

Equality and Human Rights Commission

Equality Act

2010

Handbook for Advisers

England and Wales



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Equality and
Human Rights
Commission

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Introduction

The aim of this handbook is to provide a brief overview of the Equality Act 2010 and to act as a reference guide. This handbook is not designed to be a comprehensive summary of equality law. Instead, advisers are encouraged to use this as a starting point to direct further reading.

Advisers should bear in mind that clients may not initially present their problem as a discrimination case, but nonetheless may have a claim under the Equality Act 2010, which protects against prohibited conduct in relation to nine protected characteristics in a range of contexts: services, public functions, premises, work, education, and associations. Advisers should be aware that, although there may be general rules, a number of exceptions apply. Not all discrimination is unlawful.

This handbook only applies to the application of equality law in England and Wales. There is a separate handbook for Scotland where the law in relation to some areas is different. This handbook is up to date, and links are correct, as of **mid-March 2018**, but advisers should ensure that they check for any changes in the law, which may be of relevance to their query. If you have a query about a discrimination law issue arising in a case, the Equality and Human Rights Commission (the Commission) may be able to assist with second-tier advice, that is advice to the adviser or frontline agency and not directly to the individual (see section E).

More information about the role of the Commission and how advisers can contact the legal team can be found in section E.

Checklist for advisers

- Has the person suffered a detriment?
- Is any detriment because of, or partly because of, a protected characteristic?
- Does any potential discrimination fall under an exception?
- Can the discrimination be justified?
- What court or tribunal will it be raised in and what remedies are available?
- What is the time limit and when did it commence running?

Section A

Protected characteristics



Age

The Equality Act 2010 (the Act) does not define an age group; it could be narrow, for example 18-20 or wide, for example under 40s or over 18s. It could be relative, for example 'younger than me', and can be a particular age.

Disability (s. 6)

A person has a disability if he or she has a physical or mental impairment that has a substantial, long-term adverse effect on his/her ability to carry out normal day-to-day activities.

There are some general points to consider:

- Physical or mental impairment includes sensory impairments.
- 'Substantial effect' need only be more than minor or trivial.
- 'Long-term' means that it has lasted, or is likely to last, at least 12 months, or for the rest of the person's life.
- There is no exhaustive list of day-to-day activities but normal work-related activities are included, although highly specialised work activities are not.
- The effects of measures to treat or correct the disability are disregarded, including medical treatment and the use of a prosthesis or other aid.
- Progressive conditions are treated as a disability from the moment there is any impairment that has some adverse effect on ability to carry out day-to-day activities, provided the future adverse effect is likely to become substantial.
- Certain conditions such as HIV, cancer and multiple sclerosis are expressly included even if there are no adverse effects on day-to-day activities.
- A severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person to carry out day-to-day activities.
- A person certified by an ophthalmologist as blind, severely sight-impaired, sight-impaired or partially sighted has a 'deemed disability'.
- Certain conditions are expressly excluded such as hay fever (except where it aggravates another condition), a tendency to physical or sexual abuse of others, a tendency to steal or set fires, voyeurism, addiction to alcohol (although health conditions arising from an addiction to alcohol could amount to a disability) and exhibitionism.

For more detail see Schedule 1, as well as **HM Government (2011), Guidance on matters to be taken into account in determining questions relating to the definition of disability**, and **Equality Act 2010 (Disability) Regulations 2010**.

Gender reassignment (s. 7)

A person has this protected characteristic if he/she 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. This definition has a broad scope under the Act, as it refers to a personal process of moving from the birth sex to the preferred gender, rather than to a medical process.

Included in the definition are people who propose to reassign their sex but have not yet started the process or have not completed it, as well as those who have been through the process in the past. It includes those undergoing medical gender reassignment, but this is not a requirement.

Marriage and civil partnership (s. 8)

Only people who are married or in a civil partnership are protected. This does not cover single people, divorcees, fiancés, cohabitees, and so on.

Pregnancy and maternity (s. 17-18)

Section 17 applies to non-work cases where the protected period covers the whole of a woman's pregnancy as well as 26 weeks following the birth (or stillbirth after more than 24 weeks of pregnancy).

Section 18 applies to work cases where the protected period commences when a woman becomes pregnant and ends either two weeks after the end of the pregnancy or, if entitled to ordinary and additional maternity leave, at the end of that period, or when she returns to work if that is earlier.

Race (s. 9)

This includes colour, nationality and ethnic or national origins. Sikhs and Jewish people are both an ethnic group and a religious group.

Religion or belief (s. 10)

Religion includes any religion as well as a lack of religion. Belief means any religious or philosophical belief and includes a lack of belief.

Sex (s. 11)

Sex includes reference to a man or to a woman.

Sexual orientation (s. 12)

This means a person's orientation towards people of the same sex, the opposite sex and either sex. It relates to feelings as well as actions, and manifestations such as appearance, dress, and social life.

