

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Associations

Section 100: Application of this Part

Effect

326. This section provides that this Part of the Act, which prohibits discrimination, harassment and victimisation by associations, does not make it unlawful for an association to discriminate against or harass people because of marriage or civil partnership.
327. It also provides that, if an act of discrimination, harassment or victimisation is made unlawful by the Parts of the Act covering services and public functions, premises, work or education, then those provisions, rather than the provisions in this Part, apply.

Background

328. This section is designed to replicate the position in previous legislation.

Section 101: Members and associates

Effect

329. This section makes it unlawful for an association to discriminate against, harass or victimise an existing or potential member, or an associate. This means that an association cannot refuse membership to a potential member or grant it on less favourable terms because of a protected characteristic. It does not, however, prevent associations restricting their membership to people who share a protected characteristic (see Schedule 16). It also means that an association cannot, among other things, refuse an existing member or associate access to a benefit or deprive him or her of membership or rights as an associate respectively because of a protected characteristic covered by this Part.

Background

330. Previous legislation provided protection from discrimination, harassment and victimisation by associations against existing or potential members and associates because of race, disability and sexual orientation. This section is designed to replicate the effect of the provisions in previous legislation, and to extend protection to the characteristics of gender, age, religion or belief, pregnancy and maternity, and gender reassignment.

Examples

- A gentlemen's club refuses to accept a man's application for membership or charges him a higher subscription rate because he is Muslim. This would be direct discrimination.

- A private members' golf club, which has members of both sexes, requires its female members to play only on certain days while allowing male members to play at all times. This would be direct discrimination.

Section 102: Guests

Effect

331. This section makes it unlawful for an association to discriminate against, harass or victimise existing or potential guests. In particular, an association cannot refuse to invite a person as a guest because of a particular characteristic or invite that person on certain conditions which the association would not apply to other would-be guests. Equally, a guest cannot be refused access to a benefit or subjected to any other detriment simply because of a protected characteristic.

Background

332. Previous legislation provided protection to existing and potential guests of associations because of disability only. This section extends similar protection to all protected characteristics covered by this Part.

Example

- An association refuses to invite the disabled wife of a member to attend an annual dinner, which is open to all members' partners, simply because she is a wheelchair user. This would be direct discrimination.

Section 103: Sections 101 and 102: further provision

Effect

333. This section imposes on associations the duty to make reasonable adjustments for disabled members and guests.
334. This section also provides that the Act does not prohibit harassment of members, potential members, associates, guests and potential guests because of religion or belief or sexual orientation.

Section 104: Selection of candidates

Effect

335. This section allows registered political parties to make arrangements in relation to the selection of election candidates to address the under-representation of people with particular protected characteristics in elected bodies.
336. These arrangements can include single-sex shortlists for election candidates, but not shortlists restricted to people with other protected characteristics. With the exception of single-sex shortlists, arrangements made under this section must be a proportionate means of reducing under-representation.
337. This provision applies to the selection of candidates in relation to elections to Parliament, local government, the European Parliament, the Scottish Parliament and the National Assembly for Wales.

Background

338. For sex, the section replicates the effect of similar provisions contained in the Sex Discrimination Act 1975, as amended by the Sex Discrimination (Election Candidates) Act 2002, relating to the selection of candidates. For the other protected characteristics this section introduces new provisions allowing political parties to take action in their

selection arrangements in order to address under-representation in elected bodies (apart from shortlists restricted to people with a particular protected characteristic) where this would be proportionate. This will, for instance, allow political parties to reserve places on relevant electoral shortlists for people with a specific protected characteristic such as race, disability etc.

Examples

- A political party can have a women-only shortlist of potential candidates to represent a particular constituency in Parliament, provided women remain under-represented in the party's Members of Parliament.
- A political party cannot shortlist only black or Asian candidates for a local government by-election. However, if Asians are under-represented amongst a party's elected councillors on a particular Council, the party could choose to reserve a specific number of seats for Asian candidates on a by-election shortlist.

Section 105: Time-limited provision

Effect

339. This section is linked to the provisions in section 104 relating to the selection of candidates by registered political parties. It provides that the provision in section 104(7) which permits single-sex shortlists for election candidates in order to address under-representation in elected bodies will be repealed automatically at the end of 2030 unless an order is made by a Minister of the Crown to extend it beyond that date.
340. This section also extends the expiry date for the similar provisions in the Sex Discrimination (Election Candidates) Act 2002 until 2030, so far as they apply to Northern Ireland.

Background

341. The section replicates similar provisions in the Sex Discrimination (Election Candidates) Act 2002, but extends the expiry date for those provisions to 2030.

Section 106: Information about diversity in range of candidates, etc.

Effect

342. This section gives a Minister of the Crown power to make regulations requiring registered political parties to publish data relating to the diversity of party candidates seeking selection. The power to make regulations is subject to the affirmative resolution procedure. It can be used to prescribe, among other things, which political parties the duty to publish data will apply to, what data should be published, and when. The requirement to publish could apply to diversity data related to some or all of the protected characteristics of age, disability, gender reassignment, race, sex, sexual orientation and religion or belief. It will be for the Equality and Human Rights Commission to enforce the publication requirement, and the provision inserted into the Equality Act 2006 by paragraph 13 of Schedule 26 to the Act makes clear that it can use its existing powers to do so.
343. Candidates will be free to refuse to disclose any or all the information requested by the party. Data will be published in an anonymous form.

Background

344. This is a new provision which responds to a recommendation, made by the Speaker's Conference on parliamentary representation, that registered political parties be required to publish anonymised information on the diversity of their candidate selections, as a

*These notes refer to the Equality Act 2010 (c.15)
which received Royal Assent on 8 April 2010*

means of encouraging broader representation and increasing involvement of all groups in the democratic process.

Example

- Regulations might require political parties fielding more than a specified number of candidates to publish, six months after a general election, anonymised diversity data relating to gender and race of all candidates who stood at that election.

Section 107: Interpretation and exceptions

Effect

345. This section explains what is meant by terms used in Part 7 of the Act. It defines an association as a body with 25 or more members where access to membership is controlled by rules and involves a genuine selection process based on personal criteria. It gives a Minister of the Crown power to amend this definition so as to change the number of members required by the definition.
346. It also provides that people who have any kind of membership of a particular association are protected by this Part, as are associates who are not members of an association but have many of the rights of members as a consequence of being a member of another association.
347. The exceptions which apply to this Part of the Act are contained in Schedule 16.

Background

348. The substance of the definition of an association remains unchanged from that which was used in the Race Relations Act 1976.

Examples

- Associations include: private members' golf clubs and gentlemen's clubs where applicants for membership are required to make a personal application, be sponsored by other members and go through some kind of selection process.
- Membership would cover full membership, associate membership, temporary membership and day membership.
- Casinos, nightclubs and gyms, where payment of the requisite "membership" fee is all that is required to secure admittance are not associations for the purposes of this Part. These are covered instead by the provisions in Part 3 concerning services provided to the public.
- A book club run by a group of friends which has no formal rules governing admittance or whose membership is less than 25 is not an association for the purposes of this Part.