

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Equality: Key Concepts

Chapter 2: Prohibited conduct

Section 14: Combined discrimination: dual characteristics

Effect

64. This section provides for the discrimination prohibited by the Act to include direct discrimination because of a combination of two protected characteristics (“dual discrimination”). The protected characteristics which may be combined are age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.
65. For a claim to be successful, the claimant must show that the less favourable treatment was because of the combination alleged, as compared with how a person who does not share either of the characteristics in the combination is or would be treated. A dual discrimination claim will not succeed where an exception or justification applies to the treatment in respect of either of the relevant protected characteristics - for example, where an occupational requirement in Schedule 9 (Work: exceptions) renders direct discrimination lawful.
66. The claimant does not have to show that a claim of direct discrimination in respect of each protected characteristic would have been successful if brought separately. A claimant is not prevented from bringing direct discrimination claims because of individual protected characteristics and a dual discrimination claim simultaneously (or more than one dual discrimination claim). Excluded from the scope of this section are circumstances involving disability discrimination in schools (claims in respect of which are heard by the Special Educational Needs and Disability Tribunals or equivalent specialist tribunals). This section enables a Minister of the Crown to make orders specifying further what a claimant does or does not need to show to prove dual discrimination or further restricting the circumstances in which dual discrimination is prohibited by the Act.
67. As with any other type of prohibited conduct under the Act, proceedings or allegations (among other activities) relating to dual discrimination will constitute a “protected act” for purposes of victimisation (section 27). Moreover, public bodies must have due regard to the need to eliminate unlawful dual discrimination as part of the public sector equality duty (section 149).