



# Equality Act 2010

## 2010 CHAPTER 15

### PART 16 **E+W+S**

#### GENERAL AND MISCELLANEOUS

##### *Civil partnerships*

#### **202 Civil partnerships on religious premises **E+W+S****

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) Omit section 6(1)(b) and (2) (prohibition on use of religious premises for registration of civil partnership).
- (3) In section 6A (power to approve premises for registration of civil partnership), after subsection (2), insert—
  - “(2A) Regulations under this section may provide that premises approved for the registration of civil partnerships may differ from those premises approved for the registration of civil marriages.
  - (2B) Provision by virtue of subsection (2)(b) may, in particular, provide that applications for approval of premises may only be made with the consent (whether general or specific) of a person specified, or a person of a description specified, in the provision.
  - (2C) The power conferred by section 258(2), in its application to the power conferred by this section, includes in particular—
    - (a) power to make provision in relation to religious premises that differs from provision in relation to other premises;
    - (b) power to make different provision for different kinds of religious premises.”
- (4) In that section, after subsection (3), insert—

*Status: Point in time view as at 14/03/2012.*

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“(3A) For the avoidance of doubt, nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so.

(3B) “Civil marriage” means marriage solemnised otherwise than according to the rites of the Church of England or any other religious usages.

(3C) “Religious premises” means premises which—

- (a) are used solely or mainly for religious purposes, or
- (b) have been so used and have not subsequently been used solely or mainly for other purposes.”

#### Commencement Information

- II** S. 202 wholly in force at 5.12.2011; s. 202 not in force at Royal Assent see 216; s. 202(3) wholly in force and s. 202(1)(4) in force for certain purposes at 11.7.2011 by S.I. 2011/1636, art. 2(b)-(d); s. 202 in force so far as not already in force at 5.12.2011 by S.I. 2011/2646, art. 2

### *EU obligations*

#### 203 Harmonisation **E+W+S**

- (1) This section applies if—
  - (a) there is [<sup>F1</sup>an][<sup>F2</sup>EU] obligation of the United Kingdom which a Minister of the Crown thinks relates to the subject matter of the Equality Acts,
  - (b) the obligation is to be implemented by the exercise of the power under section 2(2) of the European Communities Act 1972 (the implementing power), and
  - (c) the Minister thinks that it is appropriate to make harmonising provision in the Equality Acts.
- (2) The Minister may by order make the harmonising provision.
- (3) If the Minister proposes to make an order under this section, the Minister must consult persons and organisations the Minister thinks are likely to be affected by the harmonising provision.
- (4) If, as a result of the consultation under subsection (3), the Minister thinks it appropriate to change the whole or part of the proposal, the Minister must carry out such further consultation with respect to the changes as the Minister thinks appropriate.
- (5) The Equality Acts are the Equality Act 2006 and this Act.
- (6) Harmonising provision is provision made in relation to relevant subject matter of the Equality Acts—
  - (a) which corresponds to the implementing provision, or
  - (b) which the Minister thinks is necessary or expedient in consequence of or related to provision made in pursuance of paragraph (a) or the implementing provision.
- (7) The implementing provision is provision made or to be made in exercise of the implementing power in relation to so much of the subject matter of the Equality Acts as implements [<sup>F1</sup>an][<sup>F2</sup>EU] obligation.

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- (8) Relevant subject matter of the Equality Acts is so much of the subject matter of those Acts as does not implement [<sup>F1</sup>an][<sup>F2</sup>EU] obligation.
- (9) A harmonising provision may amend a provision of the Equality Acts.
- (10) The reference to this Act does not include a reference to this section or Schedule 24 or to a provision specified in that Schedule.
- (11) A Minister of the Crown must report to Parliament on the exercise of the power under subsection (2)—
  - (a) at the end of the period of 2 years starting on the day this section comes into force;
  - (b) at the end of each succeeding period of 2 years.

