

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6: Education**

#### *Chapter 1: Schools*

#### *Section 84: Application of this Chapter*

##### **Effect**

290. This section provides that this Chapter of the Act, which prohibits discrimination, harassment and victimisation in the field of education in schools, does not apply to discrimination or harassment of people in those circumstances because of age or marriage and civil partnership.

##### **Background**

291. This replicates the position in previous legislation and in, addition, extends protection because of gender reassignment and pregnancy and maternity to pupils in schools.

##### **Examples**

- It is not unlawful discrimination for a school to organise a trip for pupils in one year group, but not for pupils in other years.
- It is not unlawful discrimination for a school to allow older pupils to have privileges for which younger pupils are not eligible, such as more choice of uniform or the right to leave school during the lunch period.

#### *Section 85: Pupils: admission and treatment, etc.*

##### **Effect**

292. This section makes it unlawful for the responsible body of a school to discriminate against, harass or victimise a pupil or prospective pupil in relation to the terms on which it offers him or her admission, by not admitting him or her, or in the way it treats the pupil once admitted. The responsible body for a maintained school is the local authority or the governing body, and for an independent educational institution or a non-maintained special school is the proprietor.
293. It also imposes on the responsible body of a school the duty to make reasonable adjustments for disabled pupils and prospective disabled pupils.
294. However, the prohibition on harassment of pupils or prospective pupils does not cover gender reassignment, sexual orientation or religion or belief.

## **Background**

295. This section is primarily designed to replicate the effect of provisions in current legislation applying to schools. In addition, it extends protection from discrimination to transsexual pupils and pupils who become pregnant.

## **Examples**

- A school refuses to let a gay pupil become a prefect because of his sexual orientation. This would be direct discrimination.
- A selective school imposes a higher standard for admission to applicants from an ethnic minority background, or to girls. This would be direct discrimination.
- A pupil alleges, in good faith, that his school has discriminated against him because of his religion (for example claiming that he is given worse marks than other pupils because he is Jewish), so the school punishes him by making him do a detention. This would be victimisation.
- A teacher ridicules a particular pupil in class because of his disability, or makes comments which have the result of making the girls in the class feel embarrassed and humiliated. This would be harassment.

## ***Section 86: Victimisation of pupils, etc. for conduct of parents, etc.***

## **Effect**

296. This section protects children in schools from being victimised as a result of a protected act (such as making or supporting a complaint of discrimination) done by their parent or sibling. The aim is to prevent parents being discouraged from raising an issue of discrimination with a school because of worry that their child may suffer retaliation as a result.
297. Where a parent or sibling maliciously makes or supports an untrue complaint, the child is still protected from victimisation, as long as the child has acted in good faith. But, in common with the general approach to victimisation, where a child has acted in bad faith, he or she is not protected, even where a parent or sibling makes or supports an untrue complaint in good faith.

## **Background**

298. This section is designed to replicate the effect of provisions in the Disability Discrimination Act 1995 and extend the protection to cover all characteristics protected under this Chapter.

## **Examples**

- The parent of a pupil complains to the school that her daughter is suffering sex discrimination by not being allowed to participate in a metalwork class. The daughter is protected from being treated less favourably by the school in any way because of this complaint.
- A pupil brings a case against his school claiming that he has suffered discrimination by a member of staff because of his sexual orientation. The pupil's younger brother, at the same school, is protected against any less favourable treatment by the school because of this case, even if it is later found that the older brother was not acting in good faith.

### ***Section 87: Application of certain powers under Education Act 1996***

#### **Effect**

299. This section enables the Secretary of State to give directions, using powers under the Education Act 1996, to require a maintained school or a non-maintained special school to comply with its duties under section 85. It enables the Secretary of State to require a school to stop a discriminatory practice or policy even if no complaint has been brought by an individual pupil or prospective pupil.

#### **Background**

300. Sections 496 and 497 of the Education Act 1996 empower the Secretary of State to give directions to local education authorities and to governing bodies of maintained schools to prevent them exercising their functions under the Education Acts unreasonably, or to require them to perform statutory duties where they are not doing so. This power has already been extended to require compliance with the law on sex discrimination, and this section extends those powers to all the protected characteristics covered by section 85.

#### **Example**

- The governing body of a school refuses as a matter of policy to let disabled pupils participate in school trips because of the extra risk management required. The Secretary of State could direct the governing body to change its policy so as to make reasonable adjustments to enable disabled pupils to participate.

### ***Section 88: Disabled pupils: accessibility***

#### **Effect**

301. This section introduces Schedule 10 which requires local authorities and schools to prepare and implement accessibility strategies and plans. These will increase disabled pupils' access to the curriculum and improve the physical environment and the provision of information. They are explained in more detail in the notes to that Schedule.