Section B

Unlawful (and lawful)

conduct

B

Direct discrimination (s. 13)

This occurs when a person treats another less favourably than they treat, or would treat, others because of a protected characteristic. The following points apply:

- Direct discrimination cannot be justified except in the case of age discrimination (see objective justification below).
- It is lawful to treat a disabled person more favourably.
- It includes segregation on grounds of race.
- It includes discrimination by association (for example, where the treatment is because a friend, or partner or carer has the characteristic).
- It includes discrimination because of a protected characteristic the person is perceived to have.
- It includes cases where the person is known not to have the characteristic, but nonetheless is treated less favourably because of it.
- If the protected characteristic is sex: no account is taken of special treatment afforded to a woman because of pregnancy or childbirth.
- In non-work cases, less favourable treatment of a woman includes less favourable treatment because she is breastfeeding.

Indirect discrimination (s. 19)

This occurs when an apparently neutral policy (provision, criterion or practice (PCP)) is applied:

- that puts, or would put, people sharing a protected characteristic at a particular disadvantage, and
- puts the individual at that disadvantage.

Indirect discrimination can be justified if it is 'a proportionate means of achieving a legitimate aim' (see objective justification on page 13).

Discrimination arising from disability (s. 15)

This occurs where a disabled person is treated unfavourably, (as opposed to less favourably) where this treatment is because of something arising in consequence of the disabled person's disability, and where it cannot be shown that this treatment is a proportionate means of achieving a legitimate aim (see objective justification on page 13).

- No comparator is required.
- There is no discrimination if it can be shown that the employer/service provider did not know, and could not be expected to know, that the disabled person had the disability.

Failure to make reasonable adjustments (s. 20 and 21)

The duty to make reasonable adjustments (s. 20) comprises three requirements:

1. Where a provision, criterion or practice (PCP) puts disabled people at a substantial disadvantage compared to those who are non-disabled, to take reasonable steps to avoid the disadvantage.
2. Where a physical feature puts disabled people at a substantial disadvantage, compared with people who are non-disabled, to take reasonable steps to avoid that disadvantage. Avoiding the disadvantage means removing the physical feature, altering it or providing a reasonable means of avoiding it.
3. Where not providing an auxiliary aid puts disabled people at a substantial disadvantage compared with non-disabled people, to take reasonable steps to provide that auxiliary aid.

Where the first two requirements include the provision of information, reasonable steps includes, in the circumstances, providing the information in an accessible format.

The person subject to the duty is not entitled to require the disabled person to pay the costs of compliance with the duty: see s. 20 (7).

A person who fails to comply with the duty to make reasonable adjustments discriminates against the disabled person (s. 21).

Harassment (s. 26)

There are three types of harassment:

1. **Harassment related to a relevant protected characteristic**, which occurs where a person engages in unwanted conduct related to a relevant protected characteristic that has the purpose or effect of violating another's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for another. The following points apply:

- Unwanted conduct could include spoken or written words or abuse, imagery, graffiti, gestures, and so on.
 - Perception and association are included.
 - The relevant protected characteristics are: age, disability, gender reassignment, race, religion or belief, sex or sexual orientation, not marriage and civil partnership or pregnancy and maternity (although direct discrimination could be applicable, see endnote 2).
 - Be aware that in some sectors additional protected characteristics to the exceptions listed above are excluded from the harassment provisions, however the conduct could amount to direct discrimination. This is discussed further below.
 - In assessing the effect of the harassment, consider the perception of the person who may have been harassed (subjective test), as well as whether it is reasonable for the conduct to have that effect (objective test), and the other circumstances of the case.
2. **Sexual harassment** (unwanted conduct of a sexual nature).
 3. **Less favourable treatment** because a person submits to or rejects unwanted conduct of a sexual nature, or that is related to gender reassignment or sex.

Victimisation (s. 27)

This occurs where a person does a protected act, might do a protected act or is suspected of doing a protected act and is subjected to a detriment as a result.

A protected act could be doing any of the following things:

- bringing proceedings
- giving evidence
- making an allegation, or
- doing any other thing for the purposes of the Act.

'Detriment' could include:

- refusing to provide a service
- terminating a service
- providing a service on less favourable terms
- disciplining or sacking someone, or
- refusing someone access to benefits.

Objective justification

Three types of discrimination can be objectively justified in some circumstances: direct age discrimination, all forms of indirect discrimination, and discrimination arising from disability.

The person seeking to justify the discrimination is required to demonstrate that their action was a proportionate means of achieving a legitimate aim.

It may assist to ask yourself:

- Is the aim of the provision, criterion or practice legitimate?
- In other words, is it legal and non-discriminatory, representing a real, objective consideration?
- If so, is the means of achieving the legitimate aim proportionate?
- Is it appropriate and necessary in all circumstances?
- Considering the range of possible responses, is this the least discriminatory alternative?

Positive action (s. 158)

Positive action is distinct from positive discrimination, which is unlawful. In limited circumstances the Act permits voluntary positive action, which is a proportionate means of achieving the aim of:

- enabling or encouraging people who suffer a disadvantage to overcome it
- meeting different needs of people with a particular characteristic, or
- enabling or encouraging people with a particular characteristic to participate in an activity where uptake is particularly low.

In the context of recruitment, employers can, in tightly prescribed circumstances, use positive action measures where there is a tie-break situation: see s. 159.

Section C

Application of equality law in
different sectors



Services and public functions (Part 3)

Overview:

This part of the Act applies to the provision of services including goods and facilities to the public, whether in the private, public or voluntary sector, and whether for payment or not.

