

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Education

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.