Case C-188/89

A. Foster and Others v British Gas plc

(Reference for a preliminary ruling from the House of Lords)

(Equal treatment for men and women workers — Direct effect of a directive with regard to a nationalized company)

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Opinion of Mr Advocate General Van Gerven delivered on 8 May 1990 .......... 3326
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Summary of the Judgment

1. Measures adopted by the institutions — Directives — Direct effect — Whether possible to rely on a directive against a body which is subject to the authority or control of the State or has special public prerogatives (EEC Treaty, Art. 189, third paragraph)


1. Unconditional and sufficiently precise provisions of a directive may be relied upon against organizations or bodies which are subject to the authority or control of the State or have special powers beyond those which result from the normal rules applicable in relations between individuals. They may in any event be relied upon against a body, whatever its legal form, which has been
made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals.

2. Article 5(1) of Directive 76/207 on equal treatment for men and women as regards access to employment and working conditions is a provision which is unconditional and sufficiently precise to be relied on by an individual and to be applied by the national courts.

REPORT FOR THE HEARING
in Case C-188/89 *

I — Facts and procedure

1. Relevant legal provisions

Article 5(1) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Official Journal 1976 L 39, p. 40) provides as follows:

'Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.'

Under English law, Section 6(2)(b) of the Sex Discrimination Act 1975, which was in force at the material time, made it unlawful for any employer to discriminate against a woman employed in Great Britain 'by dismissing her or subjecting her to any other detriment'. Section 6(4) of the Act, however, provided that Section 6(2) did not apply to 'provision in relation to death or retirement'. Section 6(4) was repealed, with effect from 7 November 1986, by Section 2 of the Sex Discrimination Act 1986.

The House of Lords has decided (judgment of 11 February 1988 in Duke v GEC Reliance Ltd [1988] AC 618) that it is impossible, in an action between workers and a private employer, to interpret the Sex Discrimination Act 1975 as it applied before the amendments introduced by the Sex Discrimination Act 1986 in such a way as to make it consistent with Directive 76/207, as interpreted by the Court in its judgment in Case 152/84 Marshall v Southampton and South-West Hampshire Health Authority

* Language of the case: English.

I - 3314