It also applies to the provision of a service in exercise of a public function, or a function of a public nature, whether exercised by a public authority or another person such as a private company: see s. 31.

Protected characteristics

Protections under Part 3 do not apply to marriage and civil partnership or to age in relation to under-18s.

Harassment provisions apply to Part 3 only in relation to: age (18 and over), disability, gender reassignment, race and sex: see s. 29 (8). They do not apply to religion and belief or sexual orientation and pregnancy and maternity, although the conduct could amount to direct discrimination: see s. 212 (5).

Unlawful conduct

A service provider must not discriminate against a person or victimise them in relation to the terms of service, by terminating provision of the service or by subjecting the person to any other detriment. A service provider must not harass a person requiring or using the service: see s. 29.

Reasonable adjustments

The duty to make reasonable adjustments for disabled people is an anticipatory duty in the context of services and public functions. This means a service provider and a body exercising a public function must consider how they will meet the needs of potentially disabled customers and take reasonable steps to ensure disabled people at large can access the service or public function: see s. 29 (7). The duty includes the first, second and third requirements as set out in s. 20.

However, the requirements of the duty to make reasonable adjustments in this context are significantly modified by Schedule 2: see Statutory Code of Practice on Services, Public Functions and Associations, paras 7.7 and 7.12.

A service provider is not required to take any step that would fundamentally alter the nature of the service or the nature of the trade or profession. A body exercising a public function is not required to take any step that it has no power to take.

Exceptions

There are a number of exceptions set out in Part 14 relating to matters such as national security, charities and sport.

There are exceptions in s. 197 relating to age, and see also the Equality Act 2010 (Age Exceptions) Order 2012 (SI 2012/2466), which covers age-related holidays and age criteria in immigration control and financial services.

Schedule 23 contains further exceptions to Part 3 in relation to nationality discrimination where required by law, and for organisations relating to religion or belief as well as in the provisions for communal accommodation.

Remedy and time limits

A claim for unlawful discrimination under Part 3 would be a claim in the county court. The time limit is six months less one day from the date of the alleged discrimination: see s. 118 (see endnote 1 regarding the possibility of extension of the time limit). The court can grant a range of remedies, such as damages (including compensation for injury to feelings), injunctions and declarations.

In addition, actions of a public authority can be challenged by way of judicial review.

Notice

The Civil Procedure Rules require a claimant in the county court to give notice of commencement of proceedings to the Commission and file a copy of that notice with the court. A simple letter providing the name of the parties and the claim number and the date the claim was issued is sufficient (see endnote 3).

An assessor

The court must appoint an assessor unless the judge is satisfied that there is good reason for not doing so: see s. 114 (7). An assessor is an individual appointed by the court in cases about discrimination related to sex, race, religion and belief and sexual orientation, to assist them at the trial hearing.

Further reading:

EHRC (2011), '**Services, public functions and associations: statutory code of practice**'.

Transport (Parts 3 and 12)

Overview:

Claims relating to the use of transport vehicles are generally services claims under Part 3. In addition, there are specific provisions relating to transport for disabled people in Part 12 that are complex, and advisers should be aware that not all the provisions are in force.

Part 3 (services) will apply to disability discrimination claims only in relation to certain land vehicles listed in Schedule 3 (Part 9), for example a mini bus, a bus, a private hire/rental vehicle, a public service vehicle, a taxi, a tram, a rescue vehicle and vehicles working on a system of guided transport, for example monorails. Ships and hovercraft are not yet covered by the Act as regulations under s. 30 (as referred to in paragraph 131 in the Government's Explanatory Notes) have not yet been enacted, though there are European regulations that relate to ships and aeroplanes.

The provisions relating to taxi accessibility, at Chapter 1, ss. 160–167 of the Act, came into force on 6 April 2017. Taxi and private hire vehicle drivers who have accessible vehicles will be obliged by law to:

- transport wheelchair users in their wheelchair
- provide passengers in wheelchairs with appropriate assistance, and
- charge wheelchair users the same as non-wheelchair users.

Drivers who are unable to provide assistance for medical reasons will be able to apply to their licensing authority for an exemption from the new requirements.

These requirements complement the provisions relating to the carrying of assistance dogs in ss. 168–173.

Airports, stations, platforms and ticket offices are all covered by the services provisions.

Part 12 (Chapter 2) deals with transport for disabled people. Under this part public service vehicles are covered by Public Service Vehicle Accessibility Regulations 2000 (as Amended), and trains are covered by Rail Vehicle Accessibility (non-interoperable rail system) Regulations 2010.

Protected characteristics

Protections under Part 3 do not apply to marriage and civil partnership or to age in relation to under-18s.

Harassment provisions apply to Part 3 only in relation to age, disability, gender reassignment, race and sex.

Reasonable adjustments

In general terms, the first, second and third requirements of the duty to make reasonable adjustments apply to transport service providers, however, the duty is significantly curtailed by Schedule 2: see Schedule 2 heading 'special provision about transport'. For example, it is never reasonable for a listed service provider to be required to alter a physical feature, except where specifically permitted.

Exceptions

Air transport is exempt from the provisions relating to direct disability discrimination, discrimination arising from disability, indirect discrimination and failure to make reasonable adjustments: see Schedule 3, Part 9. The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 came into force on 1 December 2014 and replace a criminal enforcement regime with a civil one.

