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# A short introduction to equality law



## Summary

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## Summary

This briefing provides an overview of equality law, summarising the main concepts and the role of the Equality and Human Rights Commission.

### The Equality Act 2010

The Equality Act 2010 consolidates most equality law into one Act. It prohibits conduct and creates duties in relation to ‘protected characteristics’. There are nine protected characteristics, [listed in section 4 of the Act](#), ranging from age through to sexual orientation.

The Act prohibits direct and indirect discrimination, and harassment and victimisation. It also prohibits discrimination in relation to something arising from a person’s disability, and creates a duty to make reasonable adjustments for disabled people.

The Act applies in various scenarios, including at work, in education and in relation to services and public functions.

Public authorities are subject to a Public Sector Equality Duty. The Duty means they must ‘have due regard’ to equality considerations when exercising public functions.

Except for in Northern Ireland, which has its own equality legislation, equality law is largely reserved to the UK Parliament. The legal concepts in this briefing apply across England, Wales and Scotland.

### The Equality and Human Rights Commission

The Equality and Human Rights Commission was established by the [Equality Act 2006](#), with a duty to promote and encourage understanding of equality and human rights.

Individuals enforce their rights under the Equality Act 2010 before the courts. However, the Commission also has a range of powers at its disposal to enforce equality law at a more institutional level, and often strategically intervenes as a party to litigation if doing so could help develop equality law.

# 1 Introduction

The [Equality Act 2010](#) (the Act) repealed, replaced and consolidated the principles of earlier equality legislation. The Act codifies UK equality law, which is part domestic in origin, part derived from EU law.<sup>1</sup>

## 1.1 Protected characteristics

The Act prohibits certain types of conduct and creates duties in relation to ‘protected characteristics’. Section 2 of this briefing (‘Key concepts’) explains these prohibitions and duties. The below lists the protected characteristics. Each link goes to the section of the Act that defines the relevant characteristic:

- [age](#)
- [disability](#)
- [gender reassignment](#)
- [marriage and civil partnership](#)
- pregnancy and maternity (not defined in the Act)
- [race](#)
- [religion or belief](#)
- [sex](#)
- [sexual orientation](#).

## 1.2 Scope of the Act

The prohibitions and duties in the Act only apply in specific contexts. This means that discrimination isn’t prohibited generally – for example, in social situations – but in specific contexts, such as the workplace. Broadly, the Act prohibits discrimination in relation to:

- [services and public functions](#)
- [work](#)
- [the management and disposal of premises](#)
- [education](#)
- [clubs and associations](#)
- [transport](#).

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<sup>1</sup> See Equality Act 2010, [Schedule 27](#), which lists the repealed legislation

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## 2 Key concepts

### 2.1 Direct and indirect discrimination

The Act identifies two types of discrimination: direct and indirect.

**Direct discrimination** occurs when a person, because of a protected characteristic, treats another less favourably than they would treat those without the characteristic.<sup>2</sup>

**Indirect discrimination** occurs when a person applies a ‘provision, criterion or practice’ which, although applied to persons with different protected characteristics (e.g., males and females) puts one group at a particular disadvantage (e.g., disadvantages females but not males).<sup>3</sup> The Act’s Explanatory Notes provide an example:

A woman is forced to leave her job because her employer operates a practice that staff must work in a shift pattern which she is unable to comply with because she needs to look after her children at particular times of day, and no allowances are made because of those needs. This would put women (who are shown to be more likely to be responsible for childcare) at a disadvantage, and the employer will have indirectly discriminated against the woman unless the practice can be justified.<sup>4</sup>

Indirect discrimination may be lawful if shown to be a proportionate means of achieving a legitimate aim.<sup>5</sup>

### 2.2 Discrimination arising from disability

In addition to direct and indirect discrimination, [section 15](#) of the Act states that a person discriminates against a disabled person if they treat the disabled person unfavourably because of ‘something arising in consequence’ of their disability. An Equality and Human Rights Commission Statutory Code Practice [gives an example](#):

