



# Equality Act 2010

## 2010 CHAPTER 15

### PART 10

#### CONTRACTS, ETC.

##### *Contracts and other agreements*

#### **142 Unenforceable terms**

- (1) A term of a contract is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act.
- (2) A relevant non-contractual term is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act, in so far as this Act relates to disability.
- (3) A relevant non-contractual term is a term which—
  - (a) is a term of an agreement that is not a contract, and
  - (b) relates to the provision of an employment service within section 56(2)(a) to (e) or to the provision under a group insurance arrangement of facilities by way of insurance.
- (4) A reference in subsection (1) or (2) to treatment of a description prohibited by this Act does not include—
  - (a) a reference to the inclusion of a term in a contract referred to in section 70(2)(a) or 76(2), or
  - (b) a reference to the failure to include a term in a contract as referred to in section 70(2)(b).
- (5) Subsection (4) does not affect the application of section 148(2) to this section.

*Status: Point in time view as at 09/01/2016.*

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### 143 Removal or modification of unenforceable terms

- (1) [<sup>F1</sup>The county court] or the sheriff may, on an application by a person who has an interest in a contract or other agreement which includes a term that is unenforceable as a result of section 142, make an order for the term to be removed or modified.
- (2) An order under this section must not be made unless every person who would be affected by it—
  - (a) has been given notice of the application (except where notice is dispensed with in accordance with rules of court), and
  - (b) has been afforded an opportunity to make representations to the county court or sheriff.
- (3) An order under this section may include provision in respect of a period before the making of the order.

#### Textual Amendments

**F1** Words in s. 143(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 52](#); [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

### 144 Contracting out

- (1) A term of a contract is unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of or made under this Act.
- (2) A relevant non-contractual term (as defined by section 142) is unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of or made under this Act, in so far as the provision relates to disability.
- (3) This section does not apply to a contract which settles a claim within section 114.
- (4) This section does not apply to a contract which settles a complaint within section 120 if the contract—
  - (a) is made with the assistance of a conciliation officer, or
  - (b) is a qualifying [<sup>F2</sup>settlement agreement ].
- (5) A contract within subsection (4) includes a contract which settles a complaint relating to a breach of an equality clause or rule or of a non-discrimination rule.
- (6) A contract within subsection (4) includes an agreement by the parties to a dispute to submit the dispute to arbitration if—
  - (a) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
  - (b) the agreement is to submit the dispute to arbitration in accordance with the scheme.

#### Textual Amendments

**F2** Words in s. 144(4)(b) substituted (29.7.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 23\(5\)](#), 103(3); [S.I. 2013/1648](#), art. 2(c)

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### *Collective agreements and rules of undertakings*

#### **145 Void and unenforceable terms**

- (1) A term of a collective agreement is void in so far as it constitutes, promotes or provides for treatment of a description prohibited by this Act.
- (2) A rule of an undertaking is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of the person that is of a description prohibited by this Act.

#### **146 Declaration in respect of void term, etc.**

- (1) A qualifying person (P) may make a complaint to an employment tribunal that a term is void, or that a rule is unenforceable, as a result of section 145.
- (2) But subsection (1) applies only if—
  - (a) the term or rule may in the future have effect in relation to P, and
  - (b) where the complaint alleges that the term or rule provides for treatment of a description prohibited by this Act, P may in the future be subjected to treatment that would (if P were subjected to it in present circumstances) be of that description.
- (3) If the tribunal finds that the complaint is well-founded, it must make an order declaring that the term is void or the rule is unenforceable.
- (4) An order under this section may include provision in respect of a period before the making of the order.
- (5) In the case of a complaint about a term of a collective agreement, where the term is one made by or on behalf of a person of a description specified in the first column of the table, a qualifying person is a person of a description specified in the second column.

<i>Description of person who made collective agreement</i>	<i>Qualifying person</i>
Employer	A person who is, or is seeking to be, an employee of that employer
Organisation of employers	A person who is, or is seeking to be, an employee of an employer who is a member of that organisation
Association of organisations of employers	A person who is, or is seeking to be, an employee of an employer who is a member of an organisation in that association

- (6) In the case of a complaint about a rule of an undertaking, where the rule is one made by or on behalf of a person of a description specified in the first column of the table, a qualifying person is a person of a description specified in the second column.

