



EXPLANATORY NOTES

Worker Protection (Amendment of Equality Act 2010) Act 2023

Chapter 51

£8.14

WORKER PROTECTION (AMENDMENT OF EQUALITY ACT 2010) ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Worker Protection (Amendment of Equality Act 2010) Act 2023 which received Royal Assent on 26 October 2023 (c. 51).

- These Explanatory Notes have been prepared by the Equality Hub with the consent of Wera Hobhouse MP, the member who was in charge of the Bill, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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These Explanatory Notes relate to the Worker Protection (Amendment of Equality Act 2010) Act 2023 which received Royal Assent on 26 October 2023 (c. 51).

Overview of the Act

- 1 The Act consists of 5 sections:
 - Section 1 introduces a duty on employers to take reasonable steps to prevent sexual harassment of their employees;
 - Section 2 makes provision about the enforcement of the employer duty;
 - Section 3 provides for a compensation uplift in sexual harassment cases where there has been a breach of the employer duty;
 - Section 4 makes consequential amendments to the Equality Act 2006 (“the 2006 Act”); and
 - Section 5 details the extent of the sections and when the provisions will commence.

Policy background

- 2 The Equality Act 2010 (“the 2010 Act”) provides legal protections against sexual harassment in the workplace. Despite this, persistent reports and revelations that have emerged in recent years indicate that it remains a problem within the workplace.
- 3 In 2013, parliament repealed sections 40(2)-(4) of the 2010 Act. In 2018, the Court of Appeal ruled that, in the absence of those sections, the 2010 Act no longer makes employers liable for harassment of their employees by third parties like customers.
- 4 In response to the [Women & Equalities Committee’s fifth report of session 2017–19](#), the government held a [public consultation and public questionnaire](#) about the effectiveness of anti-harassment law. In view of the results, the government committed to introduce legislation that would once again make employers liable for harassment of their employees by third parties and would require employers to take all reasonable steps to prevent sexual harassment of their employees.

Legal background

- 5 Harassment in the workplace is prohibited under the 2010 Act. Section 26 of the 2010 Act defines three types of harassment. The first type, set out in section 26(1) of the 2010 Act, which applies to all the protected characteristics apart from pregnancy and maternity, and marriage and civil partnership, involves unwanted conduct which is related to a relevant characteristic and which has the purpose or effect of violating the victim’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the victim.
- 6 The second type of harassment, set out in section 26(2) of the 2010 Act, is sexual harassment, which is defined as unwanted conduct of a sexual nature that has the purpose or effect of violating an individual’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the victim.
- 7 The third type, set out in section 26(3) of the 2010 Act, is treating someone less favourably than another because they have either submitted, or failed to submit, to sexual harassment or harassment related to sex or gender reassignment.

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- 8 Section 40 of the 2010 Act prohibits employers from harassing their employees or job applicants. Under section 109 of the 2010 Act employers may be vicariously liable for acts of discrimination, harassment and victimisation carried out by their employees in the course of employment. The combined effect of these provisions means that an employer may be legally liable for sexual harassment carried out by their staff. This employer liability applies regardless of whether or not they have approved, or are even aware of, their employees' actions.
- 9 Section 109(4) of the 2010 Act provides that employers have a legal defence if they can show that they took 'all reasonable steps' to prevent their employee from acting unlawfully.
- 10 Sections 20-24A of the 2006 Act set out the Equality and Human Rights Commission's (EHRC's) enforcement powers relevant to the Act. These include the power to conduct investigations in relation to an unlawful act under the 2010 Act, to issue an unlawful act notice, to make action plans or enter into agreements with the person who has committed the unlawful act. It can also apply for an injunction against that person in relation to the breach. See the [EHRC's website](#) for more detail on its enforcement powers.

Territorial extent and application

- 11 Section 5(1) sets out the territorial extent of the Act. In line with the current extent and application of the 2010 Act, the Act extends to, and applies in, England and Wales and Scotland. It does not extend to Northern Ireland.
- 12 The devolution settlements for both Scotland and Wales provide that employment and industrial relations, as well as equal opportunities, are generally reserved to the UK Parliament. While there are exceptions to this, none are relevant here.

Commentary on provisions of Act

Section 1: Employer duty to prevent sexual harassment of employees

- 13 This section amends the 2010 Act by inserting new section 40A. It creates a duty on employers to prevent sexual harassment of their employees.
- 14 New section 40A(1) describes the new duty: employers must take reasonable steps to prevent sexual harassment of their employees in the course of their employment.
- 15 'Reasonable steps' depends on the specific circumstances of the employer, including its size and sector and other relevant facts. In most cases, the employer's practices and procedures (e.g. grievance and reporting procedures) for preventing and dealing with sexual harassment are likely to be relevant.
- 16 New section 40A(2) defines "sexual harassment" in the context of new subsection (1) as meaning harassment of the kind described in section 26(2) (unwanted conduct of a sexual nature).
- 17 New section 40A(3) is a "signpost" provision, which explains that a breach of the employer duty in new section 40A(1) is enforceable in two ways. First, a standalone breach (and a breach of section 111 or 112 that relates to a breach of the employer duty) may be enforced by the EHRC as an unlawful act under its existing enforcement powers in Part 1 of the 2006 Act.