Remedy and time limits

A claim for unlawful discrimination under Parts 3 and 12 is a claim in the county court. The deadline is **six months** less one day from the date of the alleged discrimination: see s. 118 and endnote 1 regarding the possibility of extension of the time limit. The court can grant a range of remedies such as damages (including compensation for injury to feelings), injunctions and declarations.

Note that the courts cannot award compensation for injury to feelings for discrimination in air travel which occurred between embarkation and disembarkation.

Enforcement of the Civil Aviation Regulations is by the Civil Aviation Authority, which has a range of powers.

Where accessibility regulations are in force, such as the public service vehicle (PSV) and rail accessibility regulations above, a breach would be a criminal offence.

See Part 3 above on giving notice to the Commission and assessors.

Further reading:

EHRC (2015), 'Your passport to a smooth journey: top tips for disabled and less mobile air passengers'.

Premises (Part 4)

Overview:

This part of the Act applies to the disposal and management of premises.

Premises includes the whole or part of a property but a short-term let, such as a holiday let, and premises provided in the exercise of a public function, such as a police cell or accommodation in a hospital ward, are not included as they are covered by Part 3: see s. 32.

People whose permission is required for disposal of premises are covered, as well as those who manage premises such as property management agencies, estate agencies and housing associations: see ss. 34–35.

‘Disposal’ could include selling, letting, subletting or granting an occupancy right: see s. 38.

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Protected characteristics

Part 4 does not apply to the protected characteristics of age or marriage and civil partnership.

Harassment provisions apply only to disability, gender reassignment, race and sex: see s. 33 (6) and s. 26.

Unlawful conduct

A person who has the right to dispose of premises must not discriminate against or victimise another person, for example, by offering the premises on less favourable terms, by refusing to let or sell the premises, or by less favourable treatment. Harassment is also unlawful: see s. 33.

Reasonable adjustments

The first and third requirements of the duty, as set out in s. 20, apply to a controller of let premises and a controller of premises available to let: see s. 36 and Schedule 4. In the context of premises the duty is not anticipatory and the controller must first receive

a request by, or on behalf of, a tenant or a person who is considering occupying the premises.

The provisions in s. 36 relating to adjustments to common parts are not in force, therefore there is no duty on a controller to make adjustments to the physical features of common parts in England and Wales.

Physical features

The second requirement of the reasonable adjustment duty does not apply in this context and there is no requirement for controllers to take any step to remove or alter a physical feature, however, signs, notices, taps and door handles, and door entry systems are not considered to be physical features and so the duty to make adjustments would apply to them. See Schedule 4, para 2 (9).

It is the Commission's position that the reasonable adjustment duty includes making adjustments to a term of a lease prohibiting alterations, to enable a disabled person to make a disability-related improvement. However, at the time of writing, there are no decided cases on this point. Advisers should contact EHRC Adviser Support for more information. See section E below for contact details.

Improvements to dwellings

Where a tenancy is not a protected, statutory or secure tenancy and the lease entitles the tenant to make improvements with the consent of the landlord, a disabled tenant or occupier can apply to the landlord for consent to make a disability-related improvement (that is, one which is likely to improve the disabled person's enjoyment of the premises). The disabled person must intend to occupy the dwelling as their only or main home.

Where the tenant applies in writing, if the landlord consents he/she may attach reasonable conditions; if consent is withheld the landlord must give written reasons for withholding consent. It is for the landlord to show a condition attached is reasonable or consent was not unreasonably withheld. A failure by the tenant to comply with a reasonable condition is treated as a breach of the obligation of the tenancy: see Part 13 s.190 and Schedule 2.

Consent is deemed to have been withheld unreasonably if the landlord refuses or does not give consent within a reasonable time. Attaching an unreasonable condition is treated as having withheld consent, and if consent is unreasonably withheld it must be taken to be given.

Protected, statutory and secure tenants enjoy similar rights under the Housing Acts 1980 and 1985: see Part 13 s. 190.

Exceptions

Schedule 5 provides various exceptions in relation to disposal of premises, for example, private disposal of premises by an owner-occupier who is not using an estate agent, and small premises with shared areas which are part-occupied. Schedule 23 contains further exceptions to Part 4 in relation to nationality discrimination where required by statute or the executive, for organisations relating to religion or belief as well as provision of communal accommodation.

Remedies and time limits

A claim for unlawful discrimination under Part 4 is brought in the county court. The deadline is **six months** less one day: see s. 118. The court can grant a range of remedies such as damages (including compensation for injury to feelings) injunctions and declarations. See Part 3 above on notice to the Commission and assessors.

A civil action regarding improvements to dwelling houses would be brought in the county court. Section 118 of the Equality Act does not specify a time limit. Such a claim is likely to be complex and specialist advice, beyond the scope of this handbook, should be sought promptly when dealing with a claim of this type.

Work (Part 5)

Overview:

Part 5 of the Act provides protection against discrimination, harassment and victimisation in the context of work, which covers all stages from advertising, recruitment and selection, to employment and post-employment as well as occupational pension schemes, employment training and equal pay.