#### Textual Amendments

- F1** Words in s. 203(1)(a)(7)(8) substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, **6(3)**
- F2** Words in s. 203(1)(a)(7)(8) substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, **6(1)**

## 204 Harmonisation: procedure **E+W+S**

- (1) If, after the conclusion of the consultation required under section 203, the Minister thinks it appropriate to proceed with the making of an order under that section, the Minister must lay before Parliament—
  - (a) a draft of a statutory instrument containing the order, together with
  - (b) an explanatory document.
- (2) The explanatory document must—
  - (a) introduce and give reasons for the harmonising provision;
  - (b) explain why the Minister thinks that the conditions in subsection (1) of section 203 are satisfied;
  - (c) give details of the consultation carried out under that section;
  - (d) give details of the representations received as a result of the consultation;
  - (e) give details of such changes as were made as a result of the representations.
- (3) Where a person making representations in response to the consultation has requested the Minister not to disclose them, the Minister must not disclose them under subsection (2)(d) if, or to the extent that, to do so would (disregarding any connection with proceedings in Parliament) constitute an actionable breach of confidence.
- (4) If information in representations made by a person in response to consultation under section 203 relates to another person, the Minister need not disclose the information under subsection (2)(d) if or to the extent that—
  - (a) the Minister thinks that the disclosure of information could adversely affect the interests of that other person, and
  - (b) the Minister has been unable to obtain the consent of that other person to the disclosure.
- (5) The Minister may not act under subsection (1) before the end of the period of 12 weeks beginning with the day on which the consultation under section 203(3) begins.

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- (6) Laying a draft of a statutory instrument in accordance with subsection (1) satisfies the condition as to laying imposed by subsection (8) of section 208, in so far as that subsection applies in relation to orders under section 203.

### *Application*

#### **205 Crown application** E+W+S

- (1) The following provisions of this Act bind the Crown—
- (a) Part 1 (public sector duty regarding socio-economic inequalities);
  - (b) Part 3 (services and public functions), so far as relating to the exercise of public functions;
  - (c) Chapter 1 of Part 11 (public sector equality duty).
- (2) Part 5 (work) binds the Crown as provided for by that Part.
- (3) The remainder of this Act applies to Crown acts as it applies to acts done by a private person.
- (4) For the purposes of subsection (3), an act is a Crown act if (and only if) it is done—
- (a) by or on behalf of a member of the executive,
  - (b) by a statutory body acting on behalf of the Crown, or
  - (c) by or on behalf of the holder of a statutory office acting on behalf of the Crown.
- (5) A statutory body or office is a body or office established by an enactment.
- (6) The provisions of Parts 2 to 4 of the Crown Proceedings Act 1947 apply to proceedings against the Crown under this Act as they apply to proceedings in England and Wales which, as a result of section 23 of that Act, are treated for the purposes of Part 2 of that Act as civil proceedings by or against the Crown.
- (7) The provisions of Part 5 of that Act apply to proceedings against the Crown under this Act as they apply to proceedings in Scotland which, as a result of that Part, are treated as civil proceedings by or against the Crown.
- (8) But the proviso to section 44 of that Act (removal of proceedings from the sheriff to the Court of Session) does not apply to proceedings under this Act.

#### **206 Information society services** E+W+S

Schedule 25 (information society services) has effect.

### *Subordinate legislation*

#### **207 Exercise of power** E+W+S

- (1) A power to make an order or regulations under this Act is exercisable by a Minister of the Crown, unless there is express provision to the contrary.
- (2) Orders, regulations or rules under this Act must be made by statutory instrument.
- (3) Subsection (2) does not apply to—

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- (a) a transitional exemption order under Part 1 of Schedule 11,
  - (b) a transitional exemption order under Part 1 of Schedule 12, or
  - (c) an order under paragraph 1(3) of Schedule 14 that does not modify an enactment.
- (4) Orders or regulations under this Act—
- (a) may make different provision for different purposes;
  - (b) may include consequential, incidental, supplementary, transitional, transitory or saving provision.
- (5) Nothing in section 163(4), 174(4) or 182(3) affects the generality of the power under subsection (4)(a).
- (6) The power under subsection (4)(b), in its application to section 37, 153, 154(2), 155(5), 197 or 216 or to paragraph 7(1) of Schedule 11 or paragraph 1(3) or 2(3) of Schedule 14, includes power to amend an enactment (including, in the case of section 197 or 216, this Act).
- (7) In the case of section 216 (commencement), provision by virtue of subsection (4)(b) may be included in a separate order from the order that provides for the commencement to which the provision relates; and, for that purpose, it does not matter—
- (a) whether the order providing for the commencement includes provision by virtue of subsection (4)(b);
  - (b) whether the commencement has taken place.
- (8) A statutory instrument containing an Order in Council under section 82 (offshore work) is subject to annulment in pursuance of a resolution of either House of Parliament.