### ***Section 89: Interpretation and exceptions***

#### **Effect**

302. This section explains what is meant by terms used in this Chapter, such as "school" and "pupil". It also makes it clear that the prohibitions in the Chapter do not apply to anything done in relation to the content of the school curriculum. This ensures that the Act does not inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to expose pupils to thoughts and ideas of all kinds. The way in which the curriculum is taught is, however, covered by the reference to education in section 85(2)(a), so as to ensure issues are taught in a way which does not subject pupils to discrimination. This section also gives effect to Schedule 11 which provides some exceptions to the provisions in this Chapter.

#### **Background**

303. This section is designed to replicate the effect of an exception relating to discrimination because of religion or belief in the Equality Act 2006, and extends it to other protected characteristics.

#### **Examples**

- A school curriculum includes teaching of evolution in science lessons. This would not be religious discrimination against a pupil whose religious beliefs include creationism.

- A school curriculum includes *The Taming of the Shrew* on the syllabus. This would not be discrimination against a girl.

## ***Chapter 2: Further and higher education***

### ***Section 90: Application of this Chapter***

#### **Effect**

304. This section provides that this Chapter of the Act, which prohibits discrimination, harassment and victimisation in the field of education in institutions providing further and higher education, does not make it unlawful to discriminate against or harass people in those circumstances because of marriage or civil partnership status.

#### **Background**

305. This section is designed to replicate the effect of provisions in the Sex Discrimination Act 1975.

### ***Section 91: Students: admission and treatment, etc.***

#### **Effect**

306. This section makes it unlawful for universities, colleges and other institutions in the higher and further education sectors to discriminate against, harass or victimise a student or someone who wants to become a student in relation to the arrangements it makes in deciding who to admit, the terms on which a person is admitted and the way a person is treated when admitted. Subsection (3) of section 91 specifically makes it unlawful to discriminate when considering conferring qualifications to disabled people who are not enrolled at the institution.
307. It also imposes on the responsible body of such an institution the duty to make reasonable adjustments for disabled students and prospective students.

#### **Background**

308. This replicates the position in previous legislation.

#### **Examples**

- A college refuses admission to a man who applies to be a student, because he is gay. This would be direct discrimination.
- A university refuses to provide residential accommodation to Jewish or Muslim students. This would be direct discrimination.
- A college puts an age limit on access to a particular course. This would be direct discrimination, unless the college could show that the age limit was objectively justified.

### ***Section 92: Further and higher education courses***

#### **Effect**

309. This section makes it unlawful for local authorities securing further and higher education, and maintained schools providing further education, to discriminate against, harass or victimise a person in relation to deciding who to enrol, or in the way it provides any services when the person has been enrolled. It also imposes on them the duty to make reasonable adjustments when offering such facilities and services to disabled people.

## **Background**

310. This section is designed to replicate the effect of provisions in the Disability Discrimination Act 1995, and to extend protection to all the protected characteristics covered by this Chapter.

## **Example**

- A school puts on a 10-week evening educational course for local adults but prevents applicants from enrolling who are disabled or gay. This would be direct discrimination.

## **Section 93: Recreational or training facilities**

### **Effect**

311. This section makes it unlawful for local authorities providing any recreational or training facilities to discriminate against, harass or victimise a person in terms of deciding who should be provided with any facilities and the terms on which the facilities are provided. It also imposes on them the duty to make reasonable adjustments when offering such facilities and services to disabled people.
312. The recreational and training facilities concerned are those provided in England under sections 507A or 507B of the Education Act 1996 and include things like centres, parks and sports facilities.

## **Background**

313. These provisions are designed to replicate the effect of provisions in the Disability Discrimination Act 1995 and to extend protection to all the protected characteristics covered by this Chapter.

## **Example**

- A local authority which puts on a summer camp for children from local schools refuses an application from a child simply because that child is disabled or a Muslim. This would be direct discrimination.

## **Section 94: Interpretation and exceptions**

### **Effect**

314. This section explains what is meant by terms used in this Chapter, such as “student” and “university”. It also makes it clear that the prohibitions in the Chapter do not apply to anything done in relation to the content of the curriculum. This ensures that the Act does not inhibit the ability of institutions in the higher and further education sectors to include a full range of issues, ideas and materials in their syllabus and to expose students to thoughts and ideas of all kinds. The way in which the curriculum is taught is, however, covered by the reference to education in section 91(2)(a), so as to ensure issues are taught in a way which does not subject students to discrimination or harassment.
315. It also gives effect to Schedule 12 which provides exceptions to the provisions in this Chapter.