There are also provisions addressing the duties of employment service providers and trade organisations, and local authorities' obligations in respect of councillors carrying out their duties: see ss. 55–59. Qualifications bodies are also covered (see s. 53), and are defined as authorities or bodies that can confer an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade. See separate provisions for General Qualifications Bodies under Part 6 (education).

Similarly, workers who may not be an 'employee', such as contract workers, police officers, barristers, partners, members of limited liability partnerships and personal and public office holders, are expressly protected under the Act: see ss. 41–52. However, some office holders are excluded such as offices of the House of Commons and House of Lords: see Schedule 6.

Volunteers are not covered by the employment provisions.

The position of interns is less clear and would depend on the facts and circumstances of the contractual arrangements.

Members of the armed forces are expressly covered, but not in relation to age and disability. A requirement for service in the armed forces that the person is a man or is not a transsexual person may be lawful if it can be justified as a proportionate means of ensuring combat effectiveness: see Schedule 9 (4).

Protected characteristics

All protected characteristics are covered by Part 5, but be aware that:

- There are additional provisions for pregnancy and maternity in the workplace to be found at s. 18, including unfavourable treatment because of the pregnancy, because of pregnancy-related illness, because a woman is on compulsory maternity leave or for a reason related to exercising the right to ordinary or additional maternity leave.
- A worker treated less favourably because of association with a pregnant woman may also have a claim.
- There are additional provisions for absence from work due to gender reassignment: see s. 16.
- Direct discrimination on the basis of marriage and civil partnership, in the context of work, does not apply to association and perception: see s. 13 (4).

Unlawful conduct

An employer must not discriminate against or victimise a job applicant or worker: see s. 39 (1)–(4).

- This applies to job applicants in terms of the arrangements made for deciding who to offer employment to, the terms of the job offer and where an applicant is not offered employment.
- This applies to workers as to their terms of employment, opportunities for promotion, transfer, training, benefits, facilities and services, dismissal and any other detriment.

An employer must not harass a job applicant or worker.

Reasonable adjustments

An employer is under a duty to make reasonable adjustments: see s. 39 (5). The first, second and third requirements apply as set out in s. 20 of the Act, subject to Schedule 8. The duty commences if the employer:

- knows, or could reasonably be expected to know, that a disabled person applies or may apply for the post, or
- knows, or could reasonably be expected to know, that a worker has a disability and is likely to be placed at a substantial disadvantage.

Where the employer does not know, they must take reasonable steps to find out whether a worker or an applicant requires a reasonable adjustment, however enquiries must be handled with sensitivity. There is a prohibition on **pre-employment health enquiries**: see s. 60.

Exceptions

There are a number of exceptions relating to matters such as occupational requirements, non-contractual payments to women on maternity leave, benefits dependent on marital status, and so on: see Schedule 9, and for exceptions relating to age in particular, Schedule 9, Part 2.

Schedule 23 contains further exceptions to Part 5 in relation to nationality discrimination where required by statute, or the executive provision of communal accommodation and training provided to non-European Economic Area residents.

Equal pay

The Act gives women and men the right to equal pay for equal work: see ss. 64–66. The Act also makes pay secrecy clauses unenforceable: see s. 77; and covers maternity pay equality: see ss. 73–75.

Gender pay gap reporting

The gender pay gap is the difference in average pay between the men and women in the workforce. It is different to equal pay, which means you must pay men and women the same for equal or similar work.

Employers with 250 employees or more must publish the gender pay gap data listed below every year, and a written statement on their public facing website:

- mean gender pay gap in hourly pay
- median gender pay gap in hourly pay

- mean bonus gender pay gap
- median bonus gender pay gap
- proportion of males and females receiving a bonus payment, and
- proportion of males and females in each pay quartile.

Individuals cannot compel their employer to comply with the gender pay gap reporting requirements (they can only be enforced by the Commission, see section E).

For the relevant legislation and Acas guidance, see endnotes. You can see the information organisations have published on the Gender Pay Gap Viewing Service, on the Gov.uk website.

Occupational pensions

An occupational pension scheme includes a non-discrimination rule, by which a responsible person must not discriminate against another in carrying out any function in relation to the scheme, and must not harass or victimise anyone in relation to the scheme, subject to exceptions and limitations: see s. 61.

Remedy and time limits

The employment tribunal has jurisdiction to consider a complaint under Part 5. The tribunal can provide a number of remedies under equality law:

- make a declaration as to the rights of the complainant and respondent
- order the respondent to pay damages compensation (including compensation for injury to feelings) to the complainant, and/or
- make an appropriate recommendation.

The time limit is usually **three months** less a day: see Part 9, Chapter 3, (see endnote 1 regarding the possibility of extension of the time limit) as well as the different rules for members of the armed forces.

The time limit in the employment tribunal for an equal pay claim is usually 6 months less one day from the end of employment. In some circumstances that deadline can be extended to 6 years, and brought in the civil courts. Such claims are likely to be complex and specialist advice should be sought.

Advisers should also be aware of Acas's role in compulsory early conciliation.

Further reading:

EHRC (2011), '**Employment: statutory code of practice**' and EHRC (2011), '**Equal pay: statutory code of practice**'.

