

# EQUALITY ACT 2010

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 10: Contracts, Etc.**

#### *Section 146: Declaration in respect of void term, etc.*

##### **Effect**

471. This section enables an employment tribunal to declare a term of a collective agreement void, or a rule of an undertaking unenforceable, as set out in section 142, when a person thinks that it might in the future have the effect of discriminating against him or her. Because collective agreements apply to many people in many (possibly varying) situations, it is not appropriate for a tribunal to modify them and so they are made void, rather than subject to modification or amendment, and the parties are left to renegotiate, bearing all those potentially affected in mind.
472. The section sets out who can make a complaint in each instance. Terms of discriminatory collective agreements can be challenged by employees or prospective employees. Rules of undertakings of employers can be challenged by employees or prospective employees; those of trade organisations by members or prospective members; and those of qualifications bodies by persons seeking or holding relevant qualifications (as defined in section 54).

##### **Background**

473. This section replaces similar provisions in previous legislation.

##### **Example**

- A person who is studying for an engineering qualification who is told he will only be eligible for it if he passes a test of his ability to write English can ask a tribunal to declare that the rule requiring the test is indirectly discriminatory and therefore, if unjustified, unenforceable.