



# Equality Act 2010

## 2010 CHAPTER 15

### PART 16

#### GENERAL AND MISCELLANEOUS

##### *Subordinate legislation*

#### **207 Exercise of power**

- (1) A power to make an order or regulations under this Act is exercisable by a Minister of the Crown, unless there is express provision to the contrary.
- (2) Orders, regulations or rules under this Act must be made by statutory instrument.
- (3) Subsection (2) does not apply to—
  - (a) a transitional exemption order under Part 1 of Schedule 11,
  - (b) a transitional exemption order under Part 1 of Schedule 12, or
  - (c) an order under paragraph 1(3) of Schedule 14 that does not modify an enactment.
- (4) Orders or regulations under this Act—
  - (a) may make different provision for different purposes;
  - (b) may include consequential, incidental, supplementary, transitional, transitory or saving provision.
- (5) Nothing in section 163(4), 174(4) [<sup>F1</sup>, 181A(5), 181B(6)] or 182(3) affects the generality of the power under subsection (4)(a).
- (6) The power under subsection (4)(b), in its application to section 37, [<sup>F2</sup>139A,] 153, 154(2), 155(5), 197 or 216 or to paragraph 7(1) of Schedule 11 or paragraph 1(3) or 2(3) of Schedule 14, includes power to amend an enactment (including, in the case of section [<sup>F2</sup>139A,] 197 or 216, this Act).
- (7) In the case of section 216 (commencement), provision by virtue of subsection (4) (b) may be included in a separate order from the order that provides for the

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commencement to which the provision relates; and, for that purpose, it does not matter—

- (a) whether the order providing for the commencement includes provision by virtue of subsection (4)(b);
  - (b) whether the commencement has taken place.
- (8) A statutory instrument containing an Order in Council under section 82 (offshore work) is subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F1** Words in s. 207(5) inserted (26.6.2018) by [Bus Services Act 2017 \(c. 21\)](#), **ss. 17(2), 26(2)**; S.I. [2018/758, reg. 2](#)
- F2** Words in s. 207(6) inserted (25.4.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 98(3), 103(1)**

## 208 Ministers of the Crown, etc.

- (1) This section applies where the power to make an order or regulations under this Act is exercisable by a Minister of the Crown or the Treasury.
- (2) A statutory instrument containing (whether alone or with other provision) an order or regulations that amend this Act or another Act of Parliament, or an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales, is subject to the affirmative procedure.
- (3) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains—
- (a) an order under section 59 (local authority functions);
  - (b) an order under section 151 (power to amend list of public authorities for the purposes of the public sector equality duty) that provides for the omission of an entry where the authority concerned has ceased to exist or the variation of an entry where the authority concerned has changed its name;
  - (c) an order under paragraph 1(3) of Schedule 14 (educational charities and endowments) that modifies an enactment.
- (4) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (5) is subject to the affirmative procedure.
- (5) The orders and regulations referred to in subsection (4) are—
- (a) regulations under section 30 (services: ships and hovercraft);
  - (b) regulations under section 78 (gender pay gap information);
  - (c) regulations under section 81 (work: ships and hovercraft);
  - (d) an order under section 105 (election candidates: expiry of provision);
  - (e) regulations under section 106 (election candidates: diversity information);
  - [<sup>F3</sup>(ea) regulations under section 139A (equal pay audits);]
  - (f) regulations under section 153 or 154(2) (public sector equality duty: powers to impose specific duties);
  - [<sup>F4</sup>(fa) regulations under section 181A or 181B (information for bus passengers);]
  - [<sup>F5</sup>(g) .....

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- (h) an order under section 203 (EU obligations: harmonisation);
  - (i) regulations under paragraph 9(3) of Schedule 20 (rail vehicle accessibility: determination of turnover for purposes of penalties).
- (6) A statutory instrument that is not subject to the affirmative procedure by virtue of subsection (2) or (4) is subject to the negative procedure.
- (7) But a statutory instrument is not subject to the negative procedure by virtue of subsection (6) merely because it contains—
- <sup>F6</sup>(a) .....
  - (b) an order under section 216 (commencement) that—
    - (i) does not amend an Act of Parliament, an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales, and
    - (ii) is not made in reliance on section 207(7).
- (8) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of each House of Parliament.
- (9) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If a draft of a statutory instrument containing an order or regulations under section 2, 151, 153, 154(2) or 155(5) would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

#### Textual Amendments

- F3** S. 208(5)(ea) inserted (25.4.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 98(4), 103(1)**
- F4** S. 208(5)(fa) inserted (26.6.2018) by [Bus Services Act 2017 \(c. 21\)](#), **ss. 17(3), 26(2)**; S.I. 2018/758, reg. 2
- F5** S. 208(5)(g) omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), **Sch. 10 para. 30(c)(i)**; S.I. 2015/994, art. 11(p)
- F6** S. 208(7)(a) omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), **Sch. 10 para. 30(c)(ii)**; S.I. 2015/994, art. 11(p)

## 209 The Welsh Ministers

- (1) This section applies where the power to make an order or regulations under this Act is exercisable by the Welsh Ministers.
- (2) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (3) is subject to the affirmative procedure.
- (3) The orders and regulations referred to in subsection (2) are—
  - (a) regulations under section 2 (socio-economic inequalities);
  - (b) an order under section 151 (power to amend list of public authorities for the purposes of the public sector equality duty);
  - (c) regulations under section 153 or 154(2) (public sector equality duty: powers to impose specific duties);

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- (d) regulations under section 155(5) that amend an Act of Parliament or an Act or Measure of the National Assembly for Wales (public sector equality duty: power to modify or remove specific duties);
  - [<sup>F7</sup>(e) regulations under paragraph 6, 6A or 6F of Schedule 17 (tribunal procedure, case friends and capacity of parents and persons over compulsory school age).]
- (4) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains an order under section 151 that provides for—
- (a) the omission of an entry where the authority concerned has ceased to exist, or
  - (b) the variation of an entry where the authority concerned has changed its name.
- (5) A statutory instrument that is not subject to the affirmative procedure by virtue of subsection (2) is subject to the negative procedure.
- (6) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of the National Assembly for Wales.
- (7) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

#### Textual Amendments

- F7** S. 209(3)(e) inserted (E.W.) (2.11.2020 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 19(4)**; S.I. 2020/1182, reg. 3(1)(n)

## 210 The Scottish Ministers

- (1) This section applies where the power to make an order, regulations or rules under this Act is exercisable by the Scottish Ministers.
- (2) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (3) is subject to the affirmative procedure.
- (3) The orders and regulations referred to in subsection (2) are—
- (a) regulations under section 2 (socio-economic inequalities);
  - (b) regulations under section 37 (power to make provision about adjustments to common parts in Scotland);
  - (c) an order under section 151 (power to amend list of public authorities for the purposes of the public sector equality duty);
  - (d) regulations under section 153 or 154(2) (public sector equality duty: powers to impose specific duties);
  - (e) regulations under section 155(5) that amend an Act of Parliament or an Act of the Scottish Parliament (public sector equality duty: power to modify or remove specific duties).
- (4) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains an order under section 151 that provides for—

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- (a) the omission of an entry where the authority concerned has ceased to exist, or
  - (b) the variation of an entry where the authority concerned has changed its name.
- (5) A statutory instrument that is not subject to the affirmative procedure by virtue of subsection (2) is subject to the negative procedure.
- (6) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of the Scottish Parliament.
- (7) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of the Scottish Parliament.

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