

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 26: Amendments

Effect

1007. This Schedule sets out a number of amendments to the following acts: the Local Government Act 1988, the Employment Act 1989 and the Equality Act 2006. These amendments are necessary to ensure that these Acts refer accurately to the new provisions contained in the Act and work properly with those new provisions. For example, where a new term or a new definition is used in the Act and another Act refers to the same or similar term which is contained in legislation which is being repealed, that other Act needs to be amended to refer to the new term or definition. In addition to the amendments set out in this Schedule, sections 216 and 207 used together provide a power to make similar consequential amendments to other primary legislation.

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.

Equality Act 2006: paragraph 13

Effect

1011. This amendment to the Equality Act 2006 allows the Equality and Human Rights Commission to use its enforcement powers, such as the power to conduct investigations and the power to apply for an injunction, in relation to unlawful direct and indirect discrimination under the Act, including the making of arrangements which would result in direct discrimination, if applied to an individual. It can also use its powers in relation to discrimination arising from disability and discrimination in cases where the relationship between the parties has ended; when an employer asks job applicants prohibited enquiries about disability and health; and to enforce any diversity reporting requirements imposed on political parties using the power in section 106.
1012. It allows the Equality and Human Rights Commission to use its powers whether or not it knows or suspects that an individual has been affected by the discrimination. It makes clear that nothing in the Equality Act 2006 affects an individual's right to bring a claim under the Act.

Background

1013. This amendment partially replaces provisions in previous discrimination law relating to discriminatory practices and discriminatory advertisements. The substantive prohibition against discriminatory practices and advertisements is no longer required as it is covered elsewhere in the Act. This amendment does however extend enforcement by the Equality and Human Rights Commission to cover both direct and indirect discrimination because of any of the protected characteristics, as well as discrimination arising from disability. It also extends the use of the Commission's existing powers to situations where employers ask job applicants prohibited enquiries about disability and health, and to any diversity reporting requirements that may be imposed on political parties.

Examples

- A golf club operates an informal but well-known policy of not offering membership to people from ethnic minority communities, which discourages people from these communities from applying. The Equality and Human Rights Commission may investigate this unofficial discriminatory policy even though it is not aware of particular individuals directly affected by it.
- A Bed and Breakfast (B&B) advertises for customers but includes a statement that it does not welcome people from the Gypsy and Traveller communities. Even though the Equality and Human Rights Commission can take action, an individual who is discouraged from staying at the B&B can still bring a claim in his or her own right.