

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 16: General and Miscellaneous**

#### *Schedule 3: Services and public functions: exceptions*

#### **Part 1: Constitutional matters: paragraphs 1-5**

#### **Effect**

680. **Part 1** of this Schedule provides that the prohibitions do not apply to:
- the exercise of parliamentary functions and functions linked to the undertaking of parliamentary business;
  - preparing, making, approving or considering primary legislation or particular forms of secondary legislation, including legislation of the Scottish Parliament and the National Assembly for Wales;
  - exercising judicial functions or deciding not to commence or continue criminal proceedings.
681. **Part 1** also provides that the prohibition on discriminating against a person when exercising a public function does not apply to the armed forces in respect of the protected characteristics of age, disability, gender reassignment and sex when the reason for such acts is to ensure combat effectiveness.
682. It also provides that the prohibitions on discriminating against, harassing or victimising a person when providing a service or exercising a public function do not apply to the Security Service, the Security Intelligence Service, the Government Communications Headquarters (GCHQ) or any part of the armed forces assisting GCHQ.

#### **Background**

683. **Part 1** of this Schedule is designed to replicate the effect of exceptions contained in previous legislation where discrimination, harassment and victimisation in the exercise of a public function are already prohibited, and apply the exception to relevant protected characteristics.

#### **Examples**

- Activity related to the preparation and making of primary legislation, such as this Act, would be excepted from the prohibition on discrimination. However, activity related to the making of a bye-law by a local authority would not be within the exceptions in this Schedule.
- A decision of a judge on the merits of a case would be within the exceptions in this Schedule. An administrative decision of court staff, about which contractor to use to carry out maintenance jobs or which supplier to use when ordering stationery would not be.