## **Background**

316. These provisions are new, but are based on an exception relating to discrimination because of religion or belief in education in schools in the Equality Act 2006, and explicitly extend it to education in higher and further education institutions across all the protected characteristics covered by this Chapter.

## **Examples**

- A college course includes a module on feminism. This would not be discrimination against a male student.
- A university requires students to use a computer for projects or essays. This would not be indirect discrimination against a member of a sect which rejects the use of modern technology.

## **Chapter 3: General qualifications bodies**

### **Section 95: Application of this Chapter**

#### **Effect**

317. This section provides that this Chapter of the Act, which prohibits discrimination, harassment and victimisation by qualifications bodies, does not make it unlawful for such bodies to discriminate against or harass people in the circumstances covered because of marriage or civil partnership status.

#### **Background**

318. This section is designed to replicate the effect of similar provisions in previous legislation subject to modifications that include placing a responsibility on the appropriate regulator.

### **Section 96: Qualifications bodies**

#### **Effect**

319. This section makes it unlawful for a qualifications body to discriminate against, harass or victimise a person in the arrangements it makes for deciding on whom to confer qualifications, and the terms on which those qualifications are conferred. Qualifications bodies are defined in section 97.
320. It also places a duty on qualifications bodies to make reasonable adjustments for disabled people. The section includes a power for a Minister of the Crown, the Secretary of State, Scottish Ministers and Welsh Ministers to designate an “appropriate regulator”, which may then specify matters which are not subject to the reasonable adjustments duty. For example, it could be specified that the requirement to achieve a particular mark to gain a particular qualification is not subject to reasonable adjustments. The appropriate regulator may also specify which reasonable adjustments should not be made. For example, it may be appropriate to allow additional time to complete the exam or to provide a reader, but not to give an exemption from part of an exam. In doing so, the appropriate regulator must have regard to the need to minimise the extent to which disabled persons are disadvantaged, and the need to protect the integrity of, and maintain public confidence in the qualification. It is important that the disabled candidate knows that his or her qualification will be as highly regarded as other people’s qualifications, and will not be regarded as inferior because reasonable adjustments have been made. Before specifying any such matter, the regulator must consult anyone it thinks appropriate and it must publish the specified matters.

#### **Background**

321. These provisions are designed to make similar provision to those in the Disability Discrimination Act 1995 and to extend protection to all the protected characteristics covered by this Chapter. There are some changes to the provisions concerning when reasonable adjustments do not need to be made for disabled candidates. Previously, awarding bodies were not required to make reasonable adjustments to a competence standard, but there was some confusion as to what was a competence standard in these

qualifications. Under these provisions it is the regulator that will make the decision, after consultation, about what cannot be reasonably adjusted and – as noted in paragraph 320 above - will be under specific duties in making that decision. This will create more transparency and consistency in the application of reasonable adjustments.

### **Examples**

- A qualifications body refuses to allow a girl to undertake a GCSE in woodwork because of her sex. This would be direct discrimination.
- A visually impaired candidate is granted a modified paper (enlarged font) by a qualifications body in order that she can read her English GCSE exam.
- The regulator publishes, after appropriate consultation, a requirement that qualifications bodies cannot make reasonable adjustments by granting an exemption from components of the qualification which exceed a specified percentage of the total marks.
- The regulator publishes, after appropriate consultation, a requirement on qualifications bodies not to use a specific reasonable adjustment, such as a reader in the independent reading element of a GCSE English exam. This would not be unlawful discrimination against a disabled candidate who would otherwise have been entitled to this specific adjustment.

### ***Section 97: Interpretation***

#### **Effect**

322. This section explains what is meant by terms used in section 96. It defines a qualifications body as an authority or body which awards a qualification, and sets out what it is not. It also defines a qualification as a certificate or authorisation of a set description.

#### **Background**

323. This section is designed to replicate the effect of provisions in previous legislation.

#### **Examples**

- Edexcel is an example of a qualifications body.
- A GCSE is an example of a qualification.

### ***Chapter 4: Miscellaneous***

#### ***Section 98: Reasonable adjustments***

#### **Effect**

324. This section introduces the provisions of Schedule 13, concerning the making of reasonable adjustments to ensure that disabled pupils are not placed at a substantial disadvantage in comparison with non-disabled pupils. These provisions are explained in more detail in the notes to that Schedule.

#### ***Section 99: Educational charities and endowments***

#### **Effect**

325. This section introduces the provisions of Schedule 14, concerning educational charities which restrict benefits to a single sex and providing for such restrictions to be modified.