

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Contracts, Etc.

Section 145: Void and unenforceable terms

Effect

466. This section deals with collective agreements (which are defined in the Trade Union and Labour Relations (Consolidation) Act 1992).
467. It also deals with rules of undertakings of employers, trade organisations and qualifications bodies (which are defined in Part 5).
468. Any term of a collective agreement is rendered void to the extent that it discriminates against a person or would otherwise lead to conduct prohibited by the Act. Terms of collective agreements are made void rather than unenforceable because making them unenforceable would be of no help to those affected, since they are unenforceable in any case unless incorporated into a contract. The term is therefore made of no effect at all, leaving the interested parties to renegotiate.
469. A rule of an undertaking which discriminates against a person or would otherwise lead to conduct prohibited by the Act is made unenforceable. A rule of an undertaking is defined in section 148 as a rule made by a qualifications body or trade organisation in relation to membership or conferral of a qualification, or a rule made by an employer for application to employees and prospective employees.

Background

470. This section replaces similar provisions in previous legislation.

Examples

- A collective agreement which required jobs in a particular part of a factory to be given only to men would be void, so a woman who applied could not be refused on those grounds.
- An indirectly discriminatory rule of a qualifications body (providing for example a professional qualification for plumbers) which required that applicants must have two years' previous experience with a British firm would be unenforceable against a person who had the equivalent experience with a foreign firm. It would still be enforceable against a person who did not have the required experience at all (provided it was justified).