

EXPLANATORY MEMORANDUM TO
THE EQUALITY ACT 2010 (OBTAINING INFORMATION) ORDER 2010

2010 No. 2194

1. This explanatory memorandum has been prepared by the Government Equalities Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument prescribes forms which may be used by a person who thinks that they have been treated unlawfully under the Equality Act 2010 (“the Act”) to obtain information from the person they think is responsible for the unlawful treatment, either before or after commencing proceedings in a court or tribunal. This instrument also prescribes the period in which questions must be served to be admissible as evidence in proceedings. It also prescribes the manner in which any questions and answers may be served. The instrument also specifies circumstances in which a court or tribunal must not draw an inference from a failure to answer questions or an evasive or equivocal answer.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative context

4.1 The Act received Royal Assent on 8th April 2010. This instrument is one of a series which implement the core provisions of the Act. The first two of these instruments were the Equality Act (Commencement No. 1) Order 2010 S.I. 2010/1736 and the Equality Act 2010 (Commencement No. 2) Order 2010 S.I. 2010/1966 made for the purpose of making subordinate legislation, guidance and Codes of Practice. It is intended that the core provisions of the Act will come into force on 1st October 2010.

4.2 This instrument replaces subordinate legislation made under the Act’s predecessor legislation which is being repealed or revoked by the Act. The subordinate legislation is: the Sex Discrimination (Question and Replies) Order 1975 (S.I.1975/2048), the Race Relations (Questions and Replies) Order 1977 (S.I.1977/842) , the Disability Discrimination (Questions and Replies) Order 2004 (S.I. 2004/1168) and the Disability Discrimination (Questions and Replies) Order 2005 (S.I. 2005/2703), regulation 33 of the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), regulation 33 of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), regulation 41 of the Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), section 70 of the Equality Act 2006, regulation 24 of the Equality Act (Sexual Orientation) Regulations 2007 (S.I. 2007/1263) and the Equal Pay (Questions and Replies) Order 2003 (S.I.2003/722).

4.3 Section 138 is part of the enforcement provisions of the Act and requires a Minister of the Crown to prescribe forms on which a person who thinks that they have suffered from a contravention of the Act (the complainant (P)) may ask questions of the person they think has contravened the Act (the respondent (R)) and on which the respondent may reply. The questions and answers are admissible as evidence in any subsequent proceedings brought under the Act in either a court or tribunal. If the respondent fails to answer within 8 weeks of being served a question, or gives an equivocal or evasive answer the court or tribunal may draw an inference from that failure or that answer. This instrument prescribes two sets of forms for this purpose: Schedule 1 prescribes forms which may be used in disputes about prohibited conduct and Schedule 2 for disputes about equality of terms (equal pay). A separate form has been retained for disputes about equality of terms as claims under these provisions of the Act work in a different way.

4.4 Section 138 also enables the Minister to make ancillary provisions in relation to time and manner of service. The instrument provides that questions must be served either before proceedings are commenced, within 28 days of commencement or a later time if permitted by the court or tribunal. A number of provisions are also made for service of the questions and answers including service by electronic means in certain circumstances.

4.5 The instrument also specifies that a court or tribunal may not draw an inference from failure to reply to a question or an evasive or equivocal answer where the respondent reasonably asserts that the reason for not answering or for answering in that manner is to safeguard national security.

5. Territorial extent and application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The overall policy objectives of the Act are to streamline (through simplification) and strengthen equality law. In particular, the Act replaces, fully or in part, the major pieces of existing legislation¹ and puts protection against discrimination on a more consistent basis.

¹ The Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion and Belief) Regulations 2003 (S.I. 2003/1660), the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), the Equality Act 2006, the

7.2 The Act requires a Minister of the Crown to prescribe forms on which questions may be asked and answered, but there is no requirement for complainants or respondents to use them. They may use the prescribed forms, a form to the like effect or any other form of question and answer. However, it is considered helpful for individuals (both complainants and respondents) to have template forms available so that they have a framework within which they can ask and answer questions, as many complainants and respondents will be unfamiliar with the process of litigation in discrimination claims. The obtaining information process is also intended to speed up and in some cases avoid litigation, by bringing forward the key issues at an early stage and enabling the parties to focus on them. It is also helpful to prescribe time limits and the manner of service to ensure that claims can be dealt with expeditiously. As well as the prescribed forms, an expanded version of the forms in the Schedules, with guidance on how to complete them, will be available on the Government Equalities Office website.

- *Simplification*

7.3 This instrument contributes to the objective of simplifying the existing law by replacing 20 different forms for helping persons to obtain information in disputes about prohibited conduct and equality of terms with just four forms under the Act.

8. Consultation outcome

8.1 In June 2009 the Government commissioned research into the use of some of the existing published forms for obtaining information through questionnaires under the equal pay, sex discrimination and race relations legislation. The objectives of the research were to find out whether people and businesses knew about the forms, whether they used the forms or alternative formats, the extent to which the forms were perceived as a burden and how any burden could be reduced. Businesses that were aware of the forms suggested improvements and in particular wanted shorter, clearer, and simpler forms.

8.2 To reduce the burden on business and as part of the overall simplification objective of the Act, the Government decided to merge the previous 20 forms into four forms, one set to cover prohibited conduct and the other to cover equality of terms. Draft forms were published on 16 June 2010 for a four-week public consultation. A total of 21 responses were received from employers, employer and employee representative groups, trade unions, equality groups and an employee. Of these, 16 respondents completed the online consultation document for the prohibited conduct forms and of these 12 commented on the equality of terms forms. The remaining respondents provided general comments on both forms only. Respondents generally felt that the guidance and instructions were better than before, and the process itself appeared largely the same. For some it was difficult to estimate whether the new forms would be quicker to complete without the practical experience of completing them.

9. Guidance

9.1 The Government Equalities Office will publish on its website (www.equalities.gov.uk) forms which are expanded versions of the forms in the Schedules to this instrument, containing guidance about how they might be completed. They will also be available at Jobcentre Plus offices and Citizens Advice Bureaux.

10. Impact

10.1 A separate impact assessment has not been prepared for this instrument. The June 2009 research estimated that 9,000 – 10,000 businesses had completed the previous versions of the forms, taking 5 – 6 hours to complete. The Government has estimated in the recently published Final Report on Simplification Plans for 2005 – 2010 that the consolidated forms will result in a reduction of administrative burden on businesses of at least 25%, due to firms finding it less costly and time consuming to access information because of the reduction in volume of material, equivalent to at least £1.4m per annum.²

11. Regulating small business

11.1 This instrument applies to small business.

11.2 The effect of this instrument is to reduce burdens on businesses of all sizes. Firms employing up to 20 people will also benefit from this effect.

12. Monitoring & review

12.1 The Government Equalities Office is developing an evaluation framework for the Act as a whole, including establishing a baseline against which to measure change. This will enable relevant data to be collected. A full evaluation is intended 4-5 years following enactment.

13. Contact

Jay Begum at the Government Equalities Office, Discrimination Law Team, tel: 0303 444 3039 or e-mail: jay.begum@geo.gsi.gov.uk can answer any queries regarding this instrument.

² bis.gov.uk/assets/biscore/better-regulation/docs/s/10-1083-simplification-plans-2005-2010-final-report