

SEX DISCRIMINATION (ELECTION CANDIDATES) ACT 2002

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Sex Discrimination (Election Candidates) Act which received Royal Assent on 26 February 2002. They have been prepared by the Department for Transport, Local Government and the Regions and the Cabinet Office in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The key objective for this Act is to enable a political party, should it wish to do so, to adopt measures which regulate the selection of candidates for certain elections in order to reduce inequality in the numbers of men and women elected as candidates of the party.
4. The Sex Discrimination Act 1975 (“the 1975 Act”) does not specifically cover the selection of candidates. However, in the case of *Jepson v The Labour Party* in 1996, an employment tribunal held that section 13 of the 1975 Act did cover the selection of candidates by political parties and constrained the parties’ ability to take positive action to increase, in that case, the number of women elected to the House of Commons.
5. The Act amends the 1975 Act (which applies to Great Britain) to provide that Parts II to IV of the 1975 Act do not apply to measures adopted by a party to reduce inequality in the numbers of men and women elected as its candidates. Equivalent amendments are made to the Sex Discrimination (Northern Ireland) Order 1976 (‘the 1976 Order’), which covers Northern Ireland.
6. The legislation is permissive not prescriptive, and allows political parties to decide whether and in what way they wish to reduce the inequality.

TERRITORIAL EXTENT

7. Legislation relating to equal opportunities including the subject matter of the Sex Discrimination Act 1975 is reserved to the UK Parliament under the Scotland Act 1998. In respect of Scotland, this legislation relates to the reserved matter of equal opportunities in the selection of candidates, albeit that such selection will have consequences for the subsequent election in which the candidates take part. Under the Welsh devolution settlement, the UK Parliament makes primary legislation relating to Wales. Legislation relating to equal opportunities is transferred under the Northern Ireland Act 1998, but legislation that deals with parliamentary elections and elections to the Northern Ireland Assembly, the European Parliament and district councils

is excepted under that Act. Although this legislation is principally about equal opportunities in the selection of candidates, it also has an effect on elections. In light of section 98(2) of the Northern Ireland Act 1998 (which defines the meaning of “deals with” in that Act), the legislation is therefore considered to be outside the legislative competence of the Northern Ireland Assembly. As a result the Act extends to England, Wales, Scotland and Northern Ireland. Section 1 of the Act amends the Sex Discrimination Act 1975 which applies to England, Wales, and Scotland. Section 2 contains a corresponding amendment to the [Sex Discrimination \(Northern Ireland\) Order 1976 \(SI 1976/1042 \(NI 15\)\)](#).

COMMENTARY ON SECTIONS

8. [Sections 1](#) and [2](#) are the substantive sections of the Act. They insert in the 1975 Act and the 1976 Order respectively an exemption for positive measures (designed to reduce inequality in the numbers of men and women elected to certain bodies) from the general prohibition against discrimination on the grounds of sex.
9. [Section 1](#) inserts the exemption into Part V of the 1975 Act by way of a new section 42A.
10. To be able to rely on the new subsections (1) and (2), a political party in Great Britain (GB) must be registered under Part II of the Political Parties, Elections and Referendums Act 2000 (‘the 2000 Act’). To put forward a candidate for elections in Great Britain, (to the Westminster Parliament, to the Scottish Parliament, the National Assembly for Wales, the European Parliament and to principal councils in GB), a party must in any case be registered in the Great Britain register under the 2000 Act. For elections to parish councils in England and community councils in Wales a party need not be registered under the 2000 Act, but nevertheless would need to do so in order to use the provisions of this Act.
11. A separate register under the 2000 Act operates for political parties putting forward candidates for elections in Northern Ireland.
12. New subsection (3) defines the elections to which the exemption can apply within Great Britain. The local government elections defined in subsection 3(e) are those to the London Assembly, county councils, district councils, London boroughs and parishes and in Scotland, to local authority councils. Equivalent Welsh authorities are also covered (county boroughs and communities) as are the Council of the Isles of Scilly and the Common Council of the City of London. The Act does not cover directly elected mayors and excludes the Mayor of London.
13. [Section 2](#) of the Act inserts a new Article in the 1976 Order, Article 43A, to make equivalent provision, as set out above, for those political parties putting forward candidates to elections in Northern Ireland. As in Great Britain, under the 2000 Act, for a political party to put forward candidates in Northern Ireland it must register in the Northern Ireland register.
14. A political party wishing to put forward candidates for elections in both Great Britain and Northern Ireland would need to register in both registers. Under the 2000 Act a party registering in both registers would be treated as if it were two separate parties.
15. [Section 3](#) of the Act causes the provisions of the Act to expire at the end of 2015. This should allow for at least 3 elections to have taken place for each body in the UK from the date when the provisions of the Act come into force. Beyond this, section 3 allows the provisions of the Act to continue in force only if provision is made by an order made by statutory instrument. Such an order may only be made where a draft of it has been approved by each House of Parliament.

COMMENCEMENT

16. The Act will commence immediately on Royal Assent.

These notes refer to the Sex Discrimination (Election Candidates) Act 2002 (c.2) which received Royal Assent on 26 February 2002

HANSARD REFERENCES

Stage	Date	Hansard reference
House of Commons		
Introduction and Publication	17 October 2001	Volume 372 Col.1171 (http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm011017/debtext/11017-04.htm#column_1171)
	24 October 2001	Volume 373 Col.328 (http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm011024/debtext/11024-17.htm#column_328)
Committee	6 November 2001	Standing Committee A (http://www.publications.parliament.uk/pa/cm200102/cmstand/a/st011106/am/11106s01.htm)
	8 November 2001	(http://www.publications.parliament.uk/pa/cm200102/cmstand/a/st011108/am/11108s01.htm)
Report and Third Reading	14 November 2001	Volume 374 Col.884 (http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm011114/debtext/11114-10.htm#11114-10_head1)
House of Lords		
Introduction	15 November 2001	Volume 628 Col.691 (http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds01/text/11115-04.htm#11115-04_head1)
	20 December 2001	Volume 630 Col.384 (http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds01/text/11220-06.htm#11220-06_head0)
Committee and Report	21 January 2002	Volume 630 Col.1335 (http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds02/text/20121-04.htm#20121-04_head2)
	28 January 2002	Volume 631 Col.12 (http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds02/text/20128-04.htm#20128-04_head1)
Royal Assent		
House of Commons	26 February 2002	Volume 380 Col.678
House of Lords		Volume 631 Col.1408