c. 3), ss. 87, 93 (with s. 92); S.I. 2006/1082, art. 2(j)

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.

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Changes to legislation: There are currently no known outstanding effects for the Sex Discrimination Act 1975 (repealed), Part VII. (See end of Document for details)

- (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).

Modifications etc. (not altering text)

C4 S. 67(6): transfer of functions (1.7.1999) by S.I. 1999/672, art. 2, Sch. 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 [^{F33}employment 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 [^{F33}employment 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).

Textual Amendments

F33 Words in s. 68(1)(a)(b) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a); S.I. 1998/1658, art. 2, Sch. 1 (with art. 3)

69 Investigation as to compliance with non-discrimination notice.

- (1) If—

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- (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 ^{MI}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.

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- (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 [F34 employment tribunal] unless a finding by an [F34 employment tribunal] that he did that act has become final.

Textual Amendments

- F34** Words in s. 71(2) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2, Sch. 1 (with art. 3)

Marginal Citations

- M1** 1970 c. 41.

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—
- an application for a decision whether the alleged contravention occurred, or
 - an application under subsection (4) below,
- or both.
- (3) An application under subsection (2)(a) shall be made—
- in a case based on any provision of Part II, to an [F35 employment tribunal], and
 - in any other case to a county court or sheriff court.
- (4) If it appears to the Commission—
- that a person has done an act which by virtue of section 38, 39 or 40 was unlawful, and
 - 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 . . . F36 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 [F35 employment tribunal] unless a finding by an [F35 employment tribunal] that he did that act has become final.

Textual Amendments

- F35** Words in s. 72(3)(a)(5) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a); S.I. 1998/1658, art. 2, Sch. 1 (with art. 3)
- F36** Words repealed by Race Relations Act 1976 (c. 74), Sch. 5

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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 [^{F37}employment tribunal] a complaint that he has done an act within the jurisdiction of an [^{F37}employment 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 [^{F37}employment tribunal] under—
 - (a) this Act, or
 - (b) the ^{M2}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 [^{F37}employment 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 [^{F37}employment tribunal]” are those in respect of which such jurisdiction is conferred by sections 63 and 72 and by section 2 of the ^{M3}Equal Pay Act 1970.

Textual Amendments

F37 Words in s. 73(1)(3)(4) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a); S.I. 1998/1658, art. 2, Sch. 1 (with art. 3)

Marginal Citations

M2 1970 c. 41.

M3 1970 c. 41.

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 [^{F38}or subjected to harassment] 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—
 - (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)—

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- (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 [^{F39}the period applicable under subsection (2A)] 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.

[^{F40}(2A) The period applicable for the purposes of subsection (2)(b) is—

- (a) eight weeks beginning with the day when the question was served on the respondent, if the question relates to discrimination under—
 - (i) any provision of Part 2,
 - (ii) section 35A or 35B, or
 - (iii) any other provision of Part 3, so far as it applies to vocational training;
 - (b) a reasonable period, as regards any other question.]
- (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 [^{F41}employment 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.

Textual Amendments

- F38** Words in s. 74(1) inserted (1.10.2005) by [The Employment Equality \(Sex Discrimination\) Regulations 2005 \(S.I. 2005/2467\)](#), [reg. 32\(2\)](#)
- F39** Words in s. 74(2)(b) substituted (1.10.2005) by [The Employment Equality \(Sex Discrimination\) Regulations 2005 \(S.I. 2005/2467\)](#), [reg. 32\(3\)](#)
- F40** S. 74(2A) inserted (1.10.2005) by [The Employment Equality \(Sex Discrimination\) Regulations 2005 \(S.I. 2005/2467\)](#), [reg. 32\(4\)](#)
- F41** Words in s. 74(5) substituted (1.8.1998) by [1998 c. 8, s. 1\(2\)\(a\)](#); [S.I. 1998/1658, art. 2, Sch. 1](#) (with art. 3)

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,

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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;
- (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,

[^{F42}(e) any other form of assistance which the Commission may consider appropriate],

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 [^{F43}imposed by section 10(7) of the Access to justice Act 1999], or any charge or obligation for payment in priority to other debts under [^{F44}the Legal Aid (Scotland) Act 1986], and is subject to any provision in [^{F45}or made under][^{F46}either of those Acts for payment of any sum to the [^{F47}Legal Services Commission]or into the Scottish 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 [^{F48}employment tribunal] proceedings, means [^{F49}[^{F48}employment tribunal] procedure regulations under Part I of [^{F50}the Employment Tribunals Act 1996]].

