

EQUALITY ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Public Functions

Section 83: Prohibition of discrimination

274. *Section 83* inserts a new *section 21A* into Part III of the SDA. New section 21A will make it unlawful for a public authority to discriminate or commit acts of harassment on grounds of sex when carrying out its functions. In practice this will mean that Ministers, local authorities, the police, other governmental organisations and private bodies which have functions of a public nature are not permitted to discriminate or harass on the grounds of a person's sex when exercising their public functions. This prohibition of sex discrimination in public functions ("the prohibition") will bring the SDA into line with section 19B of the RRA. The Disability Discrimination Act 2005 also similarly extends the DDA by inserting a new section 21B into the DDA.
275. An individual who has been discriminated against contrary to new section 21A will be able to bring proceedings in a county court (or a sheriff court in Scotland) in accordance with section 66 of the SDA.
276. *New subsection 21A(4)* and the table of exceptions in *subsection (9)* set out the functions and actions which are excluded from the general prohibition. The new subsection (4) includes a provision that none of these exceptions permits anything prohibited by European Community law on discrimination. *New subsection 21A(3)* excludes the Houses of Parliament and the intelligence services from the requirement not to discriminate.
277. The exempted functions and actions in new subsection 21A(4) and the Table of Exceptions in new subsection 21A(9) include:
- acts related to the preparation and making of primary and secondary legislation made by a Minister of the Crown, the Scottish Ministers, the National Assembly for Wales, the Privy Council or the General Synod of the Church of England;
 - acts which are necessary to comply with a statutory requirement;
 - judicial functions and acts done on behalf of or on the instructions of a person exercising a judicial function – for example, complying with a court order;
 - decisions related to criminal proceedings, where a decision has been taken not to prosecute;
 - services only required by one sex, services more beneficially provided on a single-sex basis and acts done to compensate for disadvantage related to sex; and
 - the Charity Commissioners for England and Wales (or, in Scotland, the holder of the Office of Scottish Charity Regulator) when they are exercising their functions

*These notes refer to the Equality Act 2006 (c.3)
which received Royal Assent on 16 February 2006*

in relation to such charities which, under existing exemptions in section 43 of the SDA, are allowed to discriminate on grounds of sex.

278. The exceptions for services that are provided separately (items 8 to 12 in the Table of Exceptions at new subsection 21A(9)) allow public authorities to provide services only to one sex, or to provide separate or different services for men and women when the circumstances or need are such that it would not be reasonably practicable to do otherwise.
279. New section 21A also contains provisions to prevent there being any overlap between the new provision and the existing provisions of the SDA.
280. An order-making power in new *subsection 21A(5)* allows the Secretary of State to make additional exemptions after consultation with the CEHR and subject to affirmative resolution of each House of Parliament. (The consultation will be with the EOC until the CEHR takes on responsibility for sex discrimination issues and thereafter with the CEHR.)
281. *New subsections 21A(6), (7) and (8)* introduce changes to the enforcement provisions in section 66 of the SDA to ensure that proceedings brought under new section 21A will not prejudice the outcome of a related criminal investigation or criminal proceeding. They also amend the questionnaire procedure in section 74 of the SDA, so that a court will not be able to draw inferences from a failure to respond to a questionnaire if that was necessary to avoid prejudice to a criminal investigation or criminal proceedings.