A mother seeks admission to a privately run nursery for her son who has Hirschsprung’s disease, which means that he does not have full bowel

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<sup>2</sup> [Section 13](#)

<sup>3</sup> [Section 19](#)

<sup>4</sup> [Equality Act 2010 Explanatory Notes, para 81](#)

<sup>5</sup> [Section 19\(2\)\(d\)](#)



control. The nursery says that they cannot admit her son because he is not toilet trained and all the children at the nursery are. The refusal to admit the boy is not because of his disability itself; but he is being treated unfavourably because of something arising in consequence of his disability.<sup>6</sup>

This type of discrimination will be unlawful if the person cannot justify the treatment. However, it will not be unlawful discrimination if the person can show they did not know, and could not reasonably have been expected to know, about the disability. The Act's Explanatory Notes illustrate as follows:

The licensee of a pub refuses to serve a person who has cerebral palsy because she believes that he is drunk as he has slurred speech. However, the slurred speech is a consequence of his impairment. If the licensee is able to show that she did not know, and could not reasonably have been expected to know, that the customer was disabled, she has not subjected him to discrimination arising from his disability.

However, in the example above, if a reasonable person would have known that the behaviour was due to a disability, the licensee would have subjected the customer to discrimination arising from his disability, unless she could show that ejecting him was a proportionate means of achieving a legitimate aim.<sup>7</sup>

## 2.3 Reasonable adjustments for disabled people

The Act also creates a positive duty to anticipate the needs of, and make reasonable adjustments for, disabled people.

For example, in the context of services, the objective of the duty is to, so far as is reasonably practicable

approximate the access enjoyed by disabled people to that enjoyed by the rest of the public. The purpose of the duty to make reasonable adjustments is to provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large<sup>8</sup>

The duty is contained in [section 20](#) and comprises three requirements. The requirements are to 'take such steps **as it is reasonable to have to take**' to:

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<sup>6</sup> Equality and Human Rights Commission, *Services, public functions and associations - Statutory Code Practice*, 2011, p84

<sup>7</sup> [Equality Act 2010 Explanatory Notes, para 70](#)

<sup>8</sup> Equality and Human Rights Commission, [Statutory Code of Practice - Services, public functions and associations](#), 2011, p90

- avoid putting disabled people at a substantial disadvantage where a provision, criterion or practice would put them at that disadvantage compared with people who are not disabled
  - for example, adjusting a ‘no dogs’ policy for visually impaired people
- remove, alter or provide means of avoiding physical features where those features put disabled people at a substantial disadvantage compared with people who are not disabled
  - for example, providing a wheelchair ramp alongside stairs
- provide an auxiliary aid where disabled people would, but for the provision of that aid, be put at a substantial disadvantage in comparison with people who are not disabled
  - for example, providing an induction loop for hearing impaired people.

What is deemed to be reasonable will depend on the circumstances. The Equality and Human Rights Commission has identified the following potentially relevant factors:

- whether taking the step would be effective
- the extent to which it is practicable
- the financial and other costs of making the adjustment
- the availability of the necessary financial and other resources
- the extent of any disruption which taking the steps would cause
- the amount of any resources already spent on making adjustments.<sup>9</sup>

Ultimately, the only way to determine for certain whether any adjustment would be reasonable to have to make is for a court to decide the issue.

The law on reasonable adjustments is discussed further in the Library [research briefing on disability discrimination](#).<sup>10</sup>

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<sup>9</sup> Equality and Human Rights Commission, [Statutory Code of Practice - Services, public functions and associations](#), 2011, pp97-98

<sup>10</sup> [Disability discrimination](#), Commons Library briefing, CBP 9061



## 2.4

# Harassment and victimisation

The Equality Act also prohibits harassment and victimisation.