Education (Part 6)

Chapter 1: Schools

Overview:

Responsible bodies have duties under the Act in relation to the schools they manage. In England and Wales, the responsible body for a public school or nursery is the education authority. The responsible body for a school maintained by the local authority is the local authority or governing body. The responsible body for the types of school listed below is the proprietor:

- an alternative provision academy that is not an independent educational institution school
- an academy
- an independent educational institution (other than a special school), and
- a special school not maintained by the local authority.

The duties in relation to private nurseries would come under Part 3.

Unlawful conduct

A responsible body must not discriminate against or victimise an applicant or pupil regarding admissions, the provision of education, access to benefits, facilities and services or exclusions, or subject them to any other detriment. In addition, a responsible body must not harass an applicant or a pupil. In relation to victimisation of pupils, see provisions regarding conduct of parents and siblings under s. 86.

Reasonable adjustments

The first and third requirements of the duty to make reasonable adjustments apply to the responsible body (see section B above and s. 85 (6) and Schedule 13). The duty to adapt physical features does not apply, but there is a duty on schools to produce accessibility plans and on local authorities to produce accessibility strategies, to improve participation, physical access and information sharing for disabled pupils, generally over a set period of time. The reasonable adjustment duty is anticipatory in this context.

Qualifications bodies in England and Wales (as prescribed by a Minister of the Crown or Welsh Ministers) have specified some adjustments that are not to be made, which may be relevant in this context: see chapter 3 below.

Exceptions

There are exceptions to Part 6 (Chapter 1) contained in Schedule 11. In particular, single-sex schools are lawful, as are single-sex boarding arrangements. Foundation or voluntary schools, and schools (other than an alternative provision academy) listed in the register of independent schools for England or for Wales (if recorded as having a religious ethos), are permitted to give preference to members of their denomination when deciding who to admit to the school, and the exceptions also concern their acts of worship and religious observance.

Schedule 23 contains further exceptions to Part 6 in relation to nationality discrimination where required by statute or the executive, as well as the provision of communal accommodation.

Remedies and time limits

A claim for unlawful discrimination under the schools provisions of Part 6 (except for disability cases) is brought in the county court. The deadline is **six months** less one day from the date of the alleged discrimination. The court has a range of remedies it can award, such as a declaration, damages (including compensation for injury to feelings) and injunctions. See Part 3 above on assessors.

Disability discrimination claims under Part 6 in England are made to the First-tier Tribunal (Special Educational Needs and Disability) and in Wales to the Special Educational Needs Tribunal Wales.

The deadline is **six months** less one day from the date of the alleged discrimination.

These tribunals have a range of remedies, including ordering a letter of apology, a change in policy and procedure, or any order as it considers reasonable in all the circumstances of the case, with a view to obviate or reduce the adverse effect. **They cannot award damages.** See Schedule 17, Part 2 for procedural matters.

Further reading:

EHRC (2014), '**Reasonable adjustments for disabled pupils: Scotland**'

EHRC (2014), '**Technical guidance for schools in England**' and EHRC (2015), '**Reasonable adjustments for disabled pupils in England**'

EHRC (2014), '**Guidance for schools in Wales: what equality law means for you as an education provider in Wales**'

Chapter 2: Further and higher education

Overview:

Responsible bodies have duties under the Act in relation to the institutions they manage:

- The responsible body of a university, or any other institution within the further or higher education sector, is the governing body.
- The responsible body of a 16 to 19 academy is the proprietor.
- The responsible body for a course of further or higher education secured by a local authority is the local authority. The responsible body for a course of education provided by the governing body of a maintained school, under section 80 of the School Standards and Framework Act 1998, is the governing body.
- The responsible body for a course of further or higher education providing a recreational or training facility in England and Wales is the local authority.

Protected characteristics

This chapter does not apply to marriage and civil partnership.

The harassment provisions only apply to the characteristics of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

Unlawful conduct

A responsible body must not discriminate against or victimise an applicant or student regarding admissions, exclusions, the provision of education, access to benefits, facilities and services, or conferring or withholding a qualification or subject them to any other detriment: see s. 91.

A responsible body must not harass an applicant or a student. For provisions relating to discrimination, harassment or victimisation of former students: see s. 108.

Reasonable adjustments

The first, second and third requirements of the duty to make reasonable adjustments apply to the responsible body in terms of ss. 91 (9), 92 (6), 93 (6) and Schedule 13.

Exceptions

There are exceptions to Part 6 (Chapter 2) contained in Schedule 12, relating to matters such as single-sex institutions, institutions with a religious ethos, occupational requirements, benefits depending on marital status and childcare.

Schedule 23 contains further exceptions to Part 6 in relation to nationality discrimination where required by statute or the executive, as well as the provision of communal accommodation.

Remedies and time limits

A claim for unlawful discrimination under Part 6 Chapter 2 is a claim to the county court. The deadline is **six months** less one day of the alleged discrimination (although see endnote 1 regarding the possibility of extension of the time limit). The court has a range of remedies it can award, such as a declaration, damages (including compensation for injury to feelings) and injunctions. See Part 3 above on informing the Commission about the commencement of a claim and assessors.

Further reading:

EHRC (2014), 'Technical guidance on further and higher education'.

