

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Advancement of Equality

Chapter 2: Positive action

Section 158: Positive action: general

Effect

511. This section provides that the Act does not prohibit the use of positive action measures to alleviate disadvantage experienced by people who share a protected characteristic, reduce their under-representation in relation to particular activities, and meet their particular needs. It will, for example, allow measures to be targeted to particular groups, including training to enable them to gain employment, or health services to address their needs. Any such measures must be a proportionate way of achieving the relevant aim.
512. The extent to which it is proportionate to take positive action measures which may result in people not having the relevant characteristic being treated less favourably will depend, among other things, on the seriousness of the relevant disadvantage, the extremity of need or under-representation and the availability of other means of countering them. This provision will need to be interpreted in accordance with European law which limits the extent to which the kind of action it permits will be allowed.
513. To provide greater legal certainty about what action is proportionate in particular circumstances, the section contains a power to make regulations setting out action which is not permitted under it.
514. If positive action measures are taken in recruitment or promotion under section 159(3) or the selection of political candidates under section 104, those provisions will apply rather than this section.
515. Should the provision allowing single-sex shortlists for the selection of political candidates (section 104(7)) be repealed, this section will not permit action to be taken similar to that permissible under that provision.
516. This section does not allow any action to be taken that would be prohibited by other legislation.

Background

517. This section is new. There were positive action provisions in previous legislation, but these applied to different protected characteristics in different ways and in some cases were specific about the types of action they permitted. This section extends what is possible to the extent permitted by European law, and applies in relation to all protected characteristics.

Examples

- Having identified that its white male pupils are underperforming at maths, a school could run supplementary maths classes exclusively for them.
- An NHS Primary Care Trust identifies that lesbians are less likely to be aware that they are at risk of cervical cancer and less likely to access health services such as national screening programmes. It is also aware that those who do not have children do not know that they are at an increased risk of breast cancer. Knowing this it could decide to establish local awareness campaigns for lesbians on the importance of cancer screening.