**Harassment** is defined as engaging in unwanted conduct related to a protected characteristic, which has the effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.<sup>11</sup> The Act's Explanatory Notes provide examples of this:

- A white worker who sees a black colleague being subjected to racially abusive language could have a case of harassment if the language also causes an offensive environment for her.
- An employer who displays any material of a sexual nature, such as a topless calendar, may be harassing her employees where this makes the workplace an offensive place to work for any employee, female or male.
- A shopkeeper propositions one of his shop assistants. She rejects his advances and then is turned down for promotion which she believes she would have got if she had accepted her boss's advances. The shop assistant would have a claim of harassment.<sup>12</sup>

**Victimisation** is defined as subjecting an individual to detriment because they have done a 'protected act' (or in the belief that they have).<sup>13</sup> Broadly, the protected acts are acts relating to bringing a claim under the Equality Act or alleging a person has contravened the Act. For example:

A gay man sues a publican for persistently treating him less well than heterosexual customers. Because of this, the publican bars him from the pub altogether. This would be victimisation.<sup>14</sup>

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<sup>11</sup> [Section 26](#)

<sup>12</sup> [Equality Act 2010 Explanatory Notes, para 99](#)

<sup>13</sup> [Section 27](#)

<sup>14</sup> [Equality Act 2010 Explanatory Notes, para 103](#)

## 2.5

# The Public Sector Equality Duty

The Public Sector Equality Duty is contained in [Part 11](#) of the Act and related regulations. The Duty consolidates and replaces equality duties in previous legislation, including the disability equality duty in [section 49A](#) of the Disability Discrimination Act 1995.

The main duty is set out in [section 149](#) of the Act. Under section 149 public authorities must, in the exercise of their functions, ‘**have due regard** to the need to’:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who don’t
- foster good relations between persons who share a relevant protected characteristic and persons who don’t.<sup>15</sup>

The Act does not identify what is meant by the phrase ‘have due regard’. However, the term has been considered extensively by the courts.

Broadly, the principles that emerge from the case law are:

- the duty concerns the impact of a proposal on all persons with protected characteristics and on any class of persons within a protected category who might clearly be adversely affected
- it is not a question of ticking boxes, the duty must be approached in substance, with rigour and with an open mind
- the duty must be fulfilled both before and during consideration of a particular policy
- the public authority does not have to refer expressly to the duty whilst exercising a public function
- decision-makers must be aware of the duty
- the duty is non-delegable
- it is good practice for an authority to keep a record showing that it has considered the identified needs
- it is for the decision maker to decide what weight to give to the equality implications of the decision.<sup>16</sup>

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<sup>15</sup> Equality Act 2010, section 149(1)

<sup>16</sup> See: [R \(Brown\) v Secretary of State for Work and Pensions \[2008\] EWHC 3158](#), [Bracking v Secretary of State for Work and Pensions \[2013\] EWCA Civ 1345](#)

In a leading Court of Appeal case, Lord Justice McCombe summarised the effect of the Duty and its rationale:

It seems to have been the intention of Parliament that these considerations ... are now to be placed at the centre of formulation of policy by all public authorities, side by side with all other pressing circumstances of whatever magnitude.

It is for this reason that advance consideration has to be given to these issues and they have to be an integral part of the mechanisms of government.... There is a need for a "conscious approach" and the duty must be exercised "in substance, with rigour and with an open mind" ... In the absence of evidence of a "structured attempt to focus upon the details of equality issues" ... a decision maker is likely to be in difficulties if his or her subsequent decision is challenged.<sup>17</sup>

In addition to the general Duty, some public bodies are subject to specific duties and are required to report on various equality matters. The duties differ across the devolved nations. This is discussed further in [the Library's briefing on the Public Sector Equality Duty](#).<sup>18</sup>

## Equality Impact Assessments

It is important for public authorities to record the steps they've taken to meet the Duty. Aside from this helping the authority to comply with the Duty in practice, it would also be an important evidential requirement should the authority be challenged in court for failing to comply with the Duty.

