



# Equality Act 2010

## 2010 CHAPTER 15

### PART 5 **U.K.**

#### WORK

### CHAPTER 1 **E+W+S**

#### EMPLOYMENT, ETC.

#### *Recruitment [<sup>F1</sup> etc]*

#### Textual Amendments

- F1** Word in s. 60 cross-heading inserted (1.1.2024) by [The Equality Act 2010 \(Amendment\) Regulations 2023 \(S.I. 2023/1425\)](#), regs. 1(2), **4(2)**

### **60** Enquiries about disability and health **E+W+S**

- (1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)—
- before offering work to B, or
  - where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.
- (2) A contravention of subsection (1) (or a contravention of section 111 or 112 that relates to a contravention of subsection (1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 120(8), is enforceable only by the Commission under that Part).

*Status: Point in time view as at 01/01/2024.*

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- (3) A does not contravene a relevant disability provision merely by asking about B's health; but A's conduct in reliance on information given in response may be a contravention of a relevant disability provision.
- (4) Subsection (5) applies if B brings proceedings before an employment tribunal on a complaint that A's conduct in reliance on information given in response to a question about B's health is a contravention of a relevant disability provision.
- (5) In the application of section 136 to the proceedings, the particulars of the complaint are to be treated for the purposes of subsection (2) of that section as facts from which the tribunal could decide that A contravened the provision.
- (6) This section does not apply to a question that A asks in so far as asking the question is necessary for the purpose of—
  - (a) establishing whether B will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments is or will be imposed on A in relation to B in connection with a requirement to undergo an assessment,
  - (b) establishing whether B will be able to carry out a function that is intrinsic to the work concerned,
  - (c) monitoring diversity in the range of persons applying to A for work,
  - (d) taking action to which section 158 would apply if references in that section to persons who share (or do not share) a protected characteristic were references to disabled persons (or persons who are not disabled) and the reference to the characteristic were a reference to disability, or
  - (e) if A applies in relation to the work a requirement to have a particular disability, establishing whether B has that disability.
- (7) In subsection (6)(b), where A reasonably believes that a duty to make reasonable adjustments would be imposed on A in relation to B in connection with the work, the reference to a function that is intrinsic to the work is to be read as a reference to a function that would be intrinsic to the work once A complied with the duty.
- (8) Subsection (6)(e) applies only if A shows that, having regard to the nature or context of the work—
  - (a) the requirement is an occupational requirement, and
  - (b) the application of the requirement is a proportionate means of achieving a legitimate aim.
- (9) “Work” means employment, contract work, a position as a partner, a position as a member of an LLP, a pupillage or tenancy, being taken as a devil, membership of a stable, an appointment to a personal or public office, or the provision of an employment service; and the references in subsection (1) to offering a person work are, in relation to contract work, to be read as references to allowing a person to do the work.
- (10) A reference to offering work is a reference to making a conditional or unconditional offer of work (and, in relation to contract work, is a reference to allowing a person to do the work subject to fulfilment of one or more conditions).
- (11) The following, so far as relating to discrimination within section 13 because of disability, are relevant disability provisions—
  - (a) section 39(1)(a) or (c);

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- (b) section 41(1)(b);
  - (c) section 44(1)(a) or (c);
  - (d) section 45(1)(a) or (c);
  - (e) section 47(1)(a) or (c);
  - (f) section 48(1)(a) or (c);
  - (g) section 49(3)(a) or (c);
  - (h) section 50(3)(a) or (c);
  - (i) section 51(1);
  - (j) section 55(1)(a) or (c);
  - [<sup>F2</sup>(k) section 60A(1).]
- (12) An assessment is an interview or other process designed to give an indication of a person's suitability for the work concerned.
- (13) For the purposes of this section, whether or not a person has a disability is to be regarded as an aspect of that person's health.
- (14) This section does not apply to anything done for the purpose of vetting applicants for work for reasons of national security.

