

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 16: General and Miscellaneous**

#### *Schedule 26: Amendments*

#### **Local Government Act 1988: paragraphs 1 to 4**

##### Effect

1008. This paragraph amends Part 2 of the Local Government Act 1988 (“the 1988 Act”) so as to provide that the public bodies to which that Part applies may exercise a function by reference to a non-commercial matter to the extent that the authorities consider it necessary or expedient to do so in order to comply with the equality duty.

##### Background

1009. Section 17 of the 1988 Act prevents public bodies to which that Part applies from introducing certain non-commercial matters into the procurement process; these are set out at subsection 5 of that Act. Section 18 of the 1988 Act ensured that section 17 of that Act did not restrict those authorities from complying with their duties under the Race Relations Act 1976. It achieved this by permitting those authorities to ask six approved questions of their contractors.
1010. [The Local Government Best Value \(Exclusion of Non-commercial Considerations\) Order 2001 \(S.I. 2001/9090\)](#) modified sections 17(5)(a) and (d) of the 1988 Act so that matters relating to the terms and conditions of employment etc. of a contractor’s workforce, and the conduct of contractors or their workers in industrial disputes cease to be non-commercial matters only so far as necessary or expedient to permit or facilitate compliance with the best value requirements of the Local Government Act 1999 or the Transfer of Undertakings (Protection of Employment Regulations) 1981. Similar amendments were made for Scotland and Wales.

##### Examples

- A local authority which is not a Best Value Authority, which was previously permitted to ask only the six approved questions of its contractors on the race duty, will now be able to consider broader issues on equality when contracting for public supply or works as the authority sees fit in order to comply with the requirements of the public sector equality duty.
- A local authority wants to contract with a private company. It will be able to take into account the ethnic make-up of the workforce of that company, the behaviour of that company during an industrial dispute, and any other issue which is defined as non-commercial, when deciding to award the contract, but only if it considers it is necessary to do so in order to meet the requirements of the public sector equality duty.