Chapter 3: General qualifications bodies

Overview:

This part of the Act places duties on general qualifications bodies (these are the bodies who confer qualifications such as GCSEs, A Levels, and BTEC among others): see s. 96.

Protected characteristics

This chapter does not apply to marriage and civil partnership.

The harassment provisions therefore only apply to the characteristics of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

Unlawful conduct

A qualifications body must not discriminate against or victimise them regarding: conferring a qualification, varying the terms on which a qualification is conferred or held or withdrawing it, or subjecting the person to any other detriment. A responsible body must not harass a person who holds or applies for a qualification: see s. 96.

Reasonable adjustments

The first, second and third requirements of the duty to make reasonable adjustments apply to the qualifications body: s. 96 (6) and Schedule 13.

Exceptions

The appropriate regulator can specify exceptions to the duty to make reasonable adjustments under certain circumstances, in terms of s. 96 (7)–(11).

In England the appropriate regulator is Ofqual, and in Wales it is Qualifications Wales. The two organisations work together on qualifications which are awarded in both jurisdictions, such as GCSEs.

Remedies and time limits

A claim for discrimination under Part 6 Chapter 3 is brought in the county court. The deadline is **six months** less one day of the alleged discrimination (see endnote 1 regarding the possibility of extension to the time limit). The court has a range of remedies it can award, such as a declaration, damages (including compensation for injury to feelings) and injunctions. See Part 3 above on informing the Commission about a claim and assessors.

If the complaint relates to the regulators exceptions, the challenge is by judicial review.

Further reading:

EHRC (2014), 'Technical guidance on further and higher education'

Associations (Part 7)

Overview:

This part of the Act places duties on associations of persons where the association has 25 or more members, admissions are regulated by the association's rules, there is a selection process, and the association is not a trade union or professional organisation, which would come under Part 5: see s. 107 and s. 57.

Protected characteristics

This part of the Act does not apply to marriage and civil partnership.

The harassment provisions only apply to the characteristics of age, disability, gender reassignment, race and sex: see s. 103 and s. 26.

Unlawful conduct

An association must not discriminate against or victimise an applicant, associate or member in relation to matters such as membership, affording access to a benefit, facility or service, terms of membership, rights of associates or any other detriment: see s. 101.

An association must not harass a member, an applicant or an association.

There are further provisions in relation to discrimination, harassment and victimisation of guests, at s. 102.

Reasonable adjustments

There is an anticipatory duty on associations to make reasonable adjustments, which includes the first, second and third requirements: see s. 103 and Schedule 15. The duty is explained in more detail in Schedule 15: see para 7.8 of the code of practice.

Exceptions

There are special provisions regarding positive action in relation to the selection of candidates for political parties, in terms of s. 104. Schedule 16 contains exceptions relating to matters such as health and safety, and makes it clear that single characteristic organisations are permitted. See Schedule 23 for exceptions for organisations relating to religion and belief and communal accommodation.

Remedies and time limits

A claim for unlawful discrimination under Part 7 is brought in the county court. The deadline is **six months** less one day from the date of the alleged discrimination: see s. 114 (see endnote 1 regarding the possibility of extension of the time limit). See Part 3 above about informing the Commission about bringing proceedings and assessors.

Further reading:

EHRC (2011), 'Services, public functions and associations: statutory code of practice'

Section D

The Public Sector

Equality Duty



General duty: Part 11 (Chapter 1)

There is a general duty on public bodies to have due regard to three 'needs' when exercising their public functions. The needs are to:

1. Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act.
2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not.
3. Foster good relations between persons who share a relevant protected characteristic and persons who do not.

The general equality duty applies to public authorities listed in Schedule 19. Where a person is not listed in Schedule 19 but exercises public functions, the general duty applies to the exercise of those functions, even if the person is a private organisation. See Schedule 18 for exceptions to the Public Sector Equality Duty.

Specific duties

The following additional duties apply to authorities listed in Schedule 2 of The Equality Act 2010 (Specific Duties and Public) Regulations 2017.

1. To publish information at least annually to demonstrate compliance with the general equality duty. The information must include, in particular, information relating to persons who share a relevant protected characteristic who are their employees (if they employ 150 or more employees), or those affected by its policies and practices, for example, service users. Public authorities with under 150 employees are not required to publish information on their employees (but should collect this to help develop their objectives and assess the impact of their employment policies on equality).
2. To prepare and publish one or more equality objectives it thinks it should achieve to meet the general equality duty. This should be done at least every four years. Authorities must ensure the objectives are specific and measurable.

Specific duties: The Equality Act

(Statutory Duties) (Wales)

Regulations 2011

In addition there are specific duties for public bodies in Wales who are listed in Part 2 of Schedule 19 of the Equality Act 2010, to help them meet the general duty. The specific duties are:

1. To publish an annual equality report to report progress on the general equality duty.
2. To publish a strategic equality plan with objectives and to review equality objectives at least once every four years.
3. To engage and consult with representatives of all protected groups and such other persons it considers appropriate.
4. To review and monitor the impact of equality practices and procedures.
5. To gather, use and publish relevant equality information.
6. To gather, use and publish employee information on an annual basis.
7. To gather, use and publish gender pay information and address by way of equality objectives any gender pay differences.
8. To make appropriate arrangements to promote knowledge and understanding of general and specific equality duties among employees.
9. To consider award criteria and contract conditions in relation to public procurement.
10. To publish equality outcomes and report progress on compliance.
11. To take all reasonable steps to ensure that any document or information required to be published, to meet both the general and specific equality duties, is published in a form which is accessible to people from protected groups.
12. Welsh Ministers also have a specific duty to publish a report every four years on how devolved public authorities in Wales are meeting their general equality duty.

