

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 23: General exceptions

Acts authorised by statute or the executive: paragraph 1

Effect

988. This paragraph allows direct nationality discrimination and indirect race discrimination on the basis of residency requirements where the discrimination is required by law, Ministerial arrangements or Ministerial conditions.

Background

989. The paragraph replaces a similar exception in the Race Relations Act 1976.

Examples

- The points-based system which replaced the former work permit arrangements can discriminate on the basis of nationality in determining whether migrants from outside the European Economic Area and Switzerland should be given permission to work in the United Kingdom.
- The NHS can charge some people who are not ordinarily resident in the United Kingdom for hospital treatment they receive here.
- Overseas students at universities in England and Wales can be required to pay higher tuition fees than local students (there are no tuition fees in Scotland).

Organisations relating to religion or belief: paragraph 2

Effect

990. [Paragraph 2](#) provides an exception for religious or belief organisations with regard to the provisions in the Act relating to services and public functions, premises and associations.

991. The types of organisation that can use this exception are those that exist to: practice, advance or teach a religion or belief; allow people of a religion or belief to participate in any activity or receive any benefit related to that religion or belief; promote good relations between people of different religions or beliefs. Organisations whose main purpose is commercial cannot use this exception.

992. The exception allows an organisation (or a person acting on its behalf) to impose restrictions on membership of the organisation; participation in its activities; the use of any goods, facilities or services that it provides; and the use of its premises. However, any restriction can only be imposed by reference to a person's religion or belief or sexual orientation.

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

993. In relation to religion or belief, the exception can only apply where a restriction is necessary to comply with the purpose of the organisation or to avoid causing offence to members of the religion or belief whom the organisation represents.
994. In relation to sexual orientation, the exception can only apply where it is necessary to comply with the doctrine of the organisation or in order to avoid conflict with the strongly held convictions of members of the religion or belief that the organisation represents. However, if an organisation contracts with a public body to carry out an activity on that body's behalf then it cannot discriminate because of sexual orientation in relation to that activity.
995. The exception also enables ministers of religion to restrict participation in the activities that they carry out in the performance of their functions as a minister and access to any goods, facilities or services they provide in the course of performing those functions.

Background

996. This paragraph replicates the effect of similar provisions in Part 2 of the Equality Act 2006 and the Equality Act (Sexual Orientation) Regulations 2007.

Examples

- A Catholic seminary can restrict places for students to those of the Catholic faith. This would not be unlawful religion or belief discrimination.
- A Church refuses to let out its hall for a Gay Pride celebration as it considers that it would conflict with the strongly held religious convictions of a significant number of its followers. This would not be unlawful sexual orientation discrimination.
- A religious organisation which has a contract with a local authority to provide meals to elderly and other vulnerable people within the community on behalf of the local authority cannot discriminate because of sexual orientation.

Communal accommodation: paragraph 3

Effect

997. This paragraph provides an exception to the general prohibition of sex and gender reassignment discrimination. It allows communal accommodation to be restricted to one sex only, as long as the accommodation is managed as fairly as possible for both men and women. It sets out factors which must be considered when restricting communal accommodation to one sex only, and provides that discriminatory treatment of transsexual people must be objectively justified.
998. Communal accommodation is defined as residential accommodation which includes shared sleeping accommodation which should only be used by members of one sex for privacy reasons.
999. Where such accommodation is refused in the field of work, or a benefit linked to such accommodation is refused, alternative arrangements must be made where reasonable so as to compensate the person concerned.

Background

1000. This paragraph replaces similar provisions in the Sex Discrimination Act 1975. The scope of the exception has been extended from employment, education and services to all fields.

Examples

- A hostel only accepts male guests. It is not unlawful for it to refuse to accept female guests because the majority of the bedrooms are shared and there is only one communal bathroom.
- At a worksite the only available sleeping accommodation is communal accommodation occupied by men. A woman employee who wishes to attend a training course at the worksite is refused permission because of the men-only accommodation. Her employer must make

alternative arrangements to compensate her where reasonable, for example by arranging alternative accommodation or an alternative course.

Training provided to non-EEA residents, etc: paragraph 4

Effect

1001. Paragraph 4 allows less favourable treatment because of a person's nationality in relation to training and associated benefits that are intended for people who do not live in an EEA state, as long as the training provider believes that the person will not subsequently use the skills obtained in Great Britain. This means that an EEA resident cannot claim to have been discriminated against in relation to this type of activity.
1002. Employment or contract work can be covered by this exception where its sole or main purpose is the provision of training in skills. Special provision is made in relation to defence training to reflect current arrangements to help provide other nations with the skills to assist the United Kingdom in addressing global conflict and supporting the United Kingdom on multi-national operations.

Background

1003. The main purpose of this provision is to enable people from developing countries to acquire vital skills which may not be available in their country of residence. It replaces similar provisions in the Race Relations Act 1976. The general rule on non-residence has been extended from Great Britain to include all EEA states, except in relation to defence training which is provided to forces from other EEA states as well as those outside the EEA.

Example

- It is not unlawful for a company specialising in sustainable irrigation that offers a training scheme in Great Britain for people who live in Mozambique, who then return home to put the skills learned into practice, to refuse to offer the same training to someone who lives in Great Britain.