## **208 Ministers of the Crown, etc. E+W+S**

- (1) This section applies where the power to make an order or regulations under this Act is exercisable by a Minister of the Crown or the Treasury.
- (2) A statutory instrument containing (whether alone or with other provision) an order or regulations that amend this Act or another Act of Parliament, or an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales, is subject to the affirmative procedure.
- (3) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains—
- (a) an order under section 59 (local authority functions);
  - (b) an order under section 151 (power to amend list of public authorities for the purposes of the public sector equality duty) that provides for the omission of an entry where the authority concerned has ceased to exist or the variation of an entry where the authority concerned has changed its name;
  - (c) an order under paragraph 1(3) of Schedule 14 (educational charities and endowments) that modifies an enactment.
- (4) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (5) is subject to the affirmative procedure.
- (5) The orders and regulations referred to in subsection (4) are—

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- (a) regulations under section 30 (services: ships and hovercraft);
  - (b) regulations under section 78 (gender pay gap information);
  - (c) regulations under section 81 (work: ships and hovercraft);
  - (d) an order under section 105 (election candidates: expiry of provision);
  - (e) regulations under section 106 (election candidates: diversity information);
  - (f) regulations under section 153 or 154(2) (public sector equality duty: powers to impose specific duties);
  - (g) regulations under section 184(4) (rail vehicle accessibility: procedure for exemption orders);
  - (h) an order under section 203 (EU obligations: harmonisation);
  - (i) regulations under paragraph 9(3) of Schedule 20 (rail vehicle accessibility: determination of turnover for purposes of penalties).
- (6) A statutory instrument that is not subject to the affirmative procedure by virtue of subsection (2) or (4) is subject to the negative procedure.
- (7) But a statutory instrument is not subject to the negative procedure by virtue of subsection (6) merely because it contains—
- (a) an order under section 183(1) (rail vehicle accessibility: exemptions);
  - (b) an order under section 216 (commencement) that—
    - (i) does not amend an Act of Parliament, an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales, and
    - (ii) is not made in reliance on section 207(7).
- (8) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of each House of Parliament.
- (9) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If a draft of a statutory instrument containing an order or regulations under section 2, 151, 153, 154(2) or 155(5) would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

## 209 The Welsh Ministers E+W+S

- (1) This section applies where the power to make an order or regulations under this Act is exercisable by the Welsh Ministers.
- (2) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (3) is subject to the affirmative procedure.
- (3) The orders and regulations referred to in subsection (2) are—
  - (a) regulations under section 2 (socio-economic inequalities);
  - (b) an order under section 151 (power to amend list of public authorities for the purposes of the public sector equality duty);
  - (c) regulations under section 153 or 154(2) (public sector equality duty: powers to impose specific duties);

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- (d) regulations under section 155(5) that amend an Act of Parliament or an Act or Measure of the National Assembly for Wales (public sector equality duty: power to modify or remove specific duties).
- (4) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains an order under section 151 that provides for—
  - (a) the omission of an entry where the authority concerned has ceased to exist, or
  - (b) the variation of an entry where the authority concerned has changed its name.
- (5) A statutory instrument that is not subject to the affirmative procedure by virtue of subsection (2) is subject to the negative procedure.
- (6) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of the National Assembly for Wales.
- (7) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

