



# Sex Discrimination Act 1975 (repealed)

## 1975 CHAPTER 65

### PART VIII

#### SUPPLEMENTAL

#### 77 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 Act, or
    - (b) it is included in furtherance of an act rendered unlawful by this Act, or
    - (c) it provides for the doing of an act which would be rendered unlawful by this Act.
  - (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 any provision of this Act or the <sup>M1</sup>Equal Pay Act 1970 is unenforceable by any person in whose favour the term would operate apart from this subsection.
  - (4) Subsection (3) does not apply—
    - (a) to a contract settling a complaint to which section 63(1) of this Act or section 2 of the <sup>M2</sup>Equal Pay Act 1970 applies where the contract is made with the assistance of a conciliation officer;
    - <sup>F1</sup>(aa) to a contract settling a complaint to which section 63(1) of this Act or section 2 of the <sup>M3</sup>Equal Pay Act 1970 applies if the conditions regulating compromise contracts under this Act are satisfied in relation to the contract;]
    - (b) to a contract settling a claim to which section 66 applies.
- <sup>F2F3</sup>(4A) The conditions regulating compromise contracts under this Act are that—
- (a) the contract must be in writing;
  - (b) the contract must relate to the particular complaint;

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*Status: Point in time view as at 27/07/2000. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Sex Discrimination Act 1975 (repealed), Section 77. (See end of Document for details)*

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- (c) the complainant must have received [<sup>F4</sup>advice from a relevant independent adviser]] as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an [<sup>F5</sup>employment tribunal];
- (d) there must be in force, when the adviser gives the advice, a [<sup>F6</sup>contract of insurance, or an indemnity provided for members of a profession or professional body,] covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Act are satisfied.

[<sup>F2</sup>(4B) A person is a relevant independent adviser for the purposes of subsection (4A)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Secretary of State.

(4BA) But a person is not a relevant independent adviser for the purposes of subsection (4A)

(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,
- (b) in the case of a person within subsection (4B)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within subsection (4B)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under subsection (4B)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4BB) In subsection (4B)(a) “qualified lawyer” means—

- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the <sup>M4</sup>Courts and Legal Services Act 1990), and
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(4BC) In subsection (4B)(b) “independent trade union” has the same meaning as in the <sup>M5</sup>Trade Union and Labour Relations (Consolidation) Act 1992.

(4C) For the purposes of subsection (4BA) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.]

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- [<sup>F7</sup>(4D) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of subsection (4)(a) and (aa) as being a contract settling a complaint if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the <sup>M6</sup>Trade Union and Labour Relations (Consolidation) Act 1992, and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
  - (b) shall be regarded for those purposes as neither being nor including such a contract in any other case.]
- (5) On the application of any person interested in a contract to which subsection (2) applies, a county court or sheriff court may make such order as it thinks just for removing or modifying any term made unenforceable by that subsection; but such an order shall not be made unless all persons affected have been given notice of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.
- (6) An order under subsection (5) may include provision as respects any period before the making of the order.

#### Textual Amendments

- F1** S. 77(4)(aa) inserted (30.8.1993) by 1993 c. 19, s. 39(2), **Sch. 6 para. 1(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F2** S. 77(4B)(4BA)(4BB)(4BC)(4C) substituted for s. 77(4B)(4C) (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 2**; S.I. 1998/1685, art. 2, **Sch. 1** (with art. 3)
- F3** S. 77(4A)-(4C) inserted (30.8.1993) by 1993 c. 19, s. 39(2), **Sch. 6 para. 1(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F4** Words in s. 77(4A)(c) substituted (1.8.1998) by 1998 c. 8, s. 9(1)(2)(a); S.I. 1998/1658, art. 2, **Sch. 1** (with art. 3)
- F5** Words in s. 77(4A)(c) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a); S.I. 1998/1658, art. 2, **Sch. 1** (with art. 3)
- F6** Words in s. 77(4A)(d) substituted (1.8.1998) by 1998 c. 8, s. 10(1)(2)(a); S.I. 1998/1658, art. 2, **Sch. 1** (with art. 3)
- F7** S. 77(4D) inserted (1.8.1998) by 1998 c. 8, s. 8(1); S.I. 1998/1658, art. 2, **Sch. 1** (with art. 3)

#### Modifications etc. (not altering text)

- C1** S. 77 extended (*retrosp.*) by Sex Discrimination Act 1986 (c. 59, SIF 106:1), s. 6(1)
- C2** S. 77 excluded by Sex Discrimination Act 1986 (c. 59, SIF 106:1), s. 6(4)

#### Marginal Citations

- M1** 1970 c. 41.
- M2** 1970 c. 41.
- M3** 1970 c. 41.
- M4** 1990 c. 41.
- M5** 1992 c. 52.
- M6** 1992 c. 52.

**Status:**

Point in time view as at 27/07/2000. This version of this provision has been superseded.

**Changes to legislation:**

There are currently no known outstanding effects for the Sex Discrimination Act 1975 (repealed), Section 77.