
Arbitration and Mediation Services (Equality) Bill

EXPLANATORY NOTE

INTRODUCTION

1. These Explanatory Notes relate to the Arbitration and Mediation Services (Equality) Bill as introduced in the House of Lords on 7 June 2011. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. Pressure on the court system has helped develop the use of alternative methods of resolving disputes, such as arbitration and mediation. The Arbitration Act 1996 allows parties to agree how their civil disputes should be resolved, including choosing to apply a law other than that of England and Wales.
4. The Arbitration Act has facilitated the establishment of arbitration tribunals operating according to certain religious traditions, including Islamic or Sharia law. The desire of some adherents of certain religions to settle their disputes in accordance with the relevant religious law extends beyond simply civil disputes, and there have been reports of bodies adjudicating on matters outside the arbitration framework.
5. The Bill seeks to clarify the application of discrimination law to arbitration, to strengthen the law to support progress on equality in other methods of dispute resolution, and to help ensure that family law and criminal matters are dealt with by the proper authorities. The Bill extends to England and Wales.

COMMENTARY ON CLAUSES

6. Clause 1 amends the Equality Act 2010:
 - Subsection (2) adds two subsections to section 29 of the Equality Act. The first expressly prohibits sex discrimination in the provision of arbitration services, and the second gives some more specific examples of the behaviour being outlawed. The scope of the first subsection is not limited by the second, so sex discrimination other than the three specific examples is also outlawed;
 - Subsection (3) makes it clear that a term of a contract that discriminates on the grounds of sex is not enforceable;
 - Subsection (4) adds to the provisions explaining what it means to have due regard to the need to advance equality of opportunity under section 149 of the Equality Act, highlighting the particular disadvantages faced by women married according to some religious traditions or those in polygamous households;

- Subsections (5) and (6) make it clear that arbitration is not a judicial function exempt from equality law.
7. Clause 3 amends the Arbitration Act 1996, including discriminatory arbitration agreements or processes in the list of serious irregularities for the purposes of section 68 of that Act. Serious irregularities are grounds on which arbitration decisions may be set aside by a court.
 8. Clause 4 expressly states that criminal and family law matters cannot be the subject of arbitration proceedings. This is a statement of the current position as it is understood to be under common law, and is for the purposes of clarification.
 9. Clause 5 amends the Family Law Act 1996 to make express provision allowing a court order based on a negotiated agreement to be set aside if a party to the agreement did not genuinely consent. Application may be made to the court for an order to be set aside by a party to the agreement, a third party to be specified by the Secretary of State, or any other person with the leave of the court. This clause is intended to give greater protection to vulnerable parties by increasing the emphasis on the requirement for consent. Particular issues for consideration when assessing the validity of consent are the presence of coercion or a lack of awareness of relevant legal rights, and both of these are explicitly mentioned in the clause.
 10. Clause 6 amends the Criminal Justice and Public Order Act 1994 expressly to include victims of domestic abuse among those whom it is an offence to intimidate under section 51. This clause is intended to increase the protection of domestic abuse victims from inappropriate community pressure not to assist police investigations.
 11. Clause 7 creates a new criminal offence in the Courts and Legal Services Act 1990 of falsely claiming legal jurisdiction. The offence prohibits falsely claiming to exercise a judicial function, falsely claiming to be able to make legally binding rulings or falsely purporting to adjudicate on criminal law or family law matters. This clause is intended to prevent religious or community bodies claiming to operate in lieu of the proper authorities.
 12. Schedule 1 makes consequential amendments to both the Arbitration Act 1996 and the Equality Act 2010. Amendments to the Arbitration Act 1996 are made where these are necessary to ensure internal consistency, and also to include cross references to proposed provisions of the Equality Act 2010. Consequential amendments are made to the territorial extent provisions in both Acts to reflect the fact that the Arbitration and Mediation Services (Equality) Bill only applies to England and Wales.