

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Contracts, Etc.

Section 144: Contracting out

Effect

464. Under this section, contractual and relevant non-contractual terms which try to exclude or limit the operation of any provision in the Act (which includes those dealing with equality of terms) or a provision of secondary legislation made under the Act (for example regulations made under section 81 (ships and hovercraft)) are unenforceable by the person in whose favour the term operates. There are exceptions to this to allow negotiated settlement of claims in the following circumstances:

- a contract settling a claim in an employment tribunal (including an agreement settling a claim for a breach of an equality clause) that has been negotiated with the help of a conciliation officer or which meets the standards set out in section 147 (meaning of qualifying compromise contract). This includes an arbitration agreement made in accordance with a scheme under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992 (where the parties agree to submit a dispute to arbitration);
- a contract settling a county or sheriff court claim.

Background

465. This section replaces similar provisions in previous legislation.

Examples

- A woman who thinks she may have a claim for unlawful discrimination upon being made redundant may give up any right to pursue the claim under the Act in return for payment. She will not then be able to ask a court to modify or remove that term so as to pursue the claim at a later date.
- However, if the agreement was not reached with the assistance of a conciliation officer or was not a qualifying compromise agreement, it would be unenforceable (and thus would not prevent the claimant pursuing the claim before an employment tribunal).