## 210 The Scottish Ministers **E+W+S**

- (1) This section applies where the power to make an order, regulations or rules under this Act is exercisable by the Scottish Ministers.
- (2) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (3) is subject to the affirmative procedure.
- (3) The orders and regulations referred to in subsection (2) are—
  - (a) regulations under section 2 (socio-economic inequalities);
  - (b) regulations under section 37 (power to make provision about adjustments to common parts in Scotland);
  - (c) an order under section 151 (power to amend list of public authorities for the purposes of the public sector equality duty);
  - (d) regulations under section 153 or 154(2) (public sector equality duty: powers to impose specific duties);
  - (e) regulations under section 155(5) that amend an Act of Parliament or an Act of the Scottish Parliament (public sector equality duty: power to modify or remove specific duties).
- (4) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains an order under section 151 that provides for—
  - (a) the omission of an entry where the authority concerned has ceased to exist, or
  - (b) the variation of an entry where the authority concerned has changed its name.
- (5) A statutory instrument that is not subject to the affirmative procedure by virtue of subsection (2) is subject to the negative procedure.
- (6) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of the Scottish Parliament.

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- (7) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of the Scottish Parliament.

*Amendments, etc.*

## 211 Amendments, repeals and revocations E+W+S

- (1) Schedule 26 (amendments) has effect.  
(2) Schedule 27 (repeals and revocations) has effect.

### Commencement Information

- I2** S. 211 partly in force; s. 211 not in force at Royal Assent see s. 216; s. 211(1) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, art. 3(1)(a); s. 211(1) in force for certain purposes at 4.8.2010 by S.I. 2010/1966, art. 3(a); 211(1)(2) in force for certain purposes at 1.10.2010 by S.I. 2010/2317, art. 2(1)(15)(b)(c) (with art. 15); s. 211(1)(2) in force for certain purposes at 5.4.2011 by S.I. 2011/1066, art. 2(d)(e)

*Interpretation*

## 212 General interpretation E+W+S

- (1) In this Act—
- “armed forces” means any of the naval, military or air forces of the Crown;
  - “the Commission” means the Commission for Equality and Human Rights;
  - “detriment” does not, subject to subsection (5), include conduct which amounts to harassment;
  - “the Education Acts” has the meaning given in section 578 of the Education Act 1996;
  - “employment” and related expressions are (subject to subsection (11)) to be read with section 83;
  - “enactment” means an enactment contained in—
    - (a) an Act of Parliament,
    - (b) an Act of the Scottish Parliament,
    - (c) an Act or Measure of the National Assembly for Wales, or
    - (d) subordinate legislation;
  - “equality clause” means a sex equality clause or maternity equality clause;
  - “equality rule” means a sex equality rule or maternity equality rule;
  - “man” means a male of any age;
  - “maternity equality clause” has the meaning given in section 73;
  - “maternity equality rule” has the meaning given in section 75;
  - “non-discrimination rule” has the meaning given in section 61;
  - “occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993;
  - “parent” has the same meaning as in—
    - (a) the Education Act 1996 (in relation to England and Wales);



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- (b) the Education (Scotland) Act 1980 (in relation to Scotland);
  - “prescribed” means prescribed by regulations;
  - “profession” includes a vocation or occupation;
  - “sex equality clause” has the meaning given in section 66;
  - “sex equality rule” has the meaning given in section 67;
  - “subordinate legislation” means—
    - (a) subordinate legislation within the meaning of the Interpretation Act 1978, or
    - (b) an instrument made under an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales;
  - “substantial” means more than minor or trivial;
  - “trade” includes any business;
  - “woman” means a female of any age.
- (2) A reference (however expressed) to an act includes a reference to an omission.
- (3) A reference (however expressed) to an omission includes (unless there is express provision to the contrary) a reference to—
  - (a) a deliberate omission to do something;
  - (b) a refusal to do it;
  - (c) a failure to do it.
- (4) A reference (however expressed) to providing or affording access to a benefit, facility or service includes a reference to facilitating access to the benefit, facility or service.
- (5) Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic.
- (6) A reference to occupation, in relation to premises, is a reference to lawful occupation.
- (7) The following are members of the executive—
  - (a) a Minister of the Crown;
  - (b) a government department;
  - (c) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government;
  - (d) any part of the Scottish Administration.
- (8) A reference to a breach of an equality clause or rule is a reference to a breach of a term modified by, or included by virtue of, an equality clause or rule.
- (9) A reference to a contravention of this Act does not include a reference to a breach of an equality clause or rule, unless there is express provision to the contrary.
- (10) “Member”, in relation to an occupational pension scheme, means an active member, a deferred member or a pensioner member (within the meaning, in each case, given by section 124 of the Pensions Act 1995).
- (11) “Employer”, “deferred member”, “pension credit member”, “pensionable service”, “pensioner member” and “trustees or managers” each have, in relation to an occupational pension scheme, the meaning given by section 124 of the Pensions Act 1995.

