Sex Discrimination Act 1986

1986 CHAPTER 59

1 Private households and small undertakings and partnerships

(1) In section 6 of the Sex Discrimination Act 1975 (in this Act referred to as " the 1975 Act"), subsection (3) (which excludes private households and undertakings of five employees or less from the operation of the provisions of subsections (1) and (2) of that section) shall cease to have effect.

(2) After paragraph (b) of subsection (2) of section 7 of the 1975 Act (cases where being a man is a genuine occupational qualification) there shall be inserted the following paragraph—

"(ba) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held by a man because objection might reasonably be taken to allowing to a woman—

(i) the degree of physical or social contact with a person living in the home, or

(ii) the knowledge of intimate details of such a person's life,

which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job ; or".

(3) In section 11 of the 1975 Act, in subsection (1) (which deals with discrimination against a woman in relation to a position as partner in a firm consisting of six or more partners), the words " consisting of six or more partners " shall cease to have effect.

2 Discrimination as to retirement etc.

(1) In subsection (4) of section 6 of the 1975 Act (exclusion of provisions discriminating against employees etc. in relation to death or retirement), at the end there shall be inserted the words " except in so far as, in their application to provision in relation to retirement, they render it unlawful for a person to discriminate against a woman—

(a) in such of the terms on which he offers her employment as make provision in relation to the way in which he will afford her access to opportunities for promotion, transfer or training or as provide for her dismissal or demotion; or

(b) in the way he affords her access to opportunities for promotion, transfer or training or by refusing or deliberately omitting to afford her access to any such opportunities ; or

(c) by dismissing her or subjecting her to any detriment which results in her dismissal or consists in or involves her demotion."

(2) In subsection (4) of section 11 of the 1975 Act (exclusion of provisions discriminating against partners etc. in relation to death or retirement), at the end there shall be inserted the words " except in so far as, in their application to provision made in relation to retirement, they render it unlawful for a firm to discriminate against a woman—

(a) in such of the terms on which they offer her a position as partner as provide for her expulsion from that position ; or

(b) by expelling her from a position as partner or subjecting her to any detriment which results in her expulsion from such a position."

(3) In section 82 of the 1975 Act (interpretation), after subsection (1) there shall be inserted the following subsection—

"(1A) References in this Act to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references—

(a) to the termination of that person's employment or partnership 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 employment or partnership is renewed on the same terms ; and

(b) to the termination of that person's employment or partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer or, as the case may be, the conduct of the other partners."

(4) In section 6 of the Equal Pay Act 1970 (exclusions of sections 1 to 5)—

(a) in subsection (1A)(b) (terms related to, or provision in connection with, death or retirement), at the end there shall be inserted the words " other than a term or provision which, in relation to retirement, affords access to opportunities for promotion, transfer or training or provides for a woman's dismissal or demotion " ; and

(b) in subsection (2) (meaning of retirement), at the end there shall be inserted the words " and the reference in subsection (1A) above to a woman's dismissal shall be construed in accordance with section 82(lA) of the Sex Discrimination Act 1975 as a reference to her dismissal from employment. "

3 Age of retirement etc.: unfair dismissal

(1) For paragraph (b) of subsection (1) of section 64 of the Employment Protection (Consolidation) Act 1978 (upper age limit for unfair dismissal cases) there shall be substituted the following paragraph—

"(b) attained the following age on or before the effective date of termination, that is to say—

(i) if in the undertaking in which he was employed there was a normal retiring age for an employee holding the position which he held and the age was the same whether the

employee holding that position was a man or a woman, that normal retiring age; and

(ii) in any other case, the age of sixty-five."

(2) In subsection (6) of section 73 of the said Act of 1978 (definitions for the purpose of the provision for reducing a basic award for unfair dismissal), for the words from "' the specified anniversary ' " to " her birth " there shall be substituted the words " ' the specified anniversary' in relation to an employee means the sixty-fourth anniversary of the day of his birth ".

(3) Subsection (2) above shall not affect any award for the unfair dismissal of an employee in relation to whom the effective date of termination (within the meaning of Part V of the said Act of 1978) was before the coming into force of that subsection.

4 Discrimination in relation to training

(1) Section 47 of the 1975 Act (discrimination in relation to training by a training body) shall be amended as follows.

(2) In subsections (1) and (3)—

(a) for the words " a training body " there shall be substituted the words " any person " ; and

(b) for the words " it appears to the training body " there shall be substituted the words " it reasonably appears to that person ".

(3) In subsection (2)—

(a) for the words " it appears to a training body " there shall be substituted the words " it reasonably appears to any person " ; and

(b) for the words " the training body " there shall be substituted the words " that person ".

(4) For subsection (4) (definition of, and power to designate, training body) there shall be substituted the following subsection—

"(4) The preceding provisions of this section shall not apply in relation to any discrimination which is rendered unlawful by section 6."

5 Discrimination required by public entertainment licences

(1) Nothing in—

(a) any licence granted (whether before or after the coming into force of this section) under Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982 or Schedule 12 to the London Government Act 1963 (public entertainment licences); or

(b) any regulations made for the purpose of prescribing the terms, conditions or restrictions on or subject to which any such licence is deemed to be granted,

shall have effect, at any time after the coming into force of this section, so as to require any person to do any act which, apart from section 51 of the 1975 Act (acts done under statutory authority), is rendered unlawful by Part II of the 1975 Act (discrimination in relation to employment) or by so much of Part IV of the 1975 Act as relates to acts rendered unlawful by the said Part II.

(2) In this section " act" has the same meaning as in the 1975 Act.

