

# **EQUALITY ACT 2010**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Equality Act 2010 which received Royal Assent on 8 April 2010. They have been prepared by the Government Equalities Office, the Department for Work and Pensions (in respect of provisions relating to disability and pensions), the Department for Children, Schools and Families and the Department for Business, Innovation and Skills (in respect of provisions relating to education), the Department for Transport (in respect of provisions relating to disability and transport) and the Department for Business, Innovation and Skills (in respect of provisions relating to work exceptions). Their purpose is to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### ***Background and summary***

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3. Domestic discrimination law has developed over more than 40 years since the first Race Relations Act in 1965. Subsequently, other personal characteristics besides race have been protected from discrimination and similar conduct, sometimes as a result of domestic initiatives and sometimes through implementing European Directives.
4. The domestic law is now mainly contained in the following legislation (where applicable, as amended):
  - the Equal Pay Act 1970;
  - the Sex Discrimination Act 1975;
  - the Race Relations Act 1976;
  - the Disability Discrimination Act 1995;
  - the Employment Equality (Religion or Belief) Regulations 2003;
  - the Employment Equality (Sexual Orientation) Regulations 2003;
  - the Employment Equality (Age) Regulations 2006;
  - the Equality Act 2006, Part 2;
  - the Equality Act (Sexual Orientation) Regulations 2007.
5. The main European Directives affecting domestic discrimination legislation are:
  - Council Directive [2000/43/EC](#) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

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- Council Directive [2000/78/EC](#) establishing a general framework for equal treatment in employment and occupation;
  - Council Directive [2004/113/EC](#) implementing the principle of equal treatment between men and women in the access to and supply of goods and services;
  - European Parliament and Council Directive [2006/54/EC](#) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). Also relevant in this context is Article 157 of the Treaty on the Functioning of the European Union.
6. In addition, in July 2008 the European Commission published a new draft Directive which would prohibit discrimination because of disability, religion or belief, sexual orientation and age, in access to goods and services, housing, education, social protection, social security and social advantage. This Directive is under negotiation.
  7. In February 2005, the Government set up the Discrimination Law Review to address long-term concerns about inconsistencies in the current discrimination law framework. The Review was tasked with considering the fundamental principles of discrimination legislation and its underlying concepts, and the opportunities for creating a clearer and more streamlined framework of equality legislation which produces better outcomes for those who experience disadvantage.
  8. In June 2007 the Department for Communities and Local Government published a consultation paper, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*. This was followed in June and July 2008 by two Command Papers published by the Government Equalities Office: *Framework for a Fairer Future – the Equality Bill (Cm 7431)*; and *The Equality Bill – Government Response to the Consultation (Cm 7454)*. In January 2009, the Government published the *New Opportunities White Paper (Cm 7533)* which, amongst other things, committed the Government to considering legislation to address disadvantage associated with socio-economic inequality.
  9. The following further documents were published by the Government Equalities Office during the passage of the Bill that became the Equality Act: in April 2009, *Equality Bill: Assessing the impact of a multiple discrimination provision (a summary of responses was published in October 2009)*; in June 2009, *Equality Bill: Making it work - Policy proposals for specific duties*; and in January 2010 *Equality Bill: Making it work - Ending age discrimination in services and public functions*.

### ***Summary***

10. The Act has two main purposes – to harmonise discrimination law, and to strengthen the law to support progress on equality.
11. The Act brings together and re-states all the enactments listed in paragraph 4 above and a number of other related provisions. It will harmonise existing provisions to give a single approach where appropriate. Most of the existing legislation will be repealed. The Equality Act 2006 will remain in force (as amended by the Act) so far as it relates to the constitution and operation of the Equality and Human Rights Commission; as will the Disability Discrimination Act 1995, so far as it relates to Northern Ireland.
12. The Act also strengthens the law in a number of areas. It:
  - places a new duty on certain public bodies to consider socio-economic disadvantage when making strategic decisions about how to exercise their functions;
  - extends the circumstances in which a person is protected against discrimination, harassment or victimisation because of a protected characteristic;

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- extends the circumstances in which a person is protected against discrimination by allowing people to make a claim if they are directly discriminated against because of a combination of two relevant protected characteristics;
- creates a duty on listed public bodies when carrying out their functions and on other persons when carrying out public functions to have due regard when carrying out their functions to: the need to eliminate conduct which the Act prohibits; the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and the need to foster good relations between people who share a relevant protected characteristic and people who do not. The practical effect is that listed public bodies will have to consider how their policies, programmes and service delivery will affect people with the protected characteristics;
- allows an employer or service provider or other organisation to take positive action so as to enable existing or potential employees or customers to overcome or minimise a disadvantage arising from a protected characteristic;
- extends the permission for political parties to use women-only shortlists for election candidates to 2030;
- enables an employment tribunal to make a recommendation to a respondent who has lost a discrimination claim to take certain steps to remedy matters not just for the benefit of the individual claimant (who may have already left the organisation concerned) but also the wider workforce;
- amends family property law to remove discriminatory provisions and provides additional statutory property rights for civil partners in England and Wales;
- amends the Civil Partnership Act 2004 to remove the prohibition on civil partnerships being registered in religious premises.

