

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Equality: Key Concepts

Chapter 1: Protected characteristics

Section 4: The protected characteristics

Effect

34. This section lists the characteristics that are protected by subsequent provisions in the Act.

Background

35. The protected characteristics listed are the same as those protected by previous discrimination legislation in Great Britain.

Section 5: Age

Effect

36. This section establishes that where the Act refers to the protected characteristic of age, it means a person belonging to a particular age group. An age group includes people of the same age and people of a particular range of ages. Where people fall in the same age group they share the protected characteristic of age.

Background

37. This section replaces a provision in the Employment Equality (Age) Regulations 2006.

Examples

- An age group would include “over fifties” or twenty-one year olds.
- A person aged twenty-one does not share the same characteristic of age with “people in their forties”. However, a person aged twenty-one and people in their forties can share the characteristic of being in the “under fifty” age range.

Section 6: Disability

Effect

38. This section establishes who is to be considered as having the protected characteristic of disability and is a disabled person for the purposes of the Act. With Schedule 1 and regulations to be made under that Schedule, it will also establish what constitutes a disability. Where people have the same disability, they share the protected characteristic of disability.

39. It provides for Ministers to issue statutory guidance to help those who need to decide whether a person has a disability for the purposes of the Act.

Background

40. This section, Schedule 1, and regulations to be made under Schedule 1 replace similar provisions in the Disability Discrimination Act 1995 and provisions in secondary legislation made under that Act.

Examples

- A man works in a warehouse, loading and unloading heavy stock. He develops a long-term heart condition and no longer has the ability to lift or move heavy items of stock at work. Lifting and moving such heavy items is not a normal day-to-day activity. However, he is also unable to lift, carry or move moderately heavy everyday objects such as chairs, at work or around the home. This is an adverse effect on a normal day-to-day activity. He is likely to be considered a disabled person for the purposes of the Act.
- A young woman has developed colitis, an inflammatory bowel disease. The condition is a chronic one which is subject to periods of remissions and flare-ups. During a flare-up she experiences severe abdominal pain and bouts of diarrhoea. This makes it very difficult for her to travel or go to work. This has a substantial adverse effect on her ability to carry out normal day-to-day activities. She is likely to be considered a disabled person for the purposes of the Act.

Section 7: Gender reassignment

Effect

41. This section defines the protected characteristic of gender reassignment for the purposes of the Act as where a person has proposed, started or completed a process to change his or her sex. A transsexual person has the protected characteristic of gender reassignment.
42. The section also explains that a reference to people who have or share the common characteristic of gender reassignment is a reference to all transsexual people. A woman making the transition to being a man and a man making the transition to being a woman both share the characteristic of gender reassignment, as does a person who has only just started out on the process of changing his or her sex and a person who has completed the process.

Background

43. This section replaces similar provisions in the Sex Discrimination Act 1975 but changes the definition by no longer requiring a person to be under medical supervision to come within it.

Examples

- A person who was born physically male decides to spend the rest of his life living as a woman. He declares his intention to his manager at work, who makes appropriate arrangements, and she then starts life at work and home as a woman. After discussion with her doctor and a Gender Identity Clinic, she starts hormone treatment and after several years she goes through gender reassignment surgery. She would have the protected characteristic of gender reassignment for the purposes of the Act.
- A person who was born physically female decides to spend the rest of her life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully 'passes' as a man without the need for any medical intervention. He would have the protected characteristic of gender reassignment for the purposes of the Act.

Section 8: Marriage and civil partnership

Effect

44. This section defines the protected characteristic of marriage and civil partnership. People who are not married or civil partners do not have this characteristic.
45. The section also explains that people who have or share the common characteristics of being married or of being a civil partner can be described as being in a marriage or civil partnership. A married man and a woman in a civil partnership both share the protected characteristic of marriage and civil partnership.

Background

46. This section replaces similar provisions in the Sex Discrimination Act 1975.

Examples

- A person who is engaged to be married is not married and therefore does not have this protected characteristic.
- A divorcee or a person whose civil partnership has been dissolved is not married or in a civil partnership and therefore does not have this protected characteristic.

Section 9: Race

Effect

47. This section defines the protected characteristic of race. For the purposes of the Act, “race” includes colour, nationality and ethnic or national origins.
48. The section explains that people who have or share characteristics of colour, nationality or ethnic or national origins can be described as belonging to a particular racial group. A racial group can be made up of two or more different racial groups.
49. The section also enables a Minister of the Crown to amend the Act by order so as to add “caste” to the current definition of “race”. When exercising this power, the Minister may amend the Act, for example by including exceptions for caste, or making particular provisions of the Act apply in relation to caste in some but not other circumstances. The term “caste” denotes a hereditary, endogamous (marrying within the group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity. It is generally (but not exclusively) associated with South Asia, particularly India, and its diaspora. It can encompass the four classes (varnas) of Hindu tradition (the Brahmin, Kshatriya, Vaishya and Shudra communities); the thousands of regional Hindu, Sikh, Christian, Muslim or other religious groups known as jatis; and groups amongst South Asian Muslims called biradaris. Some jatis regarded as below the varna hierarchy (once termed “untouchable”) are known as Dalit.

Background

50. This section replaces similar provisions in the Race Relations Act 1976. However, the power to add caste to the definition of race is a new provision.

Examples

- Colour includes being black or white.
- Nationality includes being a British, Australian or Swiss citizen.
- Ethnic or national origins include being from a Roma background or of Chinese heritage.

- A racial group could be “black Britons” which would encompass those people who are both black and who are British citizens.

Section 10: Religion or belief

Effect

51. This section defines the protected characteristic of religion or religious or philosophical belief, which is stated to include for this purpose a lack of religion or belief. It is a broad definition in line with the freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention on Human Rights. The main limitation for the purposes of Article 9 is that the religion must have a clear structure and belief system. Denominations or sects within a religion can be considered to be a religion or belief, such as Protestants and Catholics within Christianity.
52. The criteria for determining what is a “philosophical belief” are that it must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others. So, for example, any cult involved in illegal activities would not satisfy these criteria. The section provides that people who are of the same religion or belief share the protected characteristic of religion or belief. Depending on the context, this could mean people who, for example, share the characteristic of being Protestant or people who share the characteristic of being Christian.

Background

53. This section replaces similar provisions in the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006.

Examples

- The Baha’i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism are all religions for the purposes of this provision.
- Beliefs such as humanism and atheism would be beliefs for the purposes of this provision but adherence to a particular football team would not be.

Section 11: Sex

Effect

54. This section is a new provision which explains that references in the Act to people having the protected characteristic of sex are to mean being a man or a woman, and that men share this characteristic with other men, and women with other women.

Section 12: Sexual orientation

Effect

55. This section defines the protected characteristic of sexual orientation as being a person’s sexual orientation towards:
 - people of the same sex as him or her (in other words the person is a gay man or a lesbian)
 - people of the opposite sex from him or her (the person is heterosexual)

*These notes refer to the Equality Act 2010 (c.15)
which received Royal Assent on 8 April 2010*

- people of both sexes (the person is bisexual).
56. It also explains that references to people sharing a sexual orientation mean that they are of the same sexual orientation.

Background

57. The definition is designed to replicate the effect of similar provisions in the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2006.

Examples

- A man who experiences sexual attraction towards both men and women is “bisexual” in terms of sexual orientation even if he has only had relationships with women.
- A man and a woman who are both attracted only to people of the opposite sex from them share a sexual orientation.
- A man who is attracted only to other men is a gay man. A woman who is attracted only to other women is a lesbian. So a gay man and a lesbian share a sexual orientation.