



# Equality Act 2010

## 2010 CHAPTER 15

### PART 2

#### EQUALITY: KEY CONCEPTS

### CHAPTER 1

#### PROTECTED CHARACTERISTICS

#### **4 The protected characteristics**

The following characteristics are protected characteristics—

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

#### **5 Age**

(1) In relation to the protected characteristic of age—

- (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;
- (b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.

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- (2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.

## 6 Disability

- (1) A person (P) has a disability if—
- (a) P has a physical or mental impairment, and
  - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
- (2) A reference to a disabled person is a reference to a person who has a disability.
- (3) In relation to the protected characteristic of disability—
- (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
  - (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.
- (4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—
- (a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and
  - (b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.
- (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).
- (6) Schedule 1 (disability: supplementary provision) has effect.

### Commencement Information

- II** S. 6 wholly in force; s. 6 not in force at Royal Assent see s. 216; s. 6(5) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, art. 2, Sch.; s. 6(6) in force for certain purposes at 4.8.2010 by S.I. 2010/1966, art. 2; s. 6 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, art. 2(1)(2)(b) (with art. 15)

## 7 Gender reassignment

- (1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
- (2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.
- (3) In relation to the protected characteristic of gender reassignment—
- (a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;

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- (b) a reference to persons who share a protected characteristic is a reference to transsexual persons.

## **8 Marriage and civil partnership**

- (1) A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.
- (2) In relation to the protected characteristic of marriage and civil partnership—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner;
  - (b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.

## **9 Race**

- (1) Race includes—
  - (a) colour;
  - (b) nationality;
  - (c) ethnic or national origins.
- (2) In relation to the protected characteristic of race—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
  - (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.
- (3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.
- (4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.
- (5) A Minister of the Crown may by order—
  - (a) amend this section so as to provide for caste to be an aspect of race;
  - (b) amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances.
- (6) The power under section 207(4)(b), in its application to subsection (5), includes power to amend this Act.

## **10 Religion or belief**

- (1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
- (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
- (3) In relation to the protected characteristic of religion or belief—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

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- (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

## 11 Sex

In relation to the protected characteristic of sex—

- (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;
- (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.

## 12 Sexual orientation

(1) Sexual orientation means a person's sexual orientation towards—

- (a) persons of the same sex,
- (b) persons of the opposite sex, or
- (c) persons of either sex.

(2) In relation to the protected characteristic of sexual orientation—

- (a) a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation;
- (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same sexual orientation.

## CHAPTER 2

### PROHIBITED CONDUCT

#### *Discrimination*

## 13 Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
- (3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.
- (4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.
- (5) If the protected characteristic is race, less favourable treatment includes segregating B from others.
- (6) If the protected characteristic is sex—

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- (a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;
  - (b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.
- (7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).
- (8) This section is subject to sections 17(6) and 18(7).

PROSPECTIVE

#### **14 Combined discrimination: dual characteristics**

- (1) A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.
- (2) The relevant protected characteristics are—
- (a) age;
  - (b) disability;
  - (c) gender reassignment;
  - (d) race
  - (e) religion or belief;
  - (f) sex;
  - (g) sexual orientation.
- (3) For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).
- (4) But B cannot establish a contravention of this Act by virtue of subsection (1) if, in reliance on another provision of this Act or any other enactment, A shows that A's treatment of B is not direct discrimination because of either or both of the characteristics in the combination.
- (5) Subsection (1) does not apply to a combination of characteristics that includes disability in circumstances where, if a claim of direct discrimination because of disability were to be brought, it would come within section 116 (special educational needs).
- (6) A Minister of the Crown may by order amend this section so as to—
- (a) make further provision about circumstances in which B can, or in which B cannot, establish a contravention of this Act by virtue of subsection (1);
  - (b) specify other circumstances in which subsection (1) does not apply.
- (7) The references to direct discrimination are to a contravention of this Act by virtue of section 13.

