

SCHEDULES

SCHEDULE 3

FORMAL INVESTIGATIONS AND NON-DISCRIMINATION NOTICES

PART I

CONDUCT OF FORMAL INVESTIGATIONS

Introductory

- 1 (1) This Part of this Schedule applies to a formal investigation which the Commission has decided or has been directed to conduct.
- (2) Any subsequent action required or authorised by this Part of this Schedule (or by Part IV of this Schedule) to be taken by the Commission in relation to the conduct of a formal investigation may be taken, so far as they are authorised to do so, by persons nominated under section 3(4) for the purposes of the investigation.

Terms of reference and preliminary notices

- 2 (1) The Commission shall not take any steps in the conduct of a formal investigation until—
- (a) terms of reference for the investigation have been drawn up; and
 - (b) notice of the holding of the investigation and the terms of reference has been served or published as required by sub-paragraph (3) or (4).
- (2) The terms of reference for the investigation shall be drawn up (and may be revised)—
- (a) if the investigation is held at the direction of the Secretary of State, by the Secretary of State after consulting the Commission; and
 - (b) in any other case, by the Commission.
- (3) Where the terms of reference confine the investigation to activities of one or more named persons, notice of the holding of the investigation and the terms of reference shall be served on each of those persons.
- (4) Where the terms of reference do not confine the investigation to activities of one or more named persons, notice of the holding of the investigation and the terms of reference shall be published in such manner as appears to the Commission appropriate to bring it to the attention of persons likely to be affected by it.
- (5) If the terms of reference are revised, this paragraph applies again in relation to the revised investigation and its terms of reference.

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Investigation of unlawful acts etc.

- 3 (1) This paragraph applies where the Commission proposes to investigate in the course of a formal investigation (whether or not the investigation has already begun) whether—
- (a) a person has committed or is committing any unlawful act;
 - (b) any requirement imposed by a non-discrimination notice served on a person (including a requirement to take action specified in an action plan) has been or is being complied with;
 - (c) any undertaking given by a person in an agreement made with the Commission under section 5 is being or has been complied with.
- (2) The Commission may not investigate any such matter unless the terms of reference of the investigation confine it to the activities of one or more named persons (and the person concerned is one of those persons).
- (3) The Commission may not investigate whether a person has committed or is committing any unlawful act unless—
- (a) it has reason to believe that the person concerned may have committed or may be committing the act in question, or
 - (b) that matter is to be investigated in the course of a formal investigation into his compliance with any requirement or undertaking mentioned in sub-paragraph (1)(b) or (c).
- (4) The Commission shall serve a notice on the person concerned offering him the opportunity to make written and oral representations about the matters being investigated.
- (5) If the Commission is investigating whether the person concerned has committed or is committing any unlawful act (otherwise than in the course of a formal investigation into his compliance with any requirement or undertaking mentioned in sub-paragraph (1)(b) or (c)) the Commission shall include in the notice required by sub-paragraph (4) a statement informing that person that the Commission has reason to believe that he may have committed or may be committing any unlawful act.
- (6) The Commission shall not make any findings in relation to any matter mentioned in sub-paragraph (1) without giving the person concerned or his representative a reasonable opportunity to make written and oral representations.
- (7) 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.
- (8) If the Commission refuses to receive oral representations from a person under sub-paragraph (7), it shall give reasons in writing for its objection.
- (9) A notice required by sub-paragraph (4) may be included in a notice required by paragraph 2(3).
- (10) In this paragraph “unlawful act” means an act which is unlawful discrimination for the purposes of any provision of Part II or Part III of the 1995 Act or any other unlawful act of a description prescribed for the purposes of this paragraph.

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Power to obtain information

- 4 (1) For the purposes of a formal investigation the Commission may serve a notice on any person requiring him—
- (a) to give such written information as may be described in the notice; or
 - (b) to attend and give oral information about any matter specified in the notice, and to produce all documents in his possession or control relating to any such matter.
- (2) A notice under this paragraph may only be served on the written authority of the Secretary of State unless the terms of reference confine the investigation to the activities of one or more named persons and the person being served is one of those persons.
- (3) A person may not be required by a notice under this paragraph—
- (a) to give information, or produce a document, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court or the Court of Session; or
 - (b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.
- 5 (1) The Commission may apply to a county court or by summary application to the sheriff for an order under this paragraph if—
- (a) a person has been served with a notice under paragraph 4; and
 - (b) he fails to comply with it or the Commission has reasonable cause to believe that he intends not to comply with it.
- (2) An order under this paragraph is an order requiring the person concerned to comply with the notice or with such directions for the same purpose as may be contained in the order.

Recommendations

- 6 (1) The Commission may make recommendations in the light of its findings in a formal investigation.
- (2) The recommendations may be—
- (a) recommendations to any person for changes in his policies or procedures, or as to any other matter, with a view to promoting the equalisation of opportunities for disabled persons or persons who have had a disability, or
 - (b) recommendations to the Secretary of State, for changes in the law or otherwise.
- (3) The Commission may make such recommendations before the conclusion of the investigation concerned.

Reports

- 7 (1) The Commission shall prepare a report of its findings in any formal investigation.
- (2) The Commission shall exclude from such a report any matter which relates to an individual's private affairs or any person's business interests if—
- (a) publication of that matter might, in the Commission's opinion, prejudicially affect that individual or person, and

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- (b) its exclusion is consistent with the Commission's duties and the object of the report.
- (3) The report of an investigation carried out at the direction of the Secretary of State shall be published by the Secretary of State or, if the Secretary of State so directs, by the Commission.
- (4) The report of any other investigation shall be published by the Commission.
- (5) Nothing in this paragraph affects the Commission's power to issue a non-discrimination notice before a report is prepared or published.