

**EXPLANATORY MEMORANDUM TO
THE EQUALITY ACT 2010 (QUALIFYING COMPROMISE CONTRACT
SPECIFIED PERSON) ORDER 2010**

2010 No. 2192

1. This explanatory memorandum has been prepared by the Government Equalities Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument ensures that where a complainant has received advice from a Fellow of the Institute of Legal Executives (“ILEX”) as to the settlement of a claim of discrimination or other conduct prohibited in employment (collectively, “discrimination”) under the Equality Act 2010 (“the Act”), that settlement will be enforceable. Fellows of ILEX were recognised as independent advisers for the purpose of settling claims under the legislation which is replaced by the Act. This instrument therefore maintains the position of Fellows of ILEX in discrimination law.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative context

4.1 The Act received Royal Assent on 8th April 2010. This instrument is one of a series which implement the core provisions of the Act. The first two of these instruments were the Equality Act (Commencement No.1) Order 2010 S.I. 2010/1736 and the Equality Act 2010 (Commencement No.2) Order 2010 S.I. 2010/1966 made for the purpose of making subordinate legislation, guidance and Codes of Practice. It is intended that the core provisions of the Act will come into force on 1st October 2010.

4.2 The Act replaces and consolidates previous discrimination legislation (see footnote to paragraph 7.1) all of which contained provisions equivalent to Part 10 of the Act (which governs, amongst other things, the validity of contracts). Fellows of ILEX were listed as independent advisers for the purposes of settling claims under that legislation and this instrument maintains their position.

4.3 Section 144 of the Act provides that a contractual term (or relevant non-contractual term) which seeks to exclude or limit the operation of any provision of the Act is unenforceable. Section 144(4) provides an exception for a contract settling a complaint of discrimination in employment which is a “qualifying compromise contract”. Section 147(3) sets out the conditions which must be met by such a contract. One of these conditions is that the complainant has, before entering the contract, received advice from an independent adviser about its terms and effect.

5. Territorial extent and application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

Policy background

- *What is being done and why*

7.1 The overall policy objectives of the Act are to streamline (through simplification) and strengthen equality law. In particular, the Act replaces, fully or in part, the major pieces of existing legislation¹ and puts protection against discrimination on a more consistent basis.

7.2 One of the purposes of Part 10 (Contracts, etc.) of the Act is to ensure that contractual terms cannot generally set this protection aside (section 144 (contracting out)). However, it is also necessary to enable settlements to be reached by negotiation, thus avoiding the need to go through a full tribunal hearing in every case. So the Act makes provision to ensure that where an individual settles a claim under the Act by means of a contract which limits his or her right to redress (which is normally done in exchange for payment), that contract can be enforceable despite section 144. The exception in section 144(4) does this by protecting contracts which satisfy the requirements of a “qualifying compromise contract” (as defined in section 147).

7.3 One of the requirements of a “qualifying compromise contract” is that the complainant receives advice from an “independent adviser” (listed in section 147(4)). This safeguards claimants’ interests, by ensuring that they receive professional advice and do not surrender their rights under the Act unwittingly. The list of persons who can act as independent advisers therefore includes solicitors and properly qualified staff of trade unions or advice centres, provided no conflict of interest exists in the particular case.

7.4 Designating Fellows of ILEX as independent advisers for this purpose maintains their role under previous discrimination legislation (and is consistent with their designation for purposes of other employment legislation, such as the Employment Rights Act 1996).

- *Simplification*

7.5 This instrument consolidates the previous instruments designating Fellows of ILEX as independent advisers (or amending those instruments) in so far as contained in or made under discrimination legislation.

8. Consultation outcome

8.1 The Act was introduced after public consultation which followed publication of the Discrimination Law Review Green Paper “A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain” in June 2007. The matters dealt with in this instrument were not subject to separate consultation.

¹ The Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion and Belief) Regulations 2003 (S.I. 2003/1660), the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), the Equality Act 2006 and the Equality Act (Sexual Orientation) Regulations 2007 (S.I. 2007/1263).

9. Guidance

9.1 The Equality and Human Rights Commission is preparing comprehensive guidance on the Act which may apply in cases covered by this instrument.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 An Impact Assessment has been published for the Act as a whole. A separate Impact Assessment has not been prepared for this instrument because no additional impact is foreseen.

11. Regulating small business

11.1 This instrument applies to small business.

12. Monitoring & review

12.1 The Government Equalities Office is developing an evaluation framework for the Act as a whole, including establishing a baseline against which to measure change. This will enable relevant data to be collected. A full evaluation is intended 4-5 years following enactment.

13. Contact

David Ware at the Government Equalities Office can answer any queries regarding the instrument. Tel: 0303 444 3027 or e-mail: david.ware@geo.gsi.gov.uk.