



Sex Discrimination Act 1975 (repealed)

1975 CHAPTER 65

PART IV

OTHER UNLAWFUL ACTS

Modifications etc. (not altering text)

- C1** Part IV extended by [Employment Protection Act 1975 \(c. 71\), s. 122\(2\)](#)
C2 Pt. IV (ss. 37–42) excluded by [Employment Act 1989 \(c. 38, SIF 43:1, 106:1\), ss. 4\(1\)\(c\), 5\(1\)\(2\)\(b\)\(3\)\(4\)\(7\)](#)
C3 Pt. IV (ss. 37–42) excluded by [S.I. 1989/2420, art. 3](#)

37 Discriminatory practices.

[^{F1}(1) In this section “discriminatory practice” means—

- (a) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision of Part 2 or 3 taken with section 1(2)(b) or 3(1)(b) or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of one sex, or
- (b) the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part 3 taken with section 1(1)(b) or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of one sex.]

(2) A person acts in contravention of this section if and so long as—

- (a) he applies a discriminatory practice, or
- (b) he operates practices or other arrangements which in any circumstances would call for the application by him of a discriminatory practice.

(3) Proceedings in respect of a contravention of this section shall be brought only by the Commission in accordance with [^{F2}sections 20 to 24 of the Equality Act 2006] .

Status: Point in time view as at 01/01/2010.

Changes to legislation: There are currently no known outstanding effects for the Sex Discrimination Act 1975 (repealed), Part IV. (See end of Document for details)

Textual Amendments

- F1** S. 37(1) substituted (12.10.2001) by S.I. 2001/2660, **reg. 8(2)**
- F2** Words in s. 37(3) substituted (1.10.2007) by virtue of Equality Act 2006 (c. 3), ss. 40, 93, **Sch. 3 para. 7** (with s. 92); S.I. 2007/2603, **art. 2** (subject to **art. 3**)

38 Discriminatory advertisements.

- (1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part II or III.
- (2) Subsection (1) does not apply to an advertisement if the intended act would not in fact be unlawful.
- (3) For the purposes of subsection (1), use of a job description with a sexual connotation (such as “waiter”, “salesgirl”, “postman” or “stewardess”) shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.
- (4) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves—
 - (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful, and
 - (b) that it was reasonable for him to rely on the statement.
- (5) A person who knowingly or recklessly makes a statement such as is referred to in subsection (4) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding [^{F3}level 5 on the standard scale].
- [^{F4}(6) Proceedings in respect of a contravention of subsection (1) may be brought only—
 - (a) by the Commission, and
 - (b) in accordance with section 25 of the Equality Act 2006.]

Textual Amendments

- F3** Words substituted by virtue of (E.W.) **Criminal Justice Act 1982 (c. 48, SIF 39:1)**, **ss. 38, 46** and (S.) **Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1)**, **ss. 289F, 289G**
- F4** S. 38(6) added (1.10.2007) by **Equality Act 2006 (c. 3)**, ss. 40, 93, **Sch. 3 para. 8** (with s. 92); S.I. 2007/2603, **art. 2** (subject to **art. 3**)

39 Instructions to discriminate.

- [^{F5}(1)] It is unlawful for a person—
- (a) who has authority over another person, or
 - (b) in accordance with whose wishes that other person is accustomed to act,
- to instruct him to do any act which is unlawful by virtue of Part II or III, or procure or attempt to procure the doing by him of any such act.

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- [^{F6}(2) Proceedings in respect of a contravention of subsection (1) may be brought only—
- (a) by the Commission, and
 - (b) in accordance with section 25 of the Equality Act 2006.]

Textual Amendments

- F5** S. 39: re-numbered (1.10.2007) as subsection (1) by virtue of [Equality Act 2006 \(c. 3\)](#), ss. 40, 93, [Sch. 3 para. 9](#) (with s. 92); S.I. 2007/2603, [art. 2](#) (subject to [art. 3](#))
- F6** S. 39(2) added (1.10.2007) by [Equality Act 2006 \(c. 3\)](#), ss. 40, 93, [Sch. 3 para. 9](#) (with s. 92); S.I. 2007/2603, [art. 2](#) (subject to [art. 3](#))

40 Pressure to discriminate.

- (1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part II or III by—
 - (a) providing or offering to provide him with any benefit, or
 - (b) subjecting or threatening to subject him to any detriment.
- (2) An offer or threat is not prevented from falling within subsection (1) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

- [^{F7}(3) Proceedings in respect of a contravention of subsection (1) may be brought only—
- (a) by the Commission, and
 - (b) in accordance with section 25 of the Equality Act 2006.]

Textual Amendments

- F7** S. 40(3) added (1.10.2007) by [Equality Act 2006 \(c. 3\)](#), ss. 40, 93, [Sch. 3 para. 10](#) (with s. 92); S.I. 2007/2603, [art. 2](#) (subject to [art. 3](#))

41 Liability of employers and principals.

- (1) Anything done by a person in the course of his employment shall be treated for the purposes of this Act as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.
- (2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Act as done by that other person as well as by him.
- (3) In proceedings brought under this Act against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

Modifications etc. (not altering text)

- C4** S. 41 modified (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006 \(S.I. 2006/1073\)](#), art. 3, [Sch.](#)

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- C5** S. 41 modified by S.I. 1989/901, art. 3, **Sch.**
- C6** S. 41 modified (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**)
- C7** S. 41 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**
- C8** S. 41 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch**

42 Aiding unlawful acts.

- (1) A person who knowingly aids another person to do an act made unlawful by this Act shall be treated for the purposes of this Act as himself doing an unlawful act of the like description.
- (2) For the purposes of subsection (1) an employee or agent for whose act the employer or principal is liable under section 41 (or would be so liable but for section 41(3)) shall be deemed to aid the doing of the act by the employer or principal.
- (3) A person does not under this section knowingly aid another to do an unlawful act if—
 - (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of this Act, the act which he aids would not be unlawful, and
 - (b) it is reasonable for him to rely on the statement.
- (4) A person who knowingly or recklessly makes a statement such as is referred to in subsection (3)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding [^{F8}level 5 on the standard scale].

Textual Amendments

- F8** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 289F, 289G

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