
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends section 147 of the Equality Act 2010 (c.15) (“the Act”). Section 147 makes provision as to what is a “qualifying compromise contract” (“QCC”), which is a contract that may be used to settle a complaint within section 120, where it meets the requirements of section 147. Section 120 of the Act grants jurisdiction to an employment tribunal to determine a complaint relating to an unlawful act under Part 5 (Work), namely an act of discrimination, harassment or victimisation. One requirement of section 147 is that the complainant must have received advice from an independent adviser before entering into a QCC (section 147(3)(c)). Section 147(4) and (5) sets out who may act as an independent adviser for these purposes.

The interpretation of section 147 has given rise to uncertainty as to whether a complainant’s lawyer is precluded from being an “independent adviser” to the complainant for the purposes of a QCC. This Order seeks to clarify that the “person” referred to in section 147(5)(a) could not include the “complainant” and that, accordingly, a complainant’s legal adviser is not precluded from being an “independent adviser” to the complainant.

Section 147 relates to two obligations under European Directives, namely Council Directive 2000/78/EC (OJ L 303, 2.12.2000, pp 20 and 21); Council Directive 2000/43/EC (OJ L 180, 29.6.2000, pp 25 and 26); Council Directive 2004/113/EC (OJ L 373 13.12.2004, pp 41 and 42); and Council Directive 2006/54/EC (OJ L 204, 5.7.2006, pp 30 and 32). The first obligation is to introduce judicial or administrative procedures which, where deemed necessary by the Member States, include conciliation procedures for the enforcement of the requirements under the principle of equal treatment. The second is to provide that all terms in a contract which are contrary to the principle of equal treatment are or may be null and void. Section 147 is specifically concerned with an option which Member States may adopt, to permit prohibited terms not to be made null and void.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at the Home Office website at www.homeoffice.gov.uk/equalities/ and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.