

Reference No: E109/44/75 ; **Date:** 30/06/77

Circular 5/1977:- Employment Equality Act, 1977

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Your attention is directed to the provisions of the Employment Equality Act, 1977, which has considerable significance for Government Departments. The main features of the Act and the areas in which they are most likely to impinge significantly on the functions of personnel officers are set out below.

I THE MAIN FEATURES OF THE ACT

The general purpose of the Act

2. The general purpose of the Act is to make unlawful discrimination on grounds of sex or marital status in relation to

- * access to employment
- * conditions of employment (other than remuneration or any term relating to occupational pension schemes)
- * training or experience for or in relation to employment
- * promotion or regrading
- * classification of posts.

Detailed provisions as to what constitutes discrimination under the Act are contained in sections 2 to 11, inclusive, of the Act.

Exclusions and savers

3. Sections 12 to 17, inclusive, of the Act provide for exclusions from, and savers under, its provisions. Apart from the position in relation to the activities of the Civil Service Commissioners (and the Local Appointment Commissioners), the main exclusions and savers, insofar as the civil service is concerned, are as follows:-

- * the prison service is excluded
- * an employer is not obliged to employ a person who will not undertake the duties attached to the position in question or will not accept the conditions under which the duties are performed
- * the Act does not apply to actions done in compliance with certain other statutory requirements, e.g. the provision in the Conditions of Employment Act, 1936 which prohibits the employment of women on industrial work at night
- * special arrangements for women in connection with pregnancy or child birth are permitted
- * the Act does not apply to "the employment of a person where the sex of the person is an occupational qualification" for the post in question - section 17 contains specific provisions on this aspect.

4. The provisions of the Act prohibiting discrimination apply to the recruitment functions of the Civil Service Commissioners (and the Local Appointments Commissioners). Regulations and advertisements for competitions, for instance, will have to comply with the Act. The Commissioners' selection activities are, however, excluded from the scope of the dispute procedures provided for.

Dispute procedures

5. Under the Act a person who considers he/she has been discriminated against may, within 6 months, refer his/her case to the Labour Court. The Court will then try to settle the matter through its conciliation service and, if that fails, it will refer the dispute to an equality officer (formerly named equal pay officer). The Court may, alternatively, refer the dispute direct to an equality officer. The equality officer will investigate the dispute and issue a recommendation. Within 42 days an appeal to the Labour Court may be made against this recommendation or a determination may be sought from the Court that the recommendation has not been implemented. The Court will hear and determine the appeal. There can be an appeal on a point of law to the High Court.

6. The Labour Court, in determining an appeal made to it, may recommend a certain course of action and/or award compensation not exceeding 104 weeks' remuneration. If the Court's determination is not carried out a complaint can be made to it and it may then direct the employer to do certain things to implement its determination. If this direction is not carried out the person to whom it is addressed is liable on summary conviction to a fine of not more than £100 plus not more than £10 for every day during which the offence is continued. The trial court involved may also award damages not exceeding 104 weeks' remuneration.

7. Special remedies, for instance, by way of re-instatement, re-engagement or compensation, are available through the courts and the Labour Court where an employee is dismissed because, for instance, he/she referred a dispute to the Labour Court under the Act or gave evidence in proceedings taken under the Act.

Access to information

8. An employee who proposes to refer a dispute to the Labour Court is entitled, on request, to a statement, in writing, giving the reason for action believed by him/her to constitute discrimination (section 28).

9. In its investigation of the dispute the normal powers of the Labour Court in relation to the summoning of witnesses and access to documents apply. The equality officer also has powers in relation to access to documents and to information relating to the contents of those documents.

10. The only exception provided for in relation to access to information is that a person is not required "to furnish any reference (or copy thereof) from an employer or any report (or copy thereof), whether of a confidential nature or otherwise, relating to the character or the suitability for employment of any other person, or to disclose the contents of such a reference or report" (section 19(7)).

