

Arbitration and Mediation Services (Equality) Bill

[HL]

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TO

Make further provision about arbitration and mediation services and the application of equality legislation to such services; to make provision about the protection of victims of domestic abuse; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

AMENDMENTS TO THE EQUALITY ACT 2010

1 Providing arbitration services

- (1) The Equality Act 2010 is amended as follows.
- (2) In section 29 (provision of services, etc) after subsection (10) insert— 5
- “(11) A person must not, in providing a service in relation to arbitration, do anything that constitutes discrimination, harassment or victimisation on grounds of sex.
- (12) For the purposes of subsection (11), discrimination on grounds of sex includes but is not restricted to— 10
- (a) treating the evidence of a man as worth more than the evidence of a woman, or vice versa,
- (b) proceeding on the assumption that the division of an estate between male and female children on intestacy must be unequal, or 15
- (c) proceeding on the assumption that a woman has fewer property rights than a man, or vice versa.”
- (3) In section 142 (unenforceable terms) after subsection (5) insert—
- “(6) A reference in subsection (1) includes a term by which parties agree that rules shall apply to one or more matters in so far as those rules 20

constitute, promote or provide for treatment of that or another person that is of a description prohibited by this Act on grounds of sex.”

- (4) In section 149 (public sector equality duty) after subsection (3) insert –
- “(3A) The steps involved in removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that is connected to that characteristic include steps to take account of the fact that those who are married according to certain religious practices or are in a polygamous household may be without legal protection. 5
- (3B) Steps under subsection (3A) should include but not necessarily be restricted to – 10
- (a) informing individuals of the need to obtain an officially recognised marriage in order to have legal protection;
- (b) informing individuals that a polygamous household may be without legal protection and a polygamous household may be unlawful.” 15
- (5) In paragraph 3 of Schedule 3 (judicial functions) after sub-paragraph (2) insert –
- “(3) For the avoidance of doubt, a reference in sub-paragraph (1) to a judicial function does not include a reference to a person falling within section 29(11).” 20
- (6) In paragraph 3 of Schedule 18 (judicial functions, etc.) after sub-paragraph (2) insert –
- “(3) For the avoidance of doubt, a reference in sub-paragraph (1) to a judicial function does not include a reference to a person falling within section 29(11).” 25

2 **Arbitration services: consequential amendments**

The Schedule (consequential amendments) has effect.

PART 2

AMENDMENTS TO THE ARBITRATION ACT 1996

- 3 Validity of arbitration** 30
- (1) The Arbitration Act 1996 is amended as follows.
- (2) After section 6 (definition of arbitration agreement) insert –
- “6A Discriminatory terms of arbitration**
- No part of an arbitration agreement or process shall expressly or implicitly provide – 35
- (a) that the evidence of a man is worth more than the evidence of a woman, or vice versa,
- (b) that the division of an estate between male and female children on intestacy must be unequal,
- (c) that women should have fewer property rights than men, or vice versa, or 40

- (d) for any other term that constitutes discrimination on the grounds of sex.”

4 Criminal and family law matters not arbitrable

- (1) The Arbitration Act 1996 is amended as follows.
- (2) After section 80 (notice and other requirements in connection with legal proceedings) insert – 5

“80A Criminal and family law matters not arbitrable

Any matter which is within the jurisdiction of the criminal or family courts cannot be the subject of arbitration proceedings.”

PART 3

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AMENDMENT TO THE FAMILY LAW ACT 1996

5 Court orders based on negotiated agreements

- (1) The Family Law Act 1996 is amended as follows.
- (2) After section 9 insert –

“9A Court orders based on negotiated agreements 15

- (1) A court may issue a declaration setting aside any order based on a mediation settlement agreement or other negotiated agreement if it considers on evidence that one party’s consent was not genuine.
- (2) A court may make a declaration under subsection (1) on an application being made to it by – 20
- (a) a party to the agreement;
- (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances, including – 25
- (a) the applicant’s connection with the party;
- (b) the applicant’s knowledge of the circumstances of the party; and
- (c) the wishes and feelings of the party so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person’s age and understanding, to have regard to them. 30
- (5) In assessing the genuineness of a party’s consent, the court should have particular regard to whether or not – 35
- (a) all parties were informed of their legal rights, including alternatives to mediation or any other negotiation process used;
- (b) any party was manipulated or put under duress, including through psychological coercion, to induce participation in the mediation or negotiation process. 40