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Second, a breach may also be enforced by an employment tribunal where it has first found a breach of section 40 which involved, to any extent, sexual harassment. Further provisions on the enforcement and remedy of the employer duty are provided in sections 2 and 3.

- 18 Incidents of third party harassment in the workplace will continue not be covered by civil remedies. The situation would remain as it has been since the repeal of the third-party harassment protections in 2013.

Section 2: Enforcement of duty to prevent sexual harassment of employees

- 19 This section amends section 120(8) of the 2010 Act and inserts new section 120(9).
- 20 The amendment to section 120(8) carves out breaches of the employer duty from the employment tribunal's jurisdiction, meaning that tribunals cannot consider standalone breaches of the employer duty. Only the EHRC can take enforcement action against standalone breaches of the duty if an employer fails to take reasonable steps to prevent third-party sexual harassment of employees.
- 21 New subsection (9) clarifies and puts beyond doubt the employment tribunal's role in considering a breach of the employer duty in relation to a compensation uplift in relevant cases, as described in section 3 (see paragraph 23 below). This means that tribunals cannot consider individual claims for a breach of the employer duty other than in cases where a claim of sexual harassment has been upheld.

Section 3: Sexual harassment of employees: compensation uplift

- 22 This section inserts new section 124A into the 2010 Act. It provides for a new remedy in sexual harassment cases in respect of breaches of the employer duty.
- 23 New sections 124A(1) to (3) provide that where an employment tribunal finds that there has been a breach of section 40 of the 2010 Act which involved, to any extent, sexual harassment, the tribunal must consider whether and to what extent the employer has also breached the employer duty to take reasonable steps to prevent the sexual harassment of their employees. If the tribunal finds that the employer duty has been breached, then the tribunal may order an uplift to the compensation awarded in respect of the sexual harassment claim.
- 24 New section 124A(4) provides that the amount of the compensation uplift must reflect the extent to which, in the tribunal's opinion, the employer duty has been breached. The specific circumstances of each case will be considered as part of this. New subsection (4) also states that the compensation uplift may be no more than 25% of the amount awarded for the sexual harassment claim. A discretionary uplift to compensation is intended to allow the tribunal to take the specific circumstances of each workplace into account and avoid overall awards which may be disproportionate.

Section 4: Consequential amendments to the Equality Act 2006

- 25 Section 4 makes consequential amendments to Part 1 of the 2006 Act.
- 26 Section 4(2) inserts new section 21(8) into the 2006 Act. It provides that an appeal may be made in the employment tribunal in respect of an unlawful act notice which relates to a breach of the employer duty (or an alleged breach of section 111 or 112 of the 2010 Act which relates to a breach of the employer duty).

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27 Section 4(3) inserts new paragraph (aa) into section 24A(1) of the 2006 Act. It allows the EHRC to take enforcement action against a breach of the employer duty even if the EHRC does not know or suspect that the breach has affected someone (see section 24A(2) of the 2006 Act). The same applies to a breach of section 111 (instructing, causing or inducing contraventions) or 112 (aiding contraventions) of the 2010 Act that relates to a breach of the employer duty.

Section 5: Extent, commencement and short title

28 Section 5 provides the name of the Act. It also provides the Act's commencement date (see paragraph 29 below) and territorial extent (see paragraphs 11 and 12 above).

Commencement

29 Section 5 came into force on 26 October 2023. Sections 1 to 4 come into force on 26 October 2024.

Related documents

30 The following documents are relevant to the Act and can be read at the stated locations:

- Women and Equalities Select Committee report: Sexual Harassment in the Workplace (25 July 2018): <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/725/72502.htm>
- Government response to the Women and Equalities Select Committee report on Sexual Harassment in the Workplace (28 November 2018): <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1801/180102.htm>
- Government consultation and response on sexual harassment in the workplace (21 July 2021): <https://www.gov.uk/government/consultations/consultation-on-sexual-harassment-in-the-workplace>
- Parliamentary stages of the Act: <https://bills.parliament.uk/bills/3205/stages>
- Publications of the parliamentary stages of the Act: <https://bills.parliament.uk/bills/3205/publications>
- The Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15/contents>

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Annex A - Hansard References

31 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard reference
<i>House of Commons</i>		
Introduction and First Reading	15 June 2022	Volume 716, Column 315
Second Reading	21 October 2022	Volume 720, Columns 1,007 to 1,012
Public Bill Committee	23 November 2022	Official report of the committee
Report and Third Reading	6 February 2023	Volume 727, Columns 584 to 600
Consideration of Lords Amendments	20 October 2023	Volume 738, Columns 483 to 494
<i>House of Lords</i>		
First Reading	6 February 2023	Volume 827, Column 970
Second Reading	24 March 2023	Volume 828, Columns 2,001 to 2,020
Committee of the Whole House	14 July 2023	Volume 831, Columns 2,027 to 2,036
Report	5 September 2023	Volume 832, Column 328
Third Reading	12 September 2023	Volume 832, Columns 788 to 790
Royal Assent	26 October 2023	Volume 833, Column 695

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