Equality Act 2006

2006 CHAPTER 3

PART 2

DISCRIMINATION ON GROUNDS OF RELIGION OR BELIEF

Prohibited discrimination

52 Public authorities: general

(1) It is unlawful for a public authority exercising a function to do any act which constitutes discrimination.

(2) In subsection (1)—

(a) "public authority" includes any person who has functions of a public nature (subject to subsections (3) and (4)), and

(b) "function" means function of a public nature.

(3) The prohibition in subsection (1) shall not apply to—

(a) the House of Commons,

(b) the House of Lords,

(c) the authorities of either House of Parliament,

(d) the Security Service,

(e) the Secret Intelligence Service,

(f) the Government Communications Headquarters, or

(g) a part of the armed forces of the Crown which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

(4) The prohibition in subsection (1) shall not apply to—

(a) the exercise of a judicial function (whether in connection with a court or a tribunal),

(b) anything done on behalf of or on the instructions of a person exercising a judicial function (whether in connection with a court or a tribunal),

(c) preparing, passing (or making), confirming, approving or considering an enactment (including legislation made by or by virtue of a Measure of the General Synod of the Church of England),

(d) the making of an instrument by a Minister of the Crown under an enactment,

(e) the making of an instrument by the Scottish Ministers or a member of the Scottish Executive under an enactment,

(f) a decision of any of the following kinds taken in accordance with rules under section 3(2) of the Immigration Act 1971 (c. 77) ("immigration rules") or anything done for the purposes of or in pursuance of a decision of any of those kinds—

(i) a decision to refuse entry clearance or leave to enter the United Kingdom on the grounds that the exclusion of the person from the United Kingdom is conducive to the public good,

(ii) a decision to cancel leave to enter or remain in the United Kingdom on the grounds that the exclusion of the person from the United Kingdom is conducive to the public good,

(iii) a decision to refuse an application to vary leave to enter or remain in the United Kingdom on the grounds that it is undesirable to permit the person to remain in the United Kingdom,

(iv) a decision to vary leave to enter or remain in the United Kingdom on the grounds that it is undesirable to permit the person to remain in the United Kingdom,

(g) a decision in connection with an application for entry clearance or for leave to enter or remain in the United Kingdom or anything done for the purposes of or in pursuance of a decision of that kind (whether or not the decision is taken in pursuance of a provision of immigration rules) if the decision is taken on the grounds—

(i) that a person holds an office or position in connection with a religion or belief or provides services in connection with a religion or belief,

(ii) that a religion or belief is not to be treated in the same way as certain other religions or beliefs, or

(iii) that the exclusion from the United Kingdom of a person to whom paragraph (i) applies is conducive to the public good,

(h) a decision taken, or guidance given, by the Secretary of State in connection with a decision of a kind specified in paragraph (f) or (g),

(i) a decision taken in accordance with guidance given by the Secretary of State in connection with a decision of a kind specified in paragraph (f) or (g),

(j) a decision not to institute or continue criminal proceedings (and anything done for the purpose of reaching, or in pursuance of, such a decision),

(k) action in relation to—

(i) the curriculum of an educational institution,

(ii) admission to an educational institution which has a religious ethos,

(iii) acts of worship or other religious observance organised by or on behalf of an educational institution (whether or not forming part of the curriculum),

(iv) the governing body of an educational institution which has a religious ethos,

(v) transport to or from an educational institution, or

(vi) the establishment, alteration or closure of educational institutions,

(l) the exercise of the power under section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being), or

(m) action which—

(i) is unlawful by virtue of another provision of this Part or by virtue of a provision of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), or

(ii) would be unlawful by virtue of another provision of this Part other than section 46, or by virtue of a provision of those regulations, but for an express exception.

(5) In an action under section 66 in respect of a contravention of this section—

(a) the court shall not grant an injunction unless satisfied that it will not prejudice criminal proceedings or a criminal investigation, and

(b) the court shall grant any application to stay the section 66 proceedings on the grounds of prejudice to criminal proceedings or to a criminal investigation, unless satisfied that the proceedings or investigation will not be prejudiced.

(6) Section 70(4) shall not apply in relation to a reply, or a failure to reply, to a question in connection with an alleged contravention of this section—

(a) if the respondent or potential respondent reasonably asserts that to have replied differently or at all might have prejudiced criminal proceedings or a criminal investigation,

(b) if the respondent or potential respondent reasonably asserts that to have replied differently or at all would have revealed the reason for not instituting or not continuing criminal proceedings,

(c) where the reply is of a kind specified for the purposes of this paragraph by order of the Secretary of State,

(d) where the reply is given in circumstances specified for the purposes of this paragraph by order of the Secretary of State, or

(e) where the failure occurs in circumstances specified for the purposes of this paragraph by order of the Secretary of State.

(7) In this section—

"criminal investigation" means—

(a) an investigation into the commission of an alleged offence, and

(b) a decision whether to institute criminal proceedings, and

"enactment" includes an enactment in or under an Act of the Scottish Parliament.

(8) An order under subsection (6)(c) to (e)—

(a) may include transitional or incidental provision,

(b) may make provision generally or only for specified cases or circumstances,

(c) may make different provision for different cases or circumstances,

(d) shall be made by statutory instrument, and

(e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In the application of this section to proceedings in Scotland—

(a) a reference to the court shall be taken as a reference to the sheriff,

(b) a reference to an injunction shall be taken as a reference to an interdict,

(c) a reference to staying proceedings shall be taken as a reference to sisting proceedings, and

(d) a reference to the respondent or potential respondent shall be taken as a reference to the defender or potential defender.