

Exercise of Reasonable Discretion Bill

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Provide that public authorities and public servants shall not be subject to any criminal or civil penalty as a result of the exercise of reasonable discretion in the performance of their functions; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Protection from penalties: public authorities

A public authority or its servants or agents shall not be subject to any criminal liability and shall be indemnified from any action for breach of statutory duty, malfeasance or negligence in respect of any action taken (or intentionally not taken) in good faith as a result of the exercise of reasonable discretion in the public interest (but this is not to be construed as offering protection against any action of gross negligence or recklessness).

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2 Protection from penalties: public servants

(1) Any servant, agent or person acting on behalf of a public authority shall not be subject to any criminal liability and shall be indemnified from any action for breach of statutory duty, malfeasance or negligence in respect of any action taken (or intentionally not taken) in good faith as a result of the exercise of reasonable discretion, provided that the action was taken (or not taken) in the public interest, and did not amount to gross negligence or recklessness.

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(2) A public authority may not dismiss an employee or subject an employee to disciplinary proceedings solely as a consequence of circumstances in which that employee acted (or intentionally did not act) in good faith by exercising reasonable discretion in the public interest, unless the action (or failure to act) amounted to gross negligence or recklessness.

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3 Contracts for public services

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No action may be brought by any party to a contract for the supply of services to a public authority for any breach of that contract in relation to any act done

(or intentionally not done) by a party to the contract if that act was done (or not done) in good faith as a result of the exercise of reasonable discretion in the public interest, provided that the action done (or not done) did not amount to a fundamental breach of that contract.

- 4 Interpretation** 5
- In this Act –
- “public authority” means
- (a) any government department or agency;
 - (b) any non-departmental public body;
 - (c) any body or agency of the devolved administrations in Wales and Scotland; 10
 - (d) any local authority, as defined by section 1 of the Local Government Act 2000 (c. 22);
 - (e) any body designated as part of the National Health Service;
 - (f) any police authority; 15
 - (g) any of the above acting together;
- “servants or agents” of a public authority includes any person acting under a contract for the supply of services to that authority in respect of the delivery of those services.
- 5 Human rights** 20
- Nothing in this Act shall be construed as disapplying any provision of the Human Rights Act 1998 (c. 42).
- 6 Short title, commencement and extent**
- (1) This Act may be cited as the Exercise of Reasonable Discretion Act 2009.
 - (2) This Act comes into force on the second day of December 2009. 25
 - (3) This Act does not extend to Northern Ireland.

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To provide that public authorities and public servants shall not be subject to any criminal or civil penalty as a result of the exercise of reasonable discretion in the performance of their functions; and for connected purposes.

*Ordered to be brought in by Mr Tim Boswell,
James Brokenshire, Mr Christopher Chope,
Mr David Kidney, Bob Russell,
and Sir George Young.*

*Ordered, by The House of Commons,
to be Printed, 4 February 2009.*

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Printed in the United Kingdom by
The Stationery Office Limited
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