



# Equality Act 2010

## 2010 CHAPTER 15

### PART 11

#### ADVANCEMENT OF EQUALITY

#### CHAPTER 2

#### POSITIVE ACTION

#### **158 Positive action: general**

- (1) This section applies if a person (P) reasonably thinks that—
  - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,
  - (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
  - (c) participation in an activity by persons who share a protected characteristic is disproportionately low.
- (2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of—
  - (a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,
  - (b) meeting those needs, or
  - (c) enabling or encouraging persons who share the protected characteristic to participate in that activity.
- (3) Regulations may specify action, or descriptions of action, to which subsection (2) does not apply.
- (4) This section does not apply to—
  - (a) action within section 159(3), or
  - (b) anything that is permitted by virtue of section 104.

*Status: Point in time view as at 29/05/2020.*

*Changes to legislation: Equality Act 2010, Chapter 2 is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) If section 104(7) is repealed by virtue of section 105, this section will not apply to anything that would have been so permitted but for the repeal.
- (6) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

**Modifications etc. (not altering text)**

- C1** S. 158 excluded (S.) (29.5.2020) by [Gender Representation on Public Boards \(Scotland\) Act 2018 \(asp 4\)](#), ss. **11(1)**, 13; S.S.I. 2020/119, reg. 2

**159 Positive action: recruitment and promotion**

- (1) This section applies if a person (P) reasonably thinks that—
- (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or
  - (b) participation in an activity by persons who share a protected characteristic is disproportionately low.
- (2) Part 5 (work) does not prohibit P from taking action within subsection (3) with the aim of enabling or encouraging persons who share the protected characteristic to—
- (a) overcome or minimise that disadvantage, or
  - (b) participate in that activity.
- (3) That action is treating a person (A) more favourably in connection with recruitment or promotion than another person (B) because A has the protected characteristic but B does not.
- (4) But subsection (2) applies only if—
- (a) A is as qualified as B to be recruited or promoted,
  - (b) P does not have a policy of treating persons who share the protected characteristic more favourably in connection with recruitment or promotion than persons who do not share it, and
  - (c) taking the action in question is a proportionate means of achieving the aim referred to in subsection (2).
- (5) “Recruitment” means a process for deciding whether to—
- (a) offer employment to a person,
  - (b) make contract work available to a contract worker,
  - (c) offer a person a position as a partner in a firm or proposed firm,
  - (d) offer a person a position as a member of an LLP or proposed LLP,
  - (e) offer a person a pupillage or tenancy in barristers' chambers,
  - (f) take a person as an advocate's devil or offer a person membership of an advocate's stable,
  - (g) offer a person an appointment to a personal office,
  - (h) offer a person an appointment to a public office, recommend a person for such an appointment or approve a person's appointment to a public office, or
  - (i) offer a person a service for finding employment.

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- (6) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

**Modifications etc. (not altering text)**

- C2** S. 159 excluded by 2005 c. 4, s. 27(5A)(a) (as inserted (15.7.2013) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), [Sch. 13 para. 9](#); S.I. 2013/1725, art. 2(g))
- C3** S. 159 excluded (S.) (29.5.2020) by [Gender Representation on Public Boards \(Scotland\) Act 2018](#) (asp 4), [ss. 11\(1\)](#), 13; S.S.I. 2020/119, reg. 2

**Commencement Information**

- II** S. 159 wholly in force at 6.4.2011; s. 159 not in force at Royal Assent see s. 216; s. 159(3) in force for certain purposes at 1.10.2010 by [S.I. 2010/2317](#), [art. 2\(1\)\(11\)\(b\)](#) (with [art. 15](#)); s. 159 in force so far as not already in force at 6.4.2011 by [S.I. 2011/96](#), [art. 3](#)

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