Remedies and time limits

The Commission has certain enforcement powers in relation to the Public Sector Equality Duty: see Equality Act 2006, ss. 31–32 and section E below.

In addition, the actions of a public authority can be challenged by way of judicial review. A judicial review cannot enforce the specific duties (they can only be enforced by the Commission); however, failure to comply with the specific duties could be evidence of failures in relation to the general duty.

A judicial review must be brought promptly and in event not later than 3 months after the ground to make the claim first arose. There is case law that a judicial review that was brought within 3 months was still held not to have been brought promptly, so it is very important in judicial review proceedings to act quickly.

Further reading:

EHRC (2014), 'Technical Guidance on the Public Sector Equality Duty: England' and 'Technical Guidance on the Public Sector Equality Duty: Wales'.

Section E

Equality and Human Rights

Commission: its role and

legal powers



The Equality and Human Rights Commission promotes and enforces the laws that protect our rights to fairness, dignity and respect. We are the National Equality Body for Scotland, England and Wales, working across the nine protected characteristics set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. We are accredited by the United Nations as an 'A' status National Human Rights Institution and share our human rights mandate in Scotland with our colleagues in the Scottish Human Rights Commission. Our legal powers come from the Equality Act 2006.

Our legal powers include:

- Providing legal assistance to individuals bringing proceedings under the law. We can only fund human rights cases brought by others that also raise issues under the equality law. We can either provide funding or our own solicitors can act directly. More information about our casework and litigation strategy can be found **on our website**
- Intervening in strategic cases that raise important issues under either the equality law, human rights law or both.
- Raising proceedings for judicial review in our own name in strategic cases that raise important issues under either the equality law, human rights law or both.
- Conducting inquiries and investigations.
- Conducting assessments into the extent to which a public authority has complied with the public sector equality duty.
- Taking enforcement action against organisations who do not comply with the gender pay gap reporting regulations. You can view our enforcement policy on the legal action pages of our website.

Advisers in England and Wales can contact the Commission for advice on equality law:

England



 0161 829 8190

 Englandadvisersupport@equalityhumanrights.com

Wales



 029 2044 7790

 Walesadvisersupport@equalityhumanrights.com

To refer a strategic case to the Commission, contact the legal request inbox at legalrequest@equalityhumanrights.com, or the lawyers referral helpline on 0161 829 8407.

List of abbreviations

Acas	Advisory, Conciliation and Arbitration Service
SENT	Special Educational Needs Tribunal
FFT	First Tier Tribunal (Special Education Needs and Disability)
EHRC	Equality and Human Rights Commission
PCP	Provision, criterion or practice
PSV	Public Service Vehicle
s.	Section (of an Act)

Endnotes

1. In some circumstances, time limits can be extended where the court or tribunal considers it just and equitable, but it is always advisable to make the claim on time where possible. You also need to consider when the time bar commenced – was the prohibited conduct a one-off, or a continuing course of conduct? Remember that time limits can run from the date a decision is made, rather than from when you or your client becomes aware of the decision. Always take a cautious approach to the time bar where possible.
2. Where a protected characteristic is not covered by the harassment provisions of the Act, the unwanted conduct could amount to direct discrimination: see s. 212 (5).
3. Civil Procedure Rules – Practice Direction 2 of the Proceedings Under Enactments Relating to Equality require claimants to inform the Commission that they have started proceedings in the county court.
4. Gender pay gap reporting regulations – all private and voluntary sector employers with 250 or more employees in England, Wales and Scotland must now publish information on their gender pay gap under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017.

Public sector employers in England, Wales and Scotland, that are listed in the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, with 250 or more employees must also publish information on their gender pay gap.

Note that The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended) and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 place different gender pay gap reporting duties on public sector employers in Scotland and Wales respectively. The Commission's enforcement policy on gender pay does not apply to the enforcement of these specific duties.

You can view the information organisations have reported on the Gender Pay Gap Service on **the Gov.uk website**.

Acas have produced a series of resources on gender pay gap reporting which are **available from their website**.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: **www.equalityhumanrights.com**.

For advice, information or guidance on equality, discrimination or human rights issues, please contact the **Equality Advisory and Support Service**, a free and independent service.

Website	www.equalityadvisoryservice.com
Telephone	0808 800 0082
Textphone	0808 800 0084
Hours	09:00 to 19:00 (Monday to Friday) 10:00 to 14:00 (Saturday)
Post	FREEPOST EASS HELPLINE FPN6521

Questions and comments regarding this publication may be addressed to: **correspondence@equalityhumanrights.com**. The Commission welcomes your feedback.

Alternative formats

This publication is also available as a Microsoft Word file from **www.equalityhumanrights.com**. For information on accessing a Commission publication in an alternative format, please contact: **correspondence@equalityhumanrights.com**

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