

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 22: Statutory provisions

Statutory authority: paragraph 1

Effect

976. **Paragraph 1** of this Schedule provides exceptions from several Parts of the Act, in relation to the protected characteristics of age, disability, religion or belief, sex and sexual orientation, for things done in accordance with what is, or may in future be, required because of some other law.

Background

977. **Paragraph 1** replaces the separate exceptions for statutory authority in previous legislation. However, the exception in section 41(1) of the Race Relations Act 1976, which excused certain race discrimination done under statutory authority in areas with which European law is not concerned, has been removed but not replaced.

Examples

- An employer can lawfully dismiss a disabled employee if health and safety regulations leave him with no other choice.
- An employer can lawfully refuse to employ someone to drive a large goods vehicle who is not old enough to hold a LGV licence.

Protection of women: paragraph 2

Effect

978. This paragraph allows differential treatment based on sex or pregnancy and maternity at work which is required to comply with laws protecting women who are pregnant, who have recently given birth or against risks specific to women.

Background

979. The paragraph replaces separate exceptions for the protection of women in the Sex Discrimination Act 1975 and in the Employment Act 1989.

Examples

- A care home cannot lawfully dismiss, but can lawfully suspend, a night-shift worker because she is pregnant and her GP has certified that she must not work nights.
- It may be lawful for a road haulier to refuse to allow a woman lorry driver to transport chemicals that could harm women of child-bearing age.

Educational appointments, etc: religious belief: paragraphs 3 and 4

Effect

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

980. [Paragraph 3](#) provides an exception from the provisions on sex or religious discrimination for certain posts in schools or institutions of further or higher education where their governing instrument requires the head teacher or principal to be of a particular religious order, or that a particular academic position must be held by a woman, or where the legislation or instrument which establishes a professorship requires the holder to be an ordained priest. In the case of academic positions reserved to women, the exception only applies where the governing instrument was made before 16 January 1990.
981. There is an order-making power conferred on a Minister of the Crown to withdraw the exception either in relation to a particular institution or a class of institutions.
982. [Paragraph 4](#) provides that it is not unlawful discrimination for schools which have a religious character or ethos (often referred to as faith schools) to do certain things which are permitted by the School Standards and Framework Act 1998. This includes:
- allowing teachers who have been appointed to give religious education to be dismissed if they fail to give it competently;
 - allowing a faith school to take account of religious considerations when appointing a head teacher; and
 - allowing a voluntary aided school or an independent school to take account of religious considerations in employment matters.

Background

983. [Paragraph 3](#) is designed to replicate the effect of provisions in section 5 of the Employment Act 1989.
984. Universities restrict Canon Professorships to certain religions since such posts can only be held by ordained Ministers.
985. [Paragraph 4](#) is designed to replicate the effect of regulation 39 of the Employment Equality (Religion or Belief) Regulations 2003.

Examples

- Voluntary controlled and foundation schools with a religious ethos may appoint a head teacher on the basis of his ability and fitness to preserve and develop the religious character of the school.
- Voluntary aided schools with a religious ethos can restrict employment of teachers to applicants who share the same faith. For example most Catholic schools may require that applicants to teaching positions be of the Catholic faith.

Crown employment, etc.: [paragraph 5](#)

Effect

986. [Paragraph 5](#) allows restrictions on the employment of foreign nationals in the civil, diplomatic, armed or security and intelligence services and by certain public bodies. It also allows restrictions on foreign nationals holding public offices.

Background

987. The paragraph replaces similar provisions in the Race Relations Act 1976.

Examples

- Posts in the security and intelligence services are automatically reserved for UK nationals.
- People who are neither British, Commonwealth or Irish citizens nor British protected persons are generally prohibited from serving in the armed forces, with the notable exception of Gurkhas.