#### Textual Amendments

**F2** S. 60(11)(k) inserted (1.1.2024) by [The Equality Act 2010 \(Amendment\) Regulations 2023 \(S.I. 2023/1425\)](#), regs. 1(2), 4(3)

### [<sup>F3</sup>60A Discriminatory statements **E+W+S**

- (1) A person (A) must not make a discriminatory statement in connection with a relevant decision that A makes or might make.
- (2) References in this section to a “relevant decision” are to be determined as follows—

<i>Where A is—</i>	<i>A relevant decision is—</i>
An employer	Deciding to whom to offer employment
A principal (as defined by section 41(5))	Deciding whether to allow a contract worker (as defined by section 41(7)) to do, or to continue to do, work
A firm or proposed firm (as defined by section 46(2) and (3))	Deciding to whom to offer a position as a partner (read in accordance with section 44(8))
An LLP or proposed LLP (as defined by section 46(4) and (5))	Deciding to whom to offer a position as a member
A barrister or a barrister's clerk (read in accordance with section 47(8))	Deciding to whom to offer a pupillage or tenancy
An advocate (as defined by section 48(9)) or an advocate's clerk (read in accordance with section 48(8))	Deciding who to take as a devil or to whom to offer membership of a stable

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<i>Where A is—</i>	<i>A relevant decision is—</i>
A person with power to make an appointment to a personal office (as defined by section 49(2))	Deciding to whom to offer the appointment
A person with power to make an appointment to a public office within section 50(2)(a), (b) or (d)	Deciding to whom to offer the appointment
A person with power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a), (b) or (d) (read in accordance with section 51(5))	Deciding who to recommend for appointment or to whose appointment to give approval
A qualifications body (as defined by section 54)	Deciding to whom to confer a relevant qualification (as defined by section 54)
A person concerned with the provision of an employment service (read in accordance with section 56)	Deciding on the selection of persons to whom to provide, or to whom to offer to provide, the employment service
A trade organisation (as defined by section 57(7))	Deciding to whom to offer membership of the organisation.

- (3) For the purposes of subsection (1) a statement is discriminatory if—
- (a) it is directed to the public or a section of the public, and
  - (b) were it made in connection with a relevant decision, the making of it would amount to treatment of a person that is direct discrimination.
- (4) A statement made by a person (B) who—
- (a) is not an employee of A acting in the course of B’s employment, and
  - (b) is not an agent of A acting with A’s authority,
- is to be treated for the purposes of this section as if made by A if there are reasonable grounds for the public, or a section of the public, to believe that B is capable of exercising decisive influence on the making by A of a relevant decision.
- (5) Regard is to be had (among other things) to the factors mentioned in subsection (6) when determining—
- (a) whether a statement is made in connection with a relevant decision for the purposes of subsection (1);
  - (b) whether there are reasonable grounds for the belief mentioned in subsection (4).
- (6) The factors are—
- (a) the status of the person making the statement at the time it is made;
  - (b) the nature and content of the statement;
  - (c) the context in which the statement is made;
  - (d) in the case of a statement that A is treated as having made by virtue of subsection (4), the steps (if any) taken by A to disassociate A from the statement made by B.
- (7) It does not matter for the purposes of this section whether or not—

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- (a) an individual has or may have been affected by the discriminatory statement in question;
  - (b) A has made, or plans to make, arrangements which would involve the making of a relevant decision.
- (8) A contravention of subsection (1) (or a contravention of section 111 or 112 that relates to a contravention of subsection (1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 120(8), is enforceable only by the Commission under that Part).
- (9) In subsection (3) the reference to direct discrimination is to a contravention of this Act by virtue of section 13 or 18.
- (10) Nothing in this section limits or otherwise affects—
- (a) other prohibitions imposed by this Chapter;
  - (b) the application of section 109 (liability of employers and principals for acts of employees and agents).]

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**Textual Amendments**

- F3** S. 60A inserted (1.1.2024) by [The Equality Act 2010 \(Amendment\) Regulations 2023 \(S.I. 2023/1425\)](#), regs. 1(2), **4(4)**

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