

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Enforcement

Chapter 5: Miscellaneous

Section 138: Obtaining information, etc.

Effect

447. This section provides a mechanism for a person who thinks that he or she may have been unlawfully discriminated against, harassed or victimised to obtain information from the person he or she thinks has acted unlawfully against him or her (that is to say, the potential respondent or defendant). The person may ask questions either on a form prescribed by order by a Minister of the Crown or in some other form.
448. The questions and the answers are admissible as evidence in a case brought under the Act and the court or tribunal may draw inferences from a failure by the respondent to answer the questions posed within eight weeks or from evasive or equivocal answers.
449. However, the court or tribunal cannot draw such inferences in certain specified circumstances. These are if the respondent says that to answer differently would have prejudiced criminal proceedings or revealed the reason for criminal proceedings being withdrawn or not being brought and this is reasonable. The section contains a power for a Minister of the Crown to specify by order additional circumstances where such inferences may not be drawn.

Background

450. This provision is designed to replicate the effect of provisions in previous legislation.