

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Section 203: Harmonisation

Effect

634. This section enables a Minister of the Crown by order to amend the Act and the Equality Act 2006, to ensure consistency across the legislation where changes required by European law would otherwise result in inconsistent provision. Section 2(2)(a) of the European Communities Act 1972 allows a Minister by regulations or order to give effect to a right or obligation arising out of an EU law provision. Where provisions of this Act and equality law of the UK more generally deal with a sector on a single basis some of the matters covered may not be within the reach of EU law and so outside section 2(2)(a). This arises for instance in the case of nationality and colour which are not dealt with under the EU law provisions on race discrimination but are covered by the UK provisions. Section 2(2)(b) of the European Communities Act 1972 would not allow amendment of all relevant parts of the legislation in these circumstances, because the change required in respect of, say nationality or colour, would not be consequential on or arising out of the EU obligation. In order to retain the unitary approach to discrimination law it is necessary to have a power such as this so that in appropriate cases amendments can also be made to those areas of the Act unaffected by new EU law obligations.
635. A Minister may use this power only after consulting interested parties on the Government's proposals; and where the consultation prompts the Minister to consider changes to those proposals, these changes must be the subject of such further consultation as the Minister considers appropriate. Following the consultation, the Minister must act in accordance with the requirements in section 204.
636. A Minister must report to Parliament every two years on the use of this power.

Background

637. This is a new provision designed to ensure that the areas of the Act that are covered by European law and those that are domestic in origin do not get out of step, as was the case with the previous legislation.

Example

- A future European Court of Justice judgement on the Race Directive requires an amendment to alter the definition of indirect discrimination. This power could be used to ensure that any such amendment applies to the "colour and nationality" elements of race in the Act, as well as those in relation to which EU law applies.