Textual Amendments

F42 S. 75(2)(e) inserted by Race Relations Act 1976 (c. 74), Sch. 4 para. 7

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- F43** Words in s. 75(4) substituted (1.4.2000) by 1999 c. 22, s. 24, **Sch. 4 para. 13(a)** (with s. 107, Sch. 14 para. 7(2)); S.I. 2000/774, **art. 2** (subject to transitional provisions in arts. 3, 4)
- F44** Words “the Legal Aid (Scotland) Act 1986” substituted (S.) by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), s. 45, **Sch. 3 para. 5**
- F45** Words in s. 75(4) inserted (1.4.2000) by 1999 c. 22, ss. 24, 108(1), **Sch. 4 para. 13(b)** (with ss. 107, Sch. 14 para. 7(2)); S.I. 2000/774, **art. 2** (subject to transitional provisions in arts. 3, 4)
- F46** Words substituted by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, **Sch. 5 para. 6(b)**
- F47** Words in s. 75(4) substituted (1.4.2000) by 1999 c. 22, s. 24, **Sch. 4 para. 13(c)** (with ss. 107, Sch. 14 para. 7(2)); S.I. 2000/774, **art. 2** (subject to transitional provisions in arts. 3, 4)
- F48** Words in s. 75(5)(c) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)**; S.I. 1998/1658, art. 2, **Sch. 1** (with art. 3)
- F49** Words in s. 75(5)(c) substituted (22.8.1996) by 1996 c. 17, ss. 43, 46, **Sch. 1 para. 3** (with s. 38)
- F50** Words in s. 75(5)(c) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(c)**; S.I. 1998/1658, art. 2, **Sch. 1** (with art. 3)

Modifications etc. (not altering text)

- C5** S. 75(2)(c)(d) amended (1.1.1992) by S.I. 1991/2684, arts. 2, 4, **Sch. 1**

Period within which proceedings to be brought

76 Period within which proceedings to be brought.

- (1) An [^{F51}employment tribunal] shall not consider a complaint under section 63 unless it is presented to the tribunal before the end of [^{F52}—
- (a) the period of three months beginning when the act complained of was done; or
 - (b) in a case to which section 85(9A) applies, the period of six months so beginning.]
- (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
- [^{F53}(a) the period of six months beginning when the act complained of was done; or
 - (b) in a case to which section 66(5) applies, the period of eight months so beginning.]
- [^{F54}(2A) Where in England and Wales—
- (a) proceedings or prospective proceedings under section 66 relate to the act or omission of a qualifying institution, and
 - (b) the dispute concerned is referred as a complaint under the student complaints scheme before the end of the period of six months mentioned in subsection (2)
- (a),
- the period allowed by subsection (2)(a) shall be extended by two months.
- (2B) In subsection (2A)—
- “qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;
- “the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.]
- [^{F55}(3) An [^{F51}employment tribunal], county court or sheriff court shall not consider an application under section 72(2)(a) unless it is made before the end of the period of

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six months beginning when the act to which it relates was done; and a county court or sheriff court shall not consider an application under section 72(4) unless it is made before the end of the period of five years so beginning.]

- (4) An [F51 employment 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.

Textual Amendments

- F51** Words in s. 76(1)(3)(4) substituted (1.8.1998) by 1998 c. 8, s. 1; S.I. 1998/1658, art. 2, **Sch. 1** (with art. 3)
- F52** Words and s. 76(1)(a)(b) substituted for words in s. 76(1) (1.10.1997) by 1996 c. 46, s. 21(6); S.I. 1997/2164, **art. 2**
- F53** Words substituted by Race Relations Act 1976 (c. 74), **Sch. 4 para. 8(a)**
- F54** S. 76(2A)(2B) inserted (1.11.2004) by Higher Education Act 2004 (c. 8), **ss. 19(1), 52**; S.I. 2004/2781, **art. 3**
- F55** S. 76(3) substituted by Race Relations Act 1976 (c. 74), **Sch. 4 para. 8(b)**

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