One of the ways (but not the only way) an authority can demonstrate this, is through carrying out an equality impact assessment. This is discussed further in the aforementioned [Library briefing](#).

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<sup>17</sup> [Stuart Bracking & Ors v Secretary of State for Work and Pensions \[2013\] EWCA Civ 1345](#), para 60-61

<sup>18</sup> [The Public Sector Equality Duty and Equality Impact Assessments](#), Commons Library briefing, SN06591

## 3

# The Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) replaced the Equal Opportunities Commission, Commission for Racial Equality and the Disability Rights Commission with a single equality body. It is a non-departmental public body in England, Wales and (in part) Scotland, responsible for monitoring compliance with the Equality Act 2010.<sup>19</sup>

Equality law is devolved in Northern Ireland; Northern Ireland has a separate [Equality Commission](#).<sup>20</sup>

The EHRC is not responsible for enforcing the provisions of the Equality Act 2010. Individuals enforce their own rights through the courts. However, the EHRC can intervene strategically in litigation to develop equality law, and has a range of enforcement powers at its disposal.

## 3.1

### EHRC duties

The EHRC is a statutory body, with statutory duties, established by the [Equality Act 2006](#) (the 2006 Act).<sup>21</sup> Broadly, the 2006 Act requires the EHRC to promote and encourage the understanding of - and good practice in relation to - equality and human rights.

[Section 3](#) of the 2006 Act contains the EHRC's 'general duty', which requires the EHRC to encourage and support the development of a society in which:

- people's ability to achieve their potential is not limited by prejudice or discrimination
- there is respect for and protection of each individual's human rights
- there is respect for the dignity and worth of each individual
- each individual has an equal opportunity to participate in society
- there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

<sup>19</sup> It shares a remit with the [Scottish Human Rights Commission](#), established by the [Scottish Commission for Human Rights Act 2006](#)

<sup>20</sup> Equality Commission for Northern Ireland website [accessed 3 February 2022]

<sup>21</sup> See section 3

The EHRC must also monitor the law and progress towards development of a society that reflects these values.<sup>22</sup>

## 3.2 Powers

As noted, the EHRC is not responsible for the enforcement of equality rights at an individual level. As with most other legal rights, it falls to individuals to exercise their rights through the courts. The EHRC typically uses its powers at an institutional level; for example, agreeing new policies with a large company to avoid future discriminatory conduct.

The EHRC's powers are set out in the 2006 Act, and include the following:

- formal inquiries
- formal investigations
- issuance of unlawful act notices
- a power to enter into agreements with parties by which the party undertakes not to commit an unlawful act
- legal proceedings to prevent or restrain unlawful acts
- claims for judicial review
- assessing compliance with the Public Sector Equality Duty
- issuance of compliance notices.<sup>23</sup>

## 3.3 Accountability

The EHRC accounts to Parliament through the Minister for Women and Equalities. For example, it sends a copy of its annual report to the Minister, who then lays it before Parliament.<sup>24</sup>

## 3.4 Codes of practice

Under [section 14](#) of the 2006 Act, the Commission may issue codes of practice 'in connection with any matter addressed by the Equality Act 2010'. The codes of practice are [available on the EHRC website](#), and provide a detailed overview of the application of the Equality Act 2010 in relation to [employment, services and public functions](#), and [equal pay](#).<sup>25</sup>

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<sup>22</sup> Equality Act 2006, sections 11-12

<sup>23</sup> See: Equality Act 2006, Part 1; and EHRC website: [Enforcement powers](#) [accessed 3 February 2022]

<sup>24</sup> See [Equality Act 2006, Schedule 1 Part 2, para 32](#)

<sup>25</sup> [Equality Act codes of practice](#), EHRC website [accessed 3 February 2022]

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