<i>Description of person who made rule of undertaking</i>	<i>Qualifying person</i>
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Employer	A person who is, or is seeking to be, an employee of that employer
Trade organisation or qualifications body	A person who is, or is seeking to be, a member of the organisation or body
	A person upon whom the body has conferred a relevant qualification
	A person seeking conferment by the body of a relevant qualification

### Supplementary

#### 147 Meaning of “qualifying [<sup>F3</sup>settlement agreement]”

- (1) This section applies for the purposes of this Part.
- (2) A qualifying [<sup>F4</sup>settlement agreement] is a contract in relation to which each of the conditions in subsection (3) is met.
- (3) Those conditions are that—
  - (a) the contract is in writing,
  - (b) the contract relates to the particular complaint,
  - (c) the complainant has, before entering into the contract, received advice from an independent adviser about its terms and effect (including, in particular, its effect on the complainant's ability to pursue the complaint before an employment tribunal),
  - (d) on the date of the giving of the advice, there is in force a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising from the advice,
  - (e) the contract identifies the adviser, and
  - (f) the contract states that the conditions in paragraphs (c) and (d) are met.
- (4) Each of the following is an independent adviser—
  - (a) a qualified lawyer;
  - (b) an officer, official, employee or member of an independent trade union certified in writing by the trade union as competent to give advice and as authorised to do so on its behalf;
  - (c) a worker at an advice centre (whether as an employee or a volunteer) certified in writing by the centre as competent to give advice and as authorised to do so on its behalf;
  - (d) a person of such description as may be specified by order.
- (5) Despite subsection (4), none of the following is an independent adviser [<sup>F5</sup>to the complainant] in relation to a qualifying [<sup>F4</sup>settlement agreement]—
  - (a) a person [<sup>F6</sup>(other than the complainant)] who is a party to the contract or the complaint;
  - (b) a person who is connected to a person within paragraph (a);
  - (c) a person who is employed by a person within paragraph (a) or (b);

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- (d) a person who is acting for a person within paragraph (a) or (b) in relation to the contract or the complaint;
  - (e) a person within subsection (4)(b) or (c), if the trade union or advice centre is a person within paragraph (a) or (b);
  - (f) a person within subsection (4)(c) to whom the complainant makes a payment for the advice.
- (6) A “qualified lawyer”, for the purposes of subsection (4)(a), is—
- (a) in relation to England and Wales, a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation;
  - (b) in relation to Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.
- (7) “Independent trade union” has the meaning given in section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (8) Two persons are connected for the purposes of subsection (5) if—
- (a) one is a company of which the other (directly or indirectly) has control, or
  - (b) both are companies of which a third person (directly or indirectly) has control.
- (9) Two persons are also connected for the purposes of subsection (5) in so far as a connection between them gives rise to a conflict of interest in relation to the contract or the complaint.

#### Textual Amendments

- F3** Words in s. 147 heading substituted (29.7.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 23\(6\)](#), 103(3); [S.I. 2013/1648](#), [art. 2\(c\)](#)
- F4** Words in s. 147(2)(5) substituted (29.7.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 23\(6\)](#), 103(3); [S.I. 2013/1648](#), [art. 2\(c\)](#)
- F5** Words in s. 147(5) inserted (6.4.2012) by [The Equality Act 2010 \(Amendment\) Order 2012 \(S.I. 2012/334\)](#), [art. 2\(2\)](#)
- F6** Words in s. 147(5)(a) inserted (6.4.2012) by [The Equality Act 2010 \(Amendment\) Order 2012 \(S.I. 2012/334\)](#), [art. 2\(3\)](#)

#### Commencement Information

- I1** S. 147 wholly in force at 1.10.2010; s. 147 not in force at Royal Assent see s. 216; s. 147(4) in force for certain purposes at 6.7.2010 by [S.I. 2010/1736](#), [art. 2](#), [Sch.](#); s. 147 in force at 1.10.2010 in so far as not already in force by [S.I. 2010/2317](#), [art. 2\(1\)\(10\)\(b\)](#) (with [art. 15](#))

## 148 Interpretation

- (1) This section applies for the purposes of this Part.
- (2) A reference to treatment of a description prohibited by this Act does not include treatment in so far as it is treatment that would contravene—
  - (a) Part 1 (public sector duty regarding socio-economic inequalities), or
  - (b) Chapter 1 of Part 11 (public sector equality duty).

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- (3) “Group insurance arrangement” means an arrangement between an employer and another person for the provision by that other person of facilities by way of insurance to the employer’s employees (or a class of those employees).
- (4) “Collective agreement” has the meaning given in section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (5) A rule of an undertaking is a rule within subsection (6) or (7).
- (6) A rule within this subsection is a rule made by a trade organisation or a qualifications body for application to—
  - (a) its members or prospective members,
  - (b) persons on whom it has conferred a relevant qualification, or
  - (c) persons seeking conferment by it of a relevant qualification.
- (7) A rule within this subsection is a rule made by an employer for application to—
  - (a) employees,
  - (b) persons who apply for employment, or
  - (c) persons the employer considers for employment.
- (8) “Trade organisation”, “qualifications body” and “relevant qualification” each have the meaning given in Part 5 (work).

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