***Overview of the structure of the Act***

13. The Act consists of 16 Parts and 28 Schedules. The general arrangement of the Act is as follows:

<b><i>PART</i></b>	<b><i>SUMMARY</i></b>
Part 1	Imposes a duty on certain public bodies to have due regard to socio-economic considerations in making strategic decisions.
Part 2 including Schedule 1	Establishes the key concepts on which the Act is based including: <ul style="list-style-type: none"> <li>• the characteristics which are protected (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);</li> <li>• the definitions of direct discrimination (including because of a combination of two relevant protected characteristics), discrimination arising from disability, indirect discrimination, harassment and victimisation.</li> </ul> <p>These key concepts are then applied in the subsequent Parts of the Act.</p>
Part 3 including Schedules 2 and 3	Makes it unlawful to discriminate against, harass or victimise a person when providing a service (which includes the provision of goods or facilities) or when exercising a public function.
Part 4 including	Makes it unlawful to discriminate against, harass or victimise a person when disposing of (for example, by selling or letting) or managing premises.

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<b>PART</b>	<b>SUMMARY</b>
Schedules 4 and 5	
Part including Schedules 6, 7, 8 and 9	Makes it unlawful to discriminate against, harass or victimise a person at work or in employment services. Also contains provisions relating to equal pay between men and women; pregnancy and maternity pay; provisions making it unlawful for an employment contract to prevent an employee disclosing his or her pay; and a power to require private sector employers to publish gender pay gap (the size of the difference between men and women's pay expressed as a percentage) information about differences in pay between men and women. It also contains provisions restricting the circumstances in which potential employees can be asked questions about disability or health.
Part including Schedules 10, 11, 12, 13 and 14	Makes it unlawful for education bodies to discriminate against, harass or victimise a school pupil or student or applicant for a place.
Part including Schedules 15 and 16	Makes it unlawful for associations (for example, private clubs and political organisations) to discriminate against, harass or victimise members, associates or guests and contains a power to require political parties to publish information about the diversity of their candidates.
Part 8	Prohibits other forms of conduct, including discriminating against or harassing of an ex-employee or ex-pupil, for example: instructing a third party to discriminate against another; or helping someone discriminate against another. Also determines the liability of employers and principals in relation to the conduct of their employees or agents.
Part including Schedule 17	Deals with enforcement of the Act's provisions, through the civil courts (in relation to services and public functions; premises; education; and associations) and the employment tribunals (in relation to work and related areas, and equal pay).
Part 10	Makes terms in contracts, collective agreements or rules of undertakings unenforceable or void if they result in unlawful discrimination, harassment or victimisation.
Part including Schedules 18 and 19	Establishes a general duty on public authorities to have due regard, when carrying out their functions, to the need: to eliminate unlawful discrimination, harassment or victimisation; to advance equality of opportunity; and to foster good relations.  Also contains provisions which enable an employer or service provider or other organisation to take positive action to overcome or minimise a disadvantage arising from people possessing particular protected characteristics.
Part including Schedule 20	Requires taxis, other private hire vehicles, public service vehicles (such as buses) and rail vehicles to be accessible to disabled people and to allow them to travel in reasonable comfort.
Part including Schedule 21	Deals with consent to make reasonable adjustments to premises and improvements to let dwelling houses.
Part including	Establishes exceptions to the prohibitions in the earlier parts of the Act in relation to a range of conduct, including action required

<b>PART</b>	<b>SUMMARY</b>
Schedules 22 and 23	by an enactment; protection of women; educational appointments; national security; the provision of benefits by charities and sporting competitions.
Part 15	Repeals or replaces rules of family property law which discriminated between husbands and wives.
Part 16 including Schedules 24, 25, 26, 27 and 28	Contains a power for a Minister of the Crown to harmonise certain provisions in the Act with changes required to comply with EU obligations. It contains general provisions on application to the Crown, subordinate legislation, interpretation, commencement and extent. It also contains amendments to the Civil Partnership Act 2004 to allow civil partnership registrations to take place on religious premises that are approved for that purpose.

### ***Territorial extent and application***

#### ***General***

14. The Act forms part of the law of England and Wales. It also, with the exception of section 190 and Part 15, forms part of the law of Scotland. There are also a few provisions which form part of the law of Northern Ireland.
15. As far as territorial application is concerned, in relation to Part 5 (work) and following the precedent of the Employment Rights Act 1996, the Act leaves it to tribunals to determine whether the law applies, depending for example on the connection between the employment relationship and Great Britain. However, the Act contains a power to specify territorial application of Part 5 in relation to ships and hovercraft (section 81) and offshore work (section 82). In relation to the non-work provisions, the Act is again generally silent on territorial application, leaving it to the courts to determine whether the law applies. However, in a limited number of specific cases, express provision is made for particular provisions of the Act to apply (or potentially apply) outside the United Kingdom. Thus, section 29(9) provides for the prohibitions in respect of the provision of services or the exercise of public functions to apply in relation to race and religion or belief to the granting of entry clearance, even where the act in question takes place outside the United Kingdom. Also, section 30 contains a similar power to that in Part 5 to specify the territorial application of the services provisions of Part 3 in relation to ships and hovercraft.

#### ***Scotland***

16. The Act contains provisions that triggered the Sewel Convention in relation to Scotland. The Scottish Ministers can already impose specific equality duties on Scottish public bodies and on the devolved functions of cross-border bodies following appropriate consultation. Provisions in this Act replicate this situation. The Scottish Ministers will be able to impose specific duties on relevant Scottish bodies (sections 153 and 154) and by order to amend Part 3 of Schedule 19 which lists the relevant Scottish bodies to which the general public sector equality duty applies (section 151). A procedure will be specified in relation to imposition of specific duties on cross-border Scottish bodies added to Schedule 19 by a Minister of the Crown when a cross-border body is added to Part 4 of that Schedule. The procedure enables the Scottish Ministers to impose specific duties in relation to the devolved Scottish functions of the cross-border bodies. The Act also contains a number of provisions which confer additional powers on the Scottish Ministers to make secondary legislation, for example: a power for the Scottish Ministers to add a relevant Scottish body to the bodies subject to the duty in