

## SCHEDULES

### SCHEDULE 3

#### FORMAL INVESTIGATIONS AND NON-DISCRIMINATION NOTICES

#### PART II

#### NON-DISCRIMINATION NOTICES

##### *Procedure for issuing and appealing against non-discrimination notices*

- 8 (1) The Commission shall not issue a non-discrimination notice addressed to any person unless it has complied with the requirements of this paragraph.
- (2) The Commission shall serve on the person concerned a notice—
- (a) informing him that the Commission is considering issuing a non-discrimination notice and of the grounds for doing so,
  - (b) offering him the opportunity to make written and oral representations.
- (3) The Commission shall give the person concerned or his representative the opportunity of making oral and written representations within a period specified in the notice of not less than 28 days.
- (4) The Commission may refuse to receive oral representations made on behalf of the person concerned by a person (not being counsel or a solicitor) to whom the Commission reasonably objects as being unsuitable.
- (5) If the Commission refuses to receive oral representations from a person under subparagraph (4), it shall give reasons in writing for its objection.
- 9 On issuing a non-discrimination notice, the Commission shall serve a copy on the person to whom it is addressed.

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

- 10 (1) A person on whom a non-discrimination notice is served may, within the period of six weeks beginning on the day after the day on which the notice is served on him, appeal against any requirement imposed by the notice under section 4(1)(b) or (3).
- (2) An appeal under this paragraph lies—
- (a) to an employment tribunal, so far as the requirement relates to acts within the tribunal's jurisdiction; and
  - (b) to a county court or a sheriff court, so far as the requirement relates to acts which are not within the jurisdiction of an employment tribunal.
- (3) The court or tribunal may quash or, in Scotland, recall any requirement appealed against—

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- (a) if it considers the requirement to be unreasonable; or
  - (b) in the case of a requirement imposed under section 4(1)(b), if it considers that the Commission's finding that the person concerned had committed or is committing the unlawful act in question was based on an incorrect finding of fact.
- (4) On quashing or recalling a requirement, the court or tribunal may direct that the non-discrimination notice shall have effect with such modifications as it considers appropriate.
- (5) The modifications which may be included in such a direction include—
- (a) the substitution of a requirement in different terms; and
  - (b) in the case of a requirement imposed under section 4(1)(b), modifications to the details given under section 4(1)(a) so far as necessary to describe any unlawful act on which the requirement could properly have been based.
- (6) Sub-paragraph (1) does not apply to any modifications contained in a direction under sub-paragraph (4).
- (7) If the court or tribunal allows an appeal under this paragraph without quashing or recalling the whole of the non-discrimination notice, the Commission may by notice to the person concerned vary the non-discrimination notice—
- (a) by revoking or altering any recommendation included in pursuance of the Commission's power under section 4(2); or
  - (b) by making new recommendations in pursuance of that power.
- 11 For the purposes of this Act a non-discrimination notice becomes final when—
- (a) an appeal under paragraph 10 is dismissed, withdrawn or abandoned or the time for appealing expires without an appeal having been brought; or
  - (b) an appeal under that paragraph is allowed without the whole notice being quashed or, in Scotland, recalled.

*Enforcement of non-discrimination notice*

- 12 (1) This paragraph applies during the period of five years beginning on the date on which a non-discrimination notice served on a person has become final.
- (2) During that period the Commission may apply to a county court or by summary application to the sheriff for an order under this paragraph, if—
- (a) it appears to the Commission that the person concerned has failed to comply with any requirement imposed by the notice under section 4(1)(b); or
  - (b) the Commission has reasonable cause to believe that he intends not to comply with any such requirement.
- (3) An order under this paragraph is an order requiring the person concerned to comply with the requirement or with such directions for the same purpose as are contained in the order.

*Register of non-discrimination notices*

- 13 (1) The Commission shall maintain a register of non-discrimination notices which have become final.

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- (2) The Commission shall, in the case of notices which impose a requirement to propose an action plan, note on the register the date on which any action plan proposed by the person concerned has become final.
- (3) The Commission shall arrange for—
  - (a) the register to be available for inspection at all reasonable times, and
  - (b) certified copies of any entry to be provided if required by any person.
- (4) The Commission shall publish those arrangements in such manner as it considers appropriate to bring them to the attention of persons likely to be interested.