Employment Equality Agency

11. Provision is made for the establishment of a body to be known as the Employment Equality Agency. Among the functions of the Agency will be the following -

- * to work towards the elimination of discrimination
- * to promote equality of opportunity between men and women in relation to employment
- * to keep under review the working of the Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act, 1977 and, where it thinks this necessary, to propose changes
- * to review legislation which restricts the employment of women e.g. the prohibition on the employment of women on industrial work at night contained in the Conditions of Employment Act, 1936
- * to undertake or sponsor research or the dissemination of information
- * to conduct investigations within published terms of reference in - the process, in certain circumstances, documents may be called for and witnesses summoned.

Provision is made for the issue of reports of investigations made by the Agency and for the steps to be taken where the Agency establishes, through its investigation, that discrimination has taken place or is taking place.

Operative dates

12. The sections of the Act other than those dealing with the Employment Equality Agency come into operation on 1 July, 1977. The Agency will come into existence on 1 October, 1977.

II IMPLICATIONS OF THE ACT FOR PERSONNEL OFFICERS

General

13 It will be clear from the outline given above of the main provisions of the Act that its scope is very broad and that it has wide implications for those operating within the personnel area. Officers on personnel work should, therefore, familiarise themselves with the detailed provisions of the Act and keep themselves informed of the way in which it is applied and interpreted from time to time by, for instance, the Labour Court.

14 The provisions of the Act will, in particular, involve change in relation to the following

- (1) recruitment to grades previously reserved for the members of one sex
- (2) the classification of posts on the basis of sex
- (3) the investigation of civil service personnel matters by outside parties
- (4) access by outside parties to information on civil service personnel matters.

Recruitment

15. Grades to which access has been restricted to men or women only must now be opened up to both sexes unless the exemption provisions of the Act apply. This will be a statutory obligation from 1 July, 1977. Advertisements will have to make it clear that both men and women may apply.

16. The provisions of the Act will be binding on the Civil Service Commissioners (and the Local Appointments Commissioners) when they are making the regulations for competitions conducted by them. Where competitions have already been held by the Commissioners on a single-sex basis it will be possible, provided the Minister for Labour makes the required regulation under the Act, to appoint selected candidates within a period of up to 6 months after 1 July, 1977. No such period of grace applies to appointments which are not made through the Civil Service Commission (or the Local Appointments Commission).

17. Departments themselves should immediately apply the provisions of the Act when recruiting staff direct. Where recruitment is effected through the National Manpower Service or an Employment Exchange the terms of the Act will be adhered to when nominations are being sent to Departments.

18. In the general service, both men and women will have to be considered for the grades of Messenger and Cleaner. There will still be two categories of Cleaner, one with the hours, duties and pay of the present grade of Female Cleaner and the other with the conditions at present applying to Male Cleaners, both, of course, being open to men and women. The Staff Side are being consulted about titles for the two grades.

Classification of posts on the basis of sex

19. The one-sex nature of certain recruitment grades will change according as vacancies are filled on a fully open basis. Departments will, however, need to look at non-recruitment single-sex grades to see

what, if any changes require to be made in relation to them. It will be necessary, in particular, to review situations in which there have been separate promotion streams for single-sex grades.

Investigation of civil service personnel matters by outside parties

20. As a result of the Act Departments will have to adjust to the possibility of having to defend some of their actions or decisions, in relation to such matters as recruitment, promotion and general conditions of employment, before, for instance, an equality officer or the Labour Court. While it is unlikely that Departments will be found wanting in the application of the Act, it should be borne in mind that, particularly in the initial period, it is possible that ill-founded allegations of discrimination may be made.

Access to information by outside parties

21. Personnel officers should bear in mind the fact that as soon as an employee forms the intention to refer an alleged discrimination to the Labour Court he/she can set in motion a process which requires the release of information to him/her, the Labour Court etc. and which may involve public investigation of the allegation. As mentioned in paragraph 10, the only reserved items in this context are references to or reports on the employee's character or suitability for employment. The range of material to which access is possible is extremely wide because of the scope of the Act.

Consultation with this Department

22. This Department should be consulted about any doubts or difficulties which arise in relation to the application of the Act to the civil service. This applies in particular to any questions relating to pay which arise from the opening up of grades hitherto restricted to the members of one sex.

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