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SCHEDULES

SCHEDULE 5

Sections 2(1)(e), 12(3), 24(7), 26(8),
31(6), 38(4), 53(2)(a), 59(2), Sch. 1 para.
6(1).

CONDUCT OF INVESTIGATIONS BY THE AGENCY

Preliminary

- 1 In this Schedule " the investigation " means—
- (a) an investigation under section 12 for the purposes of ascertaining the existence, nature and extent of failures to afford equality of opportunity and considering what action, if any, ought to be taken for promoting equality of opportunity; or
 - (b) an investigation under section 24 following a complaint of unlawful discrimination; or
 - (c) an investigation under section 38 in relation to teachers in schools.

Notices

- 2 Where the investigation is to be of the kind mentioned in paragraph 1(a) or (c), the Agency, before holding the investigation.—
- (a) shall serve on every person whose practices it is minded to investigate notice of the Agency's intention to hold the investigation, and
 - (b) shall furnish to each such person, in writing, particulars of the scope and purpose of the investigation.
- 3 Where the investigation is to be of the kind mentioned in paragraph 1(b), the Agency, before holding the investigation.—
- (a) shall serve on the person against whom the complaint is made notice of the Agency's intention to hold the investigation ; and
 - (b) shall furnish to that person, in writing.—
 - (i) particulars of the allegations made in the complaint so far as they relate to him, and
 - (ii) a statement of the substance of any evidence which the Agency has reason to believe may be tendered in support of those allegations.

Procedure

- 4 The Agency shall afford to every person such as is mentioned in paragraph 2(a) or 3(a) an opportunity to comment on the matters or allegations which are the subject of the investigation and to furnish oral or other evidence respecting them.
- 5 The investigation shall be conducted in private.
- 6 Subject to paragraphs 4 and 5, the procedure for conducting the investigation shall be such as the Agency considers appropriate in the circumstances of the case.

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Information and evidence

- 7 For the purposes of the investigation, the Agency may obtain information from such persons and (subject to paragraph 5) in such manner and may make such inquiries and call for such reports (including reports by officers of the Agency on inquiries, interviews or hearings conducted by them on the Agency's behalf) as the Agency thinks fit.
- 8 (1) For the purposes of the investigation the Agency may require any person who in its opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.
- (2) For those purposes the Agency shall have the same powers as the High Court in respect of—
- (a) the attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad ; and
 - (b) the production of documents.
- (3) A person shall not be compelled for the purposes of the investigation—
- (a) to give any information or produce any document which he could not be compelled to give in evidence or produce in civil proceedings before the High Court; or
 - (b) to give any information or produce any document which discloses, or from which there can be deduced, his religious belief, if he informs the Agency that he objects to doing so ; or
 - (c) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him ;
- but head (a) above does not prejudice the provisions of section 52(1).
- 9 For the purposes of the investigation the Agency may also require an employer or a vocational organisation to take such reasonable action as the Agency specifies for communicating to his or its employees or members (as the case requires), or to employees or members of any class, any written material provided for the purpose by the Agency.

Obstruction and contempt

- 10 (1) If any person, without lawful excuse, obstructs the Agency or any member or officer of the Agency in the performance of its or his functions in connection with the investigation, or is guilty of any act in relation to the investigation which, if the investigation were a proceeding in the High Court, would constitute contempt of court, the Agency may certify the offence to the High Court.
- (2) Where an offence is certified under this paragraph, the High Court may inquire into the matter and after hearing—
- (a) any witnesses who may be produced against or on behalf of the person charged with the offence; and
 - (b) any statement that may be offered in defence,
- may deal with the person charged with the offence in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

Expenses

- 11 (1) Without prejudice to paragraph 8(3)(c), the Agency may, if it thinks fit.—

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- (a) where the investigation follows a complaint, pay to the complainant, or
 - (b) in any case, pay to any other person who attends, or furnishes information for the purposes of, the investigation,
- sums in respect of expenses properly incurred by him and allowances by way of compensation for the loss of his time in accordance with such scales and subject to such conditions as the Department with the approval of the Department of Finance may determine.
- (2) A payment made under this paragraph to a person who, under section 24(2) continues a complaint made or continued by another may also include sums in respect of expenses properly incurred by, or loss of time of, that other or any predecessor of his.

Confidentiality of information

- 12 (1) Without prejudice to any provision of section 52, no information supplied to the Agency in the course of the investigation shall be disclosed by a member, officer or servant of the Agency to a person who is not a member of, or in the employment of, the Agency, except so far as such disclosure—
- (a) is relevant for the purposes of section 2(1), section 38(3), Schedule 1, paragraph 14 or sub-paragraph (2) or (3); or
 - (b) is necessary for the purpose of carrying out an investigation into a complaint, or for the purpose of communicating to any person, in accordance with the provisions of this Act, the Agency's finding following such an investigation and the reasons for it; or
 - (c) is necessary for the purposes of any proceedings under this Act, either before a court or before the Appeals Board ; or
 - (d) is necessary for the purposes of any criminal proceedings or to comply with the order of a court;
- but any such disclosure as is mentioned in head (a) above is subject to the safeguard in sub-paragraph (4).
- (2) Without prejudice to sub-paragraph (4), where it is necessary or expedient to do so for the proper discharge of the functions of the Agency, a member, officer or servant of the Agency may—
- (a) disclose to an employer any information in the Agency's possession which relates to his employees or to other persons who have applied for employment by him ;
 - (b) disclose to a principal (within the meaning of section 18) any information in the Agency's possession which relates to contract workers whose services are or have been available to him ;
 - (c) disclose to any person who is empowered by virtue of an enactment to select or nominate another person for employment by a third person any information in the Agency's possession which relates to a person who has applied for the employment in question;
 - (d) disclose to an employment agency any information in the Agency's possession which relates to a person who has applied for or obtained the services of the agency ;
 - (e) disclose to a vocational organisation any information in the Agency's possession which relates to members of that organisation or other persons who have applied for membership ;

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- (f) disclose to a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation, any information in the Agency's possession which relates to a person who has sought, or on whose behalf it has been sought, to obtain those services, or who has obtained those services ; or
 - (g) disclose to a person who has power to confer a qualification such as is mentioned in section 23 any information in the Agency's possession which relates to a person who has applied to have, or has had, that qualification conferred on him.
- (3) Without prejudice to sub-paragraph (4), the Agency shall supply to the Department any information in the Agency's possession which the Department requests.
- (4) No information in the Agency's possession which discloses, or from which there can be deduced, the religious belief of any identifiable individual shall, without that individual's written consent, be disclosed to any person, except where—
 - (a) it is disclosed to a person employed by the Agency the nature of whose duties renders it reasonable for him to be supplied with the information ; or
 - (b) its disclosure is necessary for a purpose mentioned in sub paragraph (1)(b), (c) or (d).
- (5) If any person discloses any information in contravention of any provision of this paragraph he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £400.