

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Work

Chapter 1: Employment, etc.

Section 49: Personal offices: appointments, etc.

Effect

168. This section makes it unlawful to discriminate against, harass or victimise people who are or wish to become personal office-holders. These provisions apply in so far as other work provisions do not – this means that where office-holders are also employees, they will be protected by the provisions dealing with employment in respect of their employment relationship. In respect of sex or pregnancy and maternity discrimination, a term of an offer of an appointment to office which relates to pay is treated as discriminatory where, if accepted, it would give rise to an equality clause or, if that is not the case, where the offer of the term constitutes direct or dual discrimination.
169. Personal office-holders are people who perform a function personally at a time and place specified by another person and who, in return, are entitled to payment (other than expenses or compensation for lost income). Section 52(4) provides that, where a personal office is a public office at the same time, it is to be treated as a public office only.
170. An office-holder can be appointed by one person and then an entirely different person can be responsible for other matters, for example for providing facilities for the office-holder to perform his or her functions. Because of this, the section prohibits both the person who makes the appointment and any relevant person from discriminating against, victimising or harassing the office-holder. The relevant person is the person who is responsible for the act complained of in each case.
171. This section places a duty to make reasonable adjustments on a person who makes the appointment and any relevant person in relation to the needs of disabled people who seek or hold personal offices.

Background

172. This section is designed to replicate the effect of provisions in previous legislation.

Examples

- A company board refuses to appoint a candidate as director because she is black. This would be direct discrimination.
- A company terminates the appointment of a director because it is discovered that she is pregnant. This would be direct discrimination.