

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Prohibited Conduct: Ancillary**

#### *Section 111: Instructing, causing or inducing contraventions*

##### **Effect**

363. This section makes it unlawful for a person to instruct, cause or induce someone to discriminate against, harass or victimise another person, or to attempt to do so.
364. It provides a remedy for both the recipient of the instruction and the intended victim, whether or not the instruction is carried out, provided the recipient or intended victim suffers a detriment as a result.
365. However, the section only applies where the person giving the instruction is in a relationship with the recipient of the instruction in which discrimination, harassment or victimisation is prohibited.
366. The Equality and Human Rights Commission can enforce this section using its statutory powers under the Equality Act 2006. Equally, both the recipient of the instruction and the intended victim can bring individual claims for breach of this section against the person giving the instructions, so long as they have suffered a detriment as a result. A claim brought by the recipient of the instruction will be dealt with in the same forum (employment tribunal or county courts) as a direct claim for discrimination, harassment or victimisation against the person giving the instruction would be. A claim brought by the intended victim against the person giving the instruction will be dealt with in the same forum as a claim for discrimination, harassment or victimisation against the person carrying out the instruction would be.

##### **Background**

367. This section replaces provisions in previous legislation in relation to race, sex, gender reassignment, pregnancy and maternity, age (within the workplace) disability (within the workplace), religion or belief (outside the workplace) and sexual orientation (outside the workplace). It extends protection to all protected characteristics in all areas covered by the Act and allows the Equality and Human Rights Commission to bring enforcement proceedings in relation to any action in breach of the section. (Previously, the Equality and Human Rights Commission's enforcement powers were not uniform even between the protected characteristics and fields where there were provisions on instructions to discriminate.) The provision expressly allowing persons instructed to bring proceedings is new (other than in relation to age within the workplace where such provision already exists), and is designed to codify the current position in common law (see *Weathersfield v Sargent* [1999] IRLR 94). The provision expressly allowing the intended victim to bring proceedings, even where the instruction is not carried out, is also new and is designed to ensure greater clarity about the protection than under previous legislation.

**Example**

- A GP instructs his receptionist not to register anyone with an Asian name. The receptionist would have a claim against the GP if subjected to a detriment for not doing so. A potential patient would also have a claim against the GP if she discovered the instruction had been given and was put off applying to register. The receptionist's claim against the GP would be brought before the employment tribunal as it relates to employment, while the potential patient's claim would be brought in the county court as it relates to services.