

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Advancement of Equality

Chapter 2: Positive action

Section 158: Positive action: general

Effect

511. This section provides that the Act does not prohibit the use of positive action measures to alleviate disadvantage experienced by people who share a protected characteristic, reduce their under-representation in relation to particular activities, and meet their particular needs. It will, for example, allow measures to be targeted to particular groups, including training to enable them to gain employment, or health services to address their needs. Any such measures must be a proportionate way of achieving the relevant aim.
512. The extent to which it is proportionate to take positive action measures which may result in people not having the relevant characteristic being treated less favourably will depend, among other things, on the seriousness of the relevant disadvantage, the extremity of need or under-representation and the availability of other means of countering them. This provision will need to be interpreted in accordance with European law which limits the extent to which the kind of action it permits will be allowed.
513. To provide greater legal certainty about what action is proportionate in particular circumstances, the section contains a power to make regulations setting out action which is not permitted under it.
514. If positive action measures are taken in recruitment or promotion under section 159(3) or the selection of political candidates under section 104, those provisions will apply rather than this section.
515. Should the provision allowing single-sex shortlists for the selection of political candidates (section 104(7)) be repealed, this section will not permit action to be taken similar to that permissible under that provision.
516. This section does not allow any action to be taken that would be prohibited by other legislation.