#### **15 Discrimination arising from disability**

- (1) A person (A) discriminates against a disabled person (B) if—

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- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
  - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

## **16 Gender reassignment discrimination: cases of absence from work**

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of gender reassignment.
- (2) A person (A) discriminates against a transsexual person (B) if, in relation to an absence of B's that is because of gender reassignment, A treats B less favourably than A would treat B if—
- (a) B's absence was because of sickness or injury, or
  - (b) B's absence was for some other reason and it is not reasonable for B to be treated less favourably.
- (3) A person's absence is because of gender reassignment if it is because the person is proposing to undergo, is undergoing or has undergone the process (or part of the process) mentioned in section 7(1).

## **17 Pregnancy and maternity discrimination: non-work cases**

- (1) This section has effect for the purposes of the application to the protected characteristic of pregnancy and maternity of—
- (a) Part 3 (services and public functions);
  - (b) Part 4 (premises);
  - (c) Part 6 (education);
  - (d) Part 7 (associations).
- (2) A person (A) discriminates against a woman if A treats her unfavourably because of a pregnancy of hers.
- (3) A person (A) discriminates against a woman if, in the period of 26 weeks beginning with the day on which she gives birth, A treats her unfavourably because she has given birth.
- (4) The reference in subsection (3) to treating a woman unfavourably because she has given birth includes, in particular, a reference to treating her unfavourably because she is breast-feeding.
- (5) For the purposes of this section, the day on which a woman gives birth is the day on which—
- (a) she gives birth to a living child, or
  - (b) she gives birth to a dead child (more than 24 weeks of the pregnancy having passed).
- (6) Section 13, so far as relating to sex discrimination, does not apply to anything done in relation to a woman in so far as—
- (a) it is for the reason mentioned in subsection (2), or

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- (b) it is in the period, and for the reason, mentioned in subsection (3).

## **18 Pregnancy and maternity discrimination: work cases**

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
- (2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —
  - (a) because of the pregnancy, or
  - (b) because of illness suffered by her as a result of it.
- (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.
- (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
- (5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).
- (6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—
  - (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
  - (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
- (7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—
  - (a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
  - (b) it is for a reason mentioned in subsection (3) or (4).

## **19 Indirect discrimination**

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
  - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
  - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
  - (c) it puts, or would put, B at that disadvantage, and
  - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

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(3) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- race;
- religion or belief;
- sex;
- sexual orientation.

### *Adjustments for disabled persons*

## **20 Duty to make adjustments**

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
- (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.
- (7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.
- (8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.
- (9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—
  - (a) removing the physical feature in question,
  - (b) altering it, or
  - (c) providing a reasonable means of avoiding it.



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- (10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—
- (a) a feature arising from the design or construction of a building,
  - (b) a feature of an approach to, exit from or access to a building,
  - (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
  - (d) any other physical element or quality.
- (11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.
- (12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.
- (13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

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<i>Part of this Act</i>	<i>Applicable Schedule</i>
Part 3 (services and public functions)	Schedule 2
Part 4 (premises)	Schedule 4
Part 5 (work)	Schedule 8
Part 6 (education)	Schedule 13
Part 7 (associations)	Schedule 15
Each of the Parts mentioned above	Schedule 21

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## **21 Failure to comply with duty**

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

## **22 Regulations**

- (1) Regulations may prescribe—
- (a) matters to be taken into account in deciding whether it is reasonable for A to take a step for the purposes of a prescribed provision of an applicable Schedule;
  - (b) descriptions of persons to whom the first, second or third requirement does not apply.
- (2) Regulations may make provision as to—

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- (a) circumstances in which it is, or in which it is not, reasonable for a person of a prescribed description to have to take steps of a prescribed description;
  - (b) what is, or what is not, a provision, criterion or practice;
  - (c) things which are, or which are not, to be treated as physical features;
  - (d) things which are, or which are not, to be treated as alterations of physical features;
  - (e) things which are, or which are not, to be treated as auxiliary aids.
- (3) Provision made by virtue of this section may amend an applicable Schedule.

