



Employment Act 1989

1989 CHAPTER 38

Circumstances where discrimination as respects employment or training is permissible

3 Restriction of exemption for discrimination required by or under statute.

- (1) The 1975 Act shall be amended as follows.
- (2) Section 7(2)(f) (exception for jobs held by men because of statutory restrictions on employment of women) shall be omitted.
- (3) The following sections shall be substituted for section 51—

“51 Acts done for purposes of protection of women.

- (1) Nothing in the following provisions, namely—
 - (a) Part II,
 - (b) Part III so far as it applies to vocational training, or
 - (c) Part IV so far as it has effect in relation to the provisions mentioned in paragraphs (a) and (b),shall render unlawful any act done by a person in relation to a woman if—
 - (i) it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision concerning the protection of women, or
 - (ii) it was necessary for that person to do it in order to comply with a requirement of a relevant statutory provision (within the meaning of Part I of the Health and Safety at Work etc. Act 1974) and it was done by that person for the purpose of the protection of the woman in question (or of any class of women that included that woman).
- (2) In subsection (1)—
 - (a) the reference in paragraph (i) of that subsection to an existing statutory provision concerning the protection of women is a reference

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to any such provision having effect for the purpose of protecting women as regards—

- (i) pregnancy or maternity, or
- (ii) other circumstances giving rise to risks specifically affecting women,

whether the provision relates only to such protection or to the protection of any other class of persons as well; and

- (b) the reference in paragraph (ii) of that subsection to the protection of a particular woman or class of women is a reference to the protection of that woman or those women as regards any circumstances falling within paragraph (a)(i) or (ii) above.

- (3) In this section “existing statutory provision” means (subject to subsection (4)) any provision of—
 - (a) an Act passed before this Act, or
 - (b) an instrument approved or made by or under such an Act (including one approved or made after the passing of this Act).
- (4) Where an Act passed after this Act re-enacts (with or without modification) a provision of an Act passed before this Act, that provision as re-enacted shall be treated for the purposes of subsection (3) as if it continued to be contained in an Act passed before this Act.

51A Acts done under statutory authority to be exempt from certain provisions of Part III.

- (1) Nothing in—
 - (a) the relevant provisions of Part III, or
 - (b) Part IV so far as it has effect in relation to those provisions, shall render unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision within the meaning of section 51.
- (2) In subsection (1) “the relevant provisions of Part III” means the provisions of that Part except so far as they apply to vocational training.”

- (4) The following section shall be inserted after section 52—

“52A Construction of references to vocational training.

In the following provisions, namely—

- (a) sections 51 and 51A, and
- (b) the provisions of any Order in Council modifying the effect of section 52,

“vocational training” includes advanced vocational training and retraining; and any reference to vocational training in those provisions shall be construed as including a reference to vocational guidance.”

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4 Exemption for discrimination under certain provisions concerned with the protection of women at work.

- (1) Without prejudice to the operation of section 51 of the 1975 Act (as substituted by section 3(3) above), nothing in—
 - (a) Part II of that Act,
 - (b) Part III of that Act so far as it applies to vocational training, or
 - (c) Part IV of that Act so far as it has effect in relation to the provisions mentioned in paragraphs (a) and (b) above,shall render unlawful any act done by a person in relation to a woman if it was necessary for that person to do that act in order to comply with any requirement of any of the provisions specified in Schedule 1 to this Act (which are concerned with the protection of women at work).
- (2) Each of the last two entries in that Schedule shall be construed as including a reference to any provision or provisions for the time being having effect in place of the provision or provisions specified in that entry.
- (3) In this section “woman” means a female person of any age.

5 Exemption for discrimination in connection with certain educational appointments.

- (1) Nothing in Parts II to IV of the 1975 Act shall render unlawful any act done by a person in connection with the employment of another person as the head teacher or principal of any educational establishment if it was necessary for that person to do that act in order to comply with any requirement of any instrument relating to the establishment that its head teacher or principal should be a member of a particular religious order.
- (2) Nothing in—
 - (a) Part II of the 1975 Act, or
 - (b) Part IV of that Act so far as it has effect in relation to Part II,shall render unlawful any act done by a person in connection with the employment of another person as a professor in any university if the professorship in question is, in accordance with any Act or instrument relating to the university, either a canon professorship or one to which a canonry is annexed.
- (3) Nothing in the provisions of the 1975 Act referred to in subsection (2)(a) or (b) shall render unlawful any act done by a person in connection with the employment of another person as the head, a fellow or any other member of the academic staff of any college, or institution in the nature of a college, in a university if it was necessary for that person to do that act in order to comply with any requirement of any instrument relating to the college or institution that the holder of the position in question should be a woman.
- (4) Subsection (3) shall not apply in relation to instruments taking effect after the commencement of that subsection; and section 6(b) of the ^{M1}Interpretation Act 1978 (words importing the feminine gender to include the masculine) shall not apply to that subsection.
- (5) The Secretary of State may by order provide that any provision of subsections (1) to (3) shall not have effect in relation to—
 - (a) any educational establishment or university specified in the order; or

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- (b) any class or description of educational establishments so specified.
- (6) In this section “educational establishment” means—
- (a) any school within the meaning of the ^{M2}Education Act 1944 or the ^{M3}Education (Scotland) Act 1980;
- (b) any college, or institution in the nature of a college, in a university; or
- [^{F1}(ba) any institution designated by order under section 28 of the Further and Higher Education Act 1992]
- [^{F2}(c) any institution designated by order made or having effect as if made under section 129 of the Education Reform Act 1988.]
- (7) Nothing in this section shall be construed as prejudicing the operation of section 19 of the 1975 Act (exemption for discrimination in relation to employment of ministers of religion).

Textual Amendments

- F1** S. 5(6)(ba) inserted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. II para. 93(a)**; S.I. 1992/831, art. 2, **Sch. 3**
- F2** S. 5(6)(c) substituted (6.5.1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. II para. 93(b)**; S.I. 1992/831, art. 2, **Sch. 1**

Modifications etc. (not altering text)

- C1** S. 5: transfer of certain functions (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

Marginal Citations

- M1** 1978 c. 30.
- M2** 1944 c. 31.
- M3** 1980 c. 44.

6 Power of Secretary of State to exempt particular acts of discrimination required by or under statute.

- (1) The Secretary of State may by order make such provision as he considers appropriate—
- (a) for disapplying subsection (1) of section 1 above in the case of any provision to which it appears to him that that subsection would otherwise apply;
- (b) for rendering lawful under any of the provisions of the 1975 Act falling within section 1(2) above acts done in order to comply with any requirement—
- (i) of a provision whose effect is preserved by virtue of paragraph (a) above, or
- (ii) of an instrument approved or made by or under an Act passed after the 1975 Act but before this Act (including one approved or made after the passing of this Act).
- (2) Where an Act passed after this Act re-enacts (with or without modification) a provision of an Act passed as mentioned in sub-paragraph (ii) of subsection (1)(b), that provision as re-enacted shall be treated for the purposes of that sub-paragraph as if it continued to be contained in an Act passed as mentioned in that sub-paragraph.

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Modifications etc. (not altering text)

C2 [S. 6](#): transfer of certain functions (1.7.1999) by [S.I. 1999/672](#), art. 2, [Sch. 1](#)

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