- (6) For the purposes of this section “negotiated agreement” means an agreement which has been reached as the result of any form of negotiation, other than mediation, and “negotiation process” is to be construed accordingly.
- (7) For the purposes of this section, “relevant third party” means a person specified, or falling within a description of persons specified, by order of the Secretary of State. 5
- (8) An order of the Secretary of State under subsection (7) may, in particular, specify local authorities as defined by Article 2 of the Family Law Act 1996 (Forced Marriage) (Relevant Third Party) Order 2009.” 10

PART 4

AMENDMENT TO THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

6 Intimidation of domestic abuse victims

- (1) The Criminal Justice and Public Order Act 1994 is amended as follows.
- (2) In section 51 (intimidation, etc, of witnesses, jurors and others), after subsection (10) insert – 15
- “(10A) This section applies where the victim of a domestic abuse offence is assisting in the investigation of that offence or is a witness or potential witness in proceedings for that offence.”

PART 5

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AMENDMENT TO THE COURTS AND LEGAL SERVICES ACT 1990

7 Falsely claiming legal jurisdiction

- (1) The Courts and Legal Services Act 1990 is amended as follows.
- (2) After section 118 (functions of Treasury) insert –
- “118A Falsely claiming legal jurisdiction”** 25
- (1) A person is guilty of an offence if that person –
- (a) falsely purports to be exercising a judicial function or to be able to make legally binding rulings, or
- (b) otherwise falsely purports to adjudicate on any matter which that person knows or ought to know is within the jurisdiction of the criminal or family courts. 30
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.” 35

PART 6

GENERAL

8 Extent, commencement and short title

- (1) This Act extends to England and Wales only.
- (2) This Act comes into force on such day as the Secretary of State may by order appoint. 5
- (3) This Act may be cited as the Arbitration and Mediation Services (Equality) Act 2011.

SCHEDULE

Section 2

CONSEQUENTIAL AMENDMENTS

Arbitration Act 1996

- 1 (1) The Arbitration Act 1996 is amended as follows.
- (2) In section 46 (rules applicable to substance of dispute) after subsection (1) insert – 5
- “(1A) Whether (a) or (b) above is the case, the tribunal shall decide the dispute in accordance with the provisions of section 29(11) of the Equality Act 2010”.
- (3) In section 68 (challenging the award: serious irregularity) after subsection (2)(g) insert – 10
- “(ga) failure of the arbitration agreement or process to comply with section 6A;”.
- (4) In section 73 (loss of right to object) after subsection (2) insert –
- “(3) This section does not apply to any arbitral award that is not in accordance with the provisions of section 6A. 15
- (4) This section does not apply to any arbitral award that is not in accordance with the provisions of section 29(11) of the Equality Act 2010.”
- (5) In section 108 (extent) after subsection (1) insert – 20
- “(1A) The following provisions of Part I do not extend to Northern Ireland –
- (a) section 46(1A) (rules applicable to substance of dispute),
- (b) section 68(2)(ga) (challenging the award: serious irregularity), and 25
- (c) section 73(3) and (4) (loss of right to object).”

Equality Act 2010

- 2 (1) The Equality Act 2010 is amended as follows.
- (2) In subsection (2) of section 217 (Extent) after “apart from” delete to the end and insert – 30
- “(a) section 29(11) and (12) (provision of services, etc);
- (b) section 142(6) (unenforceable terms);
- (c) section 149(3A) and (3B) (public sector equality duty);
- (d) section 190 (improvements to let dwelling houses);
- (e) Part 15 (family property); 35
- (f) paragraph 3(3) of Schedule 3 (judicial functions); and

- (g) paragraph 3(3) of Schedule 18 (judicial functions etc) forms part of the law of Scotland.”

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Baroness Cox

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