

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 14: General Exceptions**

##### *Section 191: Statutory provisions*

###### **Effect**

605. This section gives effect to Schedule 22, which allows differential treatment which would otherwise be made unlawful by specific parts of the Act, where that is required by law. It also allows differential treatment of pregnant women for their own protection, and allows people of particular religions or beliefs to be appointed to specified educational posts. It also allows rules about Crown employment to provide for differential treatment on the basis of nationality.

##### *Section 192: National security*

###### **Effect**

606. This section ensures that the Act does not make it unlawful to do anything which is proportionate in order to safeguard national security.

###### **Background**

607. The section replaces similar exceptions in previous legislation, narrowing those which excuse disability discrimination in some areas or sex discrimination. For the first time, it provides a national security exception in relation to age and sexual orientation discrimination outside work.

###### **Example**

- Denying people of a particular nationality access to sensitive information is not unlawful race discrimination under the Act if it is proportionate in order to guard against terrorist attacks.

##### *Section 193: Charities*

###### **Effect**

608. This section allows charities to provide benefits only to people who share the same protected characteristic (for example sex, sexual orientation or disability), if this is in line with their charitable instrument and if it is objectively justified or to prevent or compensate for disadvantage. It remains unlawful for them to limit their beneficiaries by reference to their colour – and if they do their charitable instrument will be applied as if that limitation did not exist.
609. Charities must not restrict benefits consisting of employment, contract work or vocational training to people who share a protected characteristic, except that the section

does allow people to provide, and the Government to agree, arrangements for supported employment only for people with the same disability, or disabilities of a description to be set out in regulations.

610. The section also allows certain charities to make acceptance of a religion or belief a condition of membership, and to refuse members access to benefits if they do not accept a religion or belief where membership itself is not subject to such a condition, if they have done so since before 18 May 2005. It also allows single-sex activities for the purpose of promoting or supporting a charity (such as women-only fun-runs), and allows the charity regulators to exercise their functions in a charity's interests, taking account of what is said in its charitable instrument, without contravening the Act.

## **Background**

611. This section replaces and harmonises separate exceptions in previous legislation allowing charities to benefit only people of the same sex, racial group, religion or belief or sexual orientation, and creates new exceptions along these lines for charities benefiting only people of the same age group or with the same disability. This section also replicates the effect of other exceptions for charities in previous discrimination law, and creates a new exception in subsection (7) allowing participation in activities to promote or support charities to be restricted to men or women.

## **Examples**

- It is lawful for the Women's Institute to provide educational opportunities only to women.
- It is lawful for the RNIB to employ, or provide special facilities for, visually impaired people in preference to other disabled people.
- A charitable instrument enabling the provision of benefits to black members of a community actually enables the benefits to be provided to all members of that community.
- It is lawful for the Scout Association to require children joining the Scouts to promise to do their best to do their duty to God.
- Race for Life, a women-only event which raises money for Cancer Research UK, is lawful.

## ***Section 194: Charities: supplementary***

### **Effect**

612. This section makes it clear that section 193 does not allow charities to restrict their benefits to people because of colour.
613. It explains what is meant by "charity" and related expressions used in section 193.

## ***Section 195: Sport***

### **Effect**

614. This section allows separate sporting competitions to continue to be organised for men and women where physical strength, stamina or physique are major factors in determining success or failure, and in which one sex is generally at a disadvantage in comparison with the other. It also makes it lawful to restrict participation of transsexual people in such competitions if this is necessary to uphold fair or safe competition, but not otherwise.
615. In addition, this section allows the existing selection arrangements of national sports teams, regional or local clubs or related associations to continue. It also protects "closed" competitions where participation is limited to people who meet a requirement relating to nationality, place of birth or residence.

## **Background**

616. This section replaces similar provisions in previous legislation.

## **Examples**

- It would be lawful to have men and women, though not necessarily younger boys and girls, compete in separate 100 metre races.
- It would be lawful to require participants in a county tennis championship to have been born in that county or to have lived there for a minimum period prior to the event.

## **Section 196: General**

### **Effect**

617. This section gives effect to Schedule 23, which contains a number of general exceptions to the prohibitions against discrimination and harassment, covering acts authorised by statute or the Government, organisations relating to religion or belief, communal accommodation and training provided to people who are not resident in the European Economic Area.

## **Section 197: Age**

### **Effect**

618. This section enables a Minister of the Crown to make orders setting out exceptions to the prohibition on discriminating against people because of age, except in relation to work and further and higher education. These exceptions can relate to particular conduct or practices, or things done for particular purposes, or things done under particular arrangements, as set out in any order made under this power. Orders can provide for a Minister of the Crown or the Treasury to issue guidance, for consultation about the guidance, and for the imposition of requirements that refer to the guidance. Any guidance will come into force at a date specified in a further order subject to the negative procedure so that Parliament has the opportunity to consider the particular use of the guidance power

## **Background**

619. This is a new provision designed to allow exceptions to be made from the new prohibitions on age discrimination in the provision of services and the exercise of public functions.

## **Examples**

620. Appropriate age-based treatment may include the following:

- concessionary travel for older and young people;
- disease prevention programmes such as cancer screening targeted at people in particular age groups on the basis of clinical evidence;
- age differences in the calculation of annuities and insurance programmes which are reasonable and based on adequate evidence of the underlying difference in risk;
- holidays for particular age groups.