

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Enforcement

Chapter 5: Miscellaneous

Section 136: Burden of proof

Effect

443. This section provides that, in any claim where a person alleges discrimination, harassment or victimisation under the Act, the burden of proving his or her case starts with the claimant. Once the claimant has established sufficient facts, which in the absence of any other explanation point to a breach having occurred, the burden shifts to the respondent to show that he or she did not breach the provisions of the Act. The exception to this rule is if the proceedings relate to a criminal offence under this Act.

Background

444. Under previous legislation, in most cases the burden of proof was reversed once the claimant had established a case to an initial level. However, the burden of proof was not previously reversed in race discrimination claims brought because of colour and nationality; claims of victimisation which related to race discrimination; non-work disability discrimination claims; and sex discrimination claims which related to the exercise of public functions. In these areas the burden of proof is now reversed once the claimant establishes his or her case to an initial level.

Example

- A man of Chinese ethnic origin applies for a promotion at work but is not given an interview for the job. He finds that a number of white colleagues were given interviews despite having less experience and fewer qualifications. He brings a case for race discrimination before the employment tribunal and provides sufficient evidence to show that he had been treated less favourably because of his ethnic origin. It would then be up to his employer to prove that she had not discriminated against him in the promotion process.