#### **Commencement Information**

- I2** S. 22 wholly in force; s. 22 not in force at Royal Assent see s. 216; s. 22 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, art. 2, Sch.; s. 22 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, art. 2(1)(2)(e) (with art. 15)

#### *Discrimination: supplementary*

### **23 Comparison by reference to circumstances**

- (1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.
- (2) The circumstances relating to a case include a person's abilities if—
  - (a) on a comparison for the purposes of section 13, the protected characteristic is disability;
  - (b) on a comparison for the purposes of section 14, one of the protected characteristics in the combination is disability.
- (3) If the protected characteristic is sexual orientation, the fact that one person (whether or not the person referred to as B) is a civil partner while another is married is not a material difference between the circumstances relating to each case.

### **24 Irrelevance of alleged discriminator's characteristics**

- (1) For the purpose of establishing a contravention of this Act by virtue of section 13(1), it does not matter whether A has the protected characteristic.
- (2) For the purpose of establishing a contravention of this Act by virtue of section 14(1), it does not matter—
  - (a) whether A has one of the protected characteristics in the combination;
  - (b) whether A has both.

### **25 References to particular strands of discrimination**

- (1) Age discrimination is—
  - (a) discrimination within section 13 because of age;
  - (b) discrimination within section 19 where the relevant protected characteristic is age.
- (2) Disability discrimination is—

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- (a) discrimination within section 13 because of disability;
  - (b) discrimination within section 15;
  - (c) discrimination within section 19 where the relevant protected characteristic is disability;
  - (d) discrimination within section 21.
- (3) Gender reassignment discrimination is—
- (a) discrimination within section 13 because of gender reassignment;
  - (b) discrimination within section 16;
  - (c) discrimination within section 19 where the relevant protected characteristic is gender reassignment.
- (4) Marriage and civil partnership discrimination is—
- (a) discrimination within section 13 because of marriage and civil partnership;
  - (b) discrimination within section 19 where the relevant protected characteristic is marriage and civil partnership.
- (5) Pregnancy and maternity discrimination is discrimination within section 17 or 18.
- (6) Race discrimination is—
- (a) discrimination within section 13 because of race;
  - (b) discrimination within section 19 where the relevant protected characteristic is race.
- (7) Religious or belief-related discrimination is—
- (a) discrimination within section 13 because of religion or belief;
  - (b) discrimination within section 19 where the relevant protected characteristic is religion or belief.
- (8) Sex discrimination is—
- (a) discrimination within section 13 because of sex;
  - (b) discrimination within section 19 where the relevant protected characteristic is sex.
- (9) Sexual orientation discrimination is—
- (a) discrimination within section 13 because of sexual orientation;
  - (b) discrimination within section 19 where the relevant protected characteristic is sexual orientation.

### *Other prohibited conduct*

## **26 Harassment**

- (1) A person (A) harasses another (B) if—
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of—
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

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- (2) A also harasses B if—
  - (a) A engages in unwanted conduct of a sexual nature, and
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if—
  - (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
  - (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
  - (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect.
- (5) The relevant protected characteristics are—
  - age;
  - disability;
  - gender reassignment;
  - race;
  - religion or belief;
  - sex;
  - sexual orientation.

## **27 Victimization**

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
  - (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
  - (a) bringing proceedings under this Act;
  - (b) giving evidence or information in connection with proceedings under this Act;
  - (c) doing any other thing for the purposes of or in connection with this Act;
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

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### Commencement Information

- I3** S. 27 wholly in force; s. 27 not in force at Royal Assent see s. 216; s. 27 in force at 1.10.2010 by S.I. 2010/2317, art. 2(1)(2)(f) (with art. 15, and subject to transitional provision in art. 8)

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