6 Collective agreements and rules of undertakings

(1) Without prejudice to the generality of section 77 of the 1975 Act (which makes provision with respect to the validity and revision of contracts), that section shall apply, as it applies in relation to the term of a contract, to the following, namely—

(a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;

(b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;

(c) any rule made by an organisation, authority or body to which subsection (2) below applies for application to all or any of its members or prospective members or to all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer;

and that section shall so apply whether the agreement was entered into, or the rule made, before or after the coming into force of this section.

(2) This subsection applies to—

(a) any organisation of workers;

(b) any organisation of employers;

(c) any organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;

(d) any authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade.

(3) For the purposes of the said section 77 a term or rule shall be deemed to provide for the doing of an act which would be rendered unlawful by the 1975 Act if—

(a) it provides for the inclusion in any contract of employment of any term which by virtue of an equality clause would fall either to be modified or to be supplemented by an additional term; and

(b) that clause would not be prevented from operating in relation to that contract by section 1(3) of the Equal Pay Act 1970 (material factors justifying discrimination).

(4) Nothing in the said section 77 shall affect the operation of any term or rule in so far as it provides for the doing of a particular act in circumstances where the doing of that act would not be, or be deemed by virtue of subsection (3) above to be, rendered unlawful by the 1975 Act.

(5) The avoidance by virtue of the said section 77 of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights except in so far as they enable any person to require another person to be treated less favourably than himself, namely—

(a) such of the rights of the person to be discriminated against; and

(b) such of the rights of any person who will be treated more favourably in direct or indirect consequence Of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

(6) In this section " collective agreement " means any agreement relating to one or more of the matters mentioned in section 29(1) of the Trade Union and Labour Relations Act 1974 (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

(7) Any expression used in this section and in the 1975 Act has the same meaning in this section as in that Act, and this section shall have effect as if the terms of any service to which Parts II and IV of that Act apply by virtue of subsection (2) of section 85 of that Act (Crown application) were terms of a contract of employment and, in relation to the terms of any such service, as if service for the purposes of any person mentioned in that subsection were employment by that person.

7 Removal of restrictions on working hours and conditions of women

(1) Section 1 of and Part I of Schedule 1 to the Hours of Employment (Conventions) Act 1936 (which impose restrictions on the employment of women by night in industrial undertakings) shall cease to have effect.

(2) The following provisions of the Mines and Quarries Act 1954 (which contain provisions with respect to women and young persons employed at a mine or quarry) shall cease to have effect with respect to women employed at a mine or quarry, that is to say—

(a) section 125 (provisions as to hours worked);
(b) section 126 (periods of employment);
(c) section 128 (notice fixing periods of employment); and
(d) section 131 (register of women and young persons employed).

(3) The following provisions of the Factories Act 1961 (which contain provisions with respect to women and young persons employed in factories) shall cease to have effect with respect to women employed in factories, that is to say—

(a) section 86 (general conditions as to hours of employment);
(b) section 88 (notice fixing hours of employment);
(c) section 91 (restriction of employment inside and outside factory on the same day);
(d) section 92 (prohibition of use during intervals of rooms where a process is being carried out);
(e) section 93 (prohibition of Sunday employment); and
(f) section 94 (annual holidays);

and accordingly, in section 89(9)(a) of that Act (which relates to overtime working), for the words from " no woman " to " young person " there shall be substituted the words " no young person shall be employed ".

(4) The Secretary of State may by order made by statutory instrument make such provision amending or revoking any subordinate legislation (within the meaning of the Interpretation Act 1978) as he considers appropriate—

(a) in consequence of the preceding provisions of this section; or
(b) for removing any restriction which is contained in that subordinate legislation and appears to him to be equivalent to a restriction removed by this section;

and an order under this section may contain such consequential and transitional provision as appears to the Secretary of State to be expedient.

(5) A statutory instrument containing an order under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

8 Repeal of Baking Industry (Hours of Work) Act 1954

The Baking Industry (Hours of Work) Act 1954 (which imposes restrictions on the hours for which a bakery worker may do work in relation to which restrictions on the working hours of women are removed by virtue of section 7 above) shall cease to have effect.

9 Consequential amendment, repeals and saving

(1) In section 6(1) of the Equal Pay Act 1970 (exclusion of operation of equality clause and section 3(4) in relation to certain matters), for the words from the beginning to " shall " there shall be substituted the words " An equality clause shall not ".

(2) The enactments mentioned in the Schedule to this Act (which include enactments that are no longer of practical effect) are hereby repealed to the extent specified in the third column of that Schedule.

(3) Neither the repeal by this Act of section 3 of the Equal Pay Act 1970 (collective agreements and pay structures) nor the amendment made by subsection (1) above shall affect—

(a) the continuing effect, after the coming into force of that repeal, of any declaration made under that section before the coming into force of that repeal; or

(b) the operation, at any time after the coming into force of that repeal, of section 5(1) of that Act in so far as it refers to the rules which apply under subsection (4) of the said section 3.

10 Short title, commencement and extent

(1) This Act may be cited as the Sex Discrimination Act 1986.

(2) Sections 1, 6 and 9(1) and (3) above and Part II of the Schedule to this Act shall come into force at the end of the period of three months beginning with the day on which this Act is passed.

(3) Subject to subsection (4) below, sections 2, 3, 7 and 8 above and Part III of the Schedule to this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions or for different purposes.

(4) Except in so far as they come into force at an earlier time under subsection (3) above, sections 2 and 3 above shall come into force at the end of the period of twelve months beginning with the day on which this Act is passed.

(5) This Act does not extend to Northern Ireland except for the purpose of repealing, in their application to Northern Ireland, sections 1 and 4(1) of and Part I of Schedule 1 to the Hours of Employment (Conventions) Act 1936.