

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Work**

#### *Chapter 1: Employment, etc.*

#### *Section 60: Enquiries about disability and health*

#### **Effect**

197. Except in the situations specified in this section, an employer must not ask about a job applicant's health until that person has been either offered a job (on a conditional or unconditional basis) or been included in a pool of successful candidates to be offered a job when a suitable position arises. The specified situations where health-related enquiries can be made are for the purposes of:
- finding out whether a job applicant would be able to participate in an assessment to test his or her suitability for the work;
  - making reasonable adjustments to enable the disabled person to participate in the recruitment process;
  - finding out whether a job applicant would be able to undertake a function that is intrinsic to the job, with reasonable adjustments in place as required;
  - monitoring diversity in applications for jobs;
  - supporting positive action in employment for disabled people; and
  - enabling an employer to identify suitable candidates for a job where there is an occupational requirement for the person to be disabled.
198. The section also allows questions to be asked where they are needed in the context of national security vetting.
199. Where an employer makes a health or disability-related enquiry which falls outside the specified situations, he or she would be acting unlawfully under the Equality Act 2010. Together with Schedule 26, this section gives the Equality and Human Rights Commission (EHRC) an enforcement role. (Section 120(8) ensures that only the EHRC can enforce a breach of this provision.). This means, for example, that the EHRC would be able to conduct an investigation if there was evidence that a large employer might be routinely asking prohibited questions when recruiting.
200. Where the employer asks a question not allowed by this section and rejects the applicant, if the applicant then makes a claim to the employment tribunal for direct disability discrimination, it will be for the employer to show that it had not discriminated against the candidate.

201. As well as applying to recruitment to employment, the section also applies to the other areas covered by Part 5 of the Act, such as contract work, business partnerships, office-holders, barristers and advocates.

### **Background**

202. This is a new provision. The Disability Discrimination Act 1995 did not prevent an employer from making health- or disability- related enquiries of applicants for a job, although it did make it unlawful to use the result of such enquiries to discriminate against a candidate because of his or her disability. This provision will limit the making of enquiries and therefore help to tackle the disincentive effect that an employer making such enquiries can have on some disabled people making applications for work.

### **Examples**

- Applicants are asked on an application form whether they have a disability that requires the employer to make a reasonable adjustment to the recruitment process. This is to allow, for example, people with a speech impairment more time for interview. This enquiry would be permitted.
- An applicant applies for a job in a warehouse, which requires the manual lifting and handling of heavy items. As manual handling is a function which is intrinsic to the job, the employer is permitted to ask the applicant questions about his health to establish whether he is able to do the job (with reasonable adjustments for a disabled applicant, if required). The employer would not be permitted to ask the applicant other health questions until he or she offered the candidate a job.