

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 3: Services and public functions: exceptions

Part 5: Insurance, etc.

Services arranged by employer: paragraph 20

Effect

- Paragraph 20 provides an exception to section 29 (provision of services, etc) for group insurance schemes and group personal pensions (“group schemes”). As group schemes are offered to employees as part of the employment relationship:
- the employer is responsible for ensuring that the provision of benefits under group schemes complies with the requirements of Part 5 (work); and
- the insurer or pension provider is not responsible for ensuring that the provision of benefits complies with the requirements of Part 3 (services and public functions).

Background

712. Group policies and schemes are arrangements between an employer and an insurer for the benefit of the employees, their partners and their dependants. They are entered into not on the basis of the individual characteristics of each employee but on the basis of the employer’s business and the profile of the employees. Employees can sign up to the benefits under such policies on standard terms that are the same for all employees. This is a new provision but one that reflects current practice.

Example

713. An employer enters into a contract with an insurer for the provision of health insurance to employees. As the health insurance is part of the package of benefits provided by the employer to the employee, the employer must ensure that the provision complies with Part 5. So, if benefits under the health insurance policy differ between men and women, the employer may have to justify the difference by reference to paragraph 20 of Schedule 9 (insurance contracts, etc.).

Disability: paragraph 21

Effect

714. **Paragraph 21** provides an exception from the prohibition on discriminating against disabled people in the provision of services connected with insurance business (as defined) where the decision in question is based on relevant and reliable information. It enables insurance providers to offer different premiums and benefits to disabled people where it is reasonable to do so.

Background

715. These provisions are designed to replicate the effect of provisions in the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005. This exception has been carried forward into the Act because it is recognised that insurers may need to distinguish between people on the basis of the risks against which they are insuring. The consensus is that it works well.

Examples

- A disabled person with cancer applies for a life insurance policy. The insurance company refuses to provide life insurance cover based on a medical report from the person's doctor which provides a prognosis on the person's condition.
- An insurer charges higher premiums for travel insurance for a person with a particular disability because actuarial evidence suggests that people with this disability are at increased risk of having a heart attack.

Sex, gender reassignment, pregnancy and maternity: [paragraph 22](#)

716. [Paragraph 22](#) provides exceptions to allow insurers to calculate different premiums and benefits for men and women, relating to pregnancy and maternity or gender reassignment on the basis of actuarial data.
717. Sub-paragraph (1) provides an exception for an annuity, life assurance policy, accident insurance policy or similar matter which involves the assessment of risk. Under this exception, the difference in treatment must be done by reference to actuarial or other reliable data, and must be reasonable in all the circumstances. Sub-paragraph (2) applies to a contract of insurance, or for related financial services, entered into before 6 April 2008. In such a case, the exception only applies in relation to differences in premiums and benefits applicable to a person under that contract.
718. Sub-paragraph (3) applies sub-paragraph (1) to contracts of insurance, or for related financial services, entered into on or after 6 April 2008. It permits differences in treatment which are proportionate having regard to relevant and accurate data, which the insurance industry has compiled, published and updated in accordance with Treasury guidance. For contracts entered into on or after 22 December 2008, the differences must not result from costs related to a woman's pregnancy or her having given birth within the previous 26 weeks.
719. Insurers must calculate premiums and benefits based on the sex of the person seeking such services (sub-paragraph (5)).

Background

720. This paragraph is designed to replicate the effect of section 45 of the Sex Discrimination Act 1975 in respect of insurance and financial services. Services relating to premises or education are dealt with under Parts 4 and 6 of the Act.

Example

- An insurer can lawfully quote higher motor insurance premiums for young men if this is based on actuarial and statistical up-to-date data that is published so that customers can see the information that justifies proportionate differences in male and female premiums and benefits.

Existing insurance policies: [paragraph 23](#)

Effect

721. [Paragraph 23](#) provides an exception so that insurers will not be discriminating unlawfully if they continue to apply terms of insurance policies entered into before the date on which this paragraph comes into force. Where pre-existing policies are renewed, or have their terms reviewed, on or after the date this paragraph comes into force, the exception no longer applies to them.

Background

722. This paragraph provides an exception for existing insurance policies, which may not comply with subsequently altered discrimination law. But where such a policy is renewed or reviewed, it would need to be amended to meet the requirements of this Act.

Examples

- An existing life insurance policy which was taken out in 1989, and has not been subsequently renewed or reviewed, continues to be lawful and does not have to be altered to comply with current relevant discrimination law.
- A company has a death in service benefit insurance policy for its employees which has been in place for many years and whose terms have not been reviewed. It benefits from the exception unless and until the policy is reviewed or renewed.