
STATUTORY INSTRUMENTS

2005 No. 2467

**The Employment Equality (Sex
Discrimination) Regulations 2005**

Office holders

13.—(1) In the 1975 Act, after section 10 (meaning of employment at establishment in Great Britain), insert—

“Discrimination against office-holders etc.

Offices and posts to which section 10B applies

10A.—(1) Subject to subsections (2) and (3), section 10B applies to an office or post if—

- (a) the office or post is one—
 - (i) to which persons are appointed to discharge functions personally under the direction of another person, and
 - (ii) in respect of which they are entitled to remuneration,
- (b) the office or post is one to which appointments are made by a Minister of the Crown, a government department, the National Assembly for Wales or any part of the Scottish Administration, or
- (c) the office or post is one to which appointments are made on the recommendation of, or subject to the approval of, a person referred to in paragraph (b).

(2) Section 10B does not apply to an office or post if section 6 (employment), section 9 (contract work), section 11 (partnerships), section 35A (barristers) or section 35B (advocates)

- (a) applies in relation to an appointment to the office or post, or
 - (b) would apply in relation to an appointment to the office or post but for the operation of any other provision of this Act.
- (3) Section 10B does not apply to—
- (a) any office of the House of Commons held by a member of it,
 - (b) a life peerage within the meaning of the Life Peerages Act 1958, or any office of the House of Lords held by a member of it,
 - (c) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975,
 - (d) the offices of Leader of the Opposition, Chief Opposition Whip or Assistant Opposition Whip within the meaning of the Ministerial and other Salaries Act 1975,
 - (e) any office of the Scottish Parliament held by a member of it,
 - (f) a member of the Scottish Executive within the meaning of section 44 of the Scotland Act 1998, or a junior Scottish Minister within the meaning of section 49 of that Act,

- (g) any office of the National Assembly for Wales held by a member of it,
 - (h) in England, any office of a county council, a London borough council, a district council or a parish council held by a member of it,
 - (i) in Wales, any office of a county council, a county borough council or a community council held by a member of it,
 - (j) in relation to a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or a community council established under section 51 of the Local Government (Scotland) Act 1973, any office of such a council held by a member of it,
 - (k) any office of the Greater London Authority held by a member of it,
 - (l) any office of the Common Council of the City of London held by a member of it,
 - (m) any office of the Council of the Isles of Scilly held by a member of it, or
 - (n) any office of a political party.
- (4) For the purposes of subsection (1)(a), the holder of an office or post—
- (a) is to be regarded as discharging her functions under the direction of another person if that other person is entitled to direct her as to when and where she discharges those functions;
 - (b) is not to be regarded as entitled to remuneration merely because she is entitled to payments—
 - (i) in respect of expenses incurred by her in carrying out the functions of the office or post, or
 - (ii) by way of compensation for the loss of income or benefits she would or might have received from any person had she not been carrying out the functions of the office or post.
- (5) In this section and section 10B, appointment to an office or post does not include election to an office or post.

Office-holders

10B.—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this section applies, to discriminate against a woman—

- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered,
- (b) in the terms on which he offers her the appointment, or
- (c) by refusing to offer her the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this section applies and which is an office or post referred to in section 10A(1)(c), for a relevant person on whose recommendation, or subject to whose approval, appointments to the office or post are made, to discriminate against a woman—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment, or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a woman who has been appointed to an office or post to which this section applies, to discriminate against her—

- (a) in the terms of the appointment,

- (b) in the opportunities which he affords her for promotion, a transfer, training or receiving any other benefit, or by refusing to afford her any such opportunity,
 - (c) by terminating the appointment, or
 - (d) by subjecting her to any other detriment in relation to the appointment.
- (4) It is unlawful for a relevant person, in relation to an office or post to which this section applies, to subject to harassment a woman—
- (a) who has been appointed to the office or post,
 - (b) who is seeking or being considered for appointment to the office or post, or
 - (c) who, in relation to appointment to the office or post, is seeking or being considered for a recommendation or approval referred to in section 10A(1)(c).
- (5) Subsections (1) and (3) do not apply to any act in relation to an office or post where, if holding the office or post constituted employment, that act would be lawful by virtue of section 7, 7A or 7B (exception where sex is a genuine occupational qualification etc.) or section 19 (ministers of religion etc.).
- (6) Subsection (2) does not apply to any act in relation to an office or post where, if holding the office or post constituted employment, it would be lawful by virtue of section 7, 7A, 7B or 19 to refuse to offer the person such employment.
- (7) Subsection (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—
- (a) that provision differs in a material respect from the provision of the benefits to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds,
 - (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of her appointment, or
 - (c) the benefits relate to training.
- (8) In subsection (3)(c), the reference to the termination of the appointment includes a reference—
- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions, and
 - (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that she is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.
- (9) In this section “relevant person”, in relation to an office or post, means—
- (a) in a case relating to an appointment to an office or post, the person with power to make that appointment;
 - (b) in a case relating to the making of a recommendation or the giving of an approval in relation to an appointment, a person or body referred to in section 10A(1)(b) with power to make that recommendation or (as the case may be) to give that approval;
 - (c) in a case relating to a term of an appointment, the person with power to determine that term;
 - (d) in a case relating to a working condition afforded in relation to an appointment—
 - (i) the person with power to determine that working condition, or

- (ii) where there is no such person, the person with power to make the appointment;
 - (e) in a case relating to the termination of an appointment, the person with power to terminate the appointment;
 - (f) in a case relating to the subjection of a person to any other detriment or to harassment, any person or body falling within one or more of paragraphs (a) to (e) in relation to such cases as are there mentioned.
- (10) In subsection (9)(d) “working condition” includes any opportunity for promotion, a transfer, training or receiving any other benefit.
- (11) In this section—
- (a) references to making a recommendation include references to making a negative recommendation;
 - (b) references to refusal include references to deliberate omission;
 - (c) “benefits” includes facilities and services.”.
- (2) In the 1975 Act, section 86 (Government appointments outside section 6) is repealed.