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- (12) A reference to the accrual of rights under an occupational pension scheme is to be construed in accordance with that section.
- (13) Nothing in section 28, 32, 84, 90, 95 or 100 is to be regarded as an express exception.

### 213 References to maternity leave, etc. **E+W+S**

- (1) This section applies for the purposes of this Act.
- (2) A reference to a woman on maternity leave is a reference to a woman on—
- (a) compulsory maternity leave,
  - (b) ordinary maternity leave, or
  - (c) additional maternity leave.
- (3) A reference to a woman on compulsory maternity leave is a reference to a woman absent from work because she satisfies the conditions prescribed for the purposes of section 72(1) of the Employment Rights Act 1996.
- (4) A reference to a woman on ordinary maternity leave is a reference to a woman absent from work because she is exercising the right to ordinary maternity leave.
- (5) A reference to the right to ordinary maternity leave is a reference to the right conferred by section 71(1) of the Employment Rights Act 1996.
- (6) A reference to a woman on additional maternity leave is a reference to a woman absent from work because she is exercising the right to additional maternity leave.
- (7) A reference to the right to additional maternity leave is a reference to the right conferred by section 73(1) of the Employment Rights Act 1996.
- (8) “Additional maternity leave period” has the meaning given in section 73(2) of that Act.

### 214 Index of defined expressions **E+W+S**

Schedule 28 lists the places where expressions used in this Act are defined or otherwise explained.

#### *Final provisions*

### 215 Money **E+W+S**

There is to be paid out of money provided by Parliament any increase attributable to this Act in the expenses of a Minister of the Crown.

### 216 Commencement **E+W+S**

- (1) The following provisions come into force on the day on which this Act is passed—
- (a) section 186(2) (rail vehicle accessibility: compliance);
  - (b) this Part (except sections 202 (civil partnerships on religious premises), 206 (information society services) and 211 (amendments, etc)).
- (2) Part 15 (family property) comes into force on such day as the Lord Chancellor may by order appoint.

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- (3) The other provisions of this Act come into force on such day as a Minister of the Crown may by order appoint.

#### Subordinate Legislation Made

- P1** S. 216 power partly exercised; various dates appointed for specified provisions and purposes as follows:
- 6.7.2010 by {S.I. 2010/1736}, arts. 2, 3;
  - 4.8.2010 by {S.I. 2010/1966}, arts. 2, 3;
  - 3.9.2010 by {S.I. 2010/2191}, art. 2;
  - 1.10.2010 and 18.3.2011 by {S.I. 2010/2317}, art. 2 (subject to arts. 3-25, as amended by {S.I. 2010/2337}, art. 2), art. 3;
  - 18.1.2011 and 6.4.2011 by {S.I. 2011/96}, arts. 2, 3;
  - 5.4.2011 by {S.I. 2011/1066}, art. 2;
  - 11.7.2011 by {S.I. 2011/1636}, art. 2;
  - 5.12.2011 by {S.I. 2011/2646}, art. 2;
  - 19.6.2012 and 1.10.2012 by {S.I. 2012/1569}, arts. 2, 3;
  - 1.9.2012 by {S.I. 2012/2184}, art. 2

#### 217 Extent **E+W+S**

- (1) This Act forms part of the law of England and Wales.
- (2) This Act, apart from section 190 (improvements to let dwelling houses) and Part 15 (family property), forms part of the law of Scotland.
- (3) Each of the following also forms part of the law of Northern Ireland—
  - (a) section 82 (offshore work);
  - (b) section 105(3) and (4) (expiry of Sex Discrimination (Election Candidates) Act 2002);
  - (c) section 199 (abolition of presumption of advancement).

#### 218 Short title **E+W+S**

This Act may be cited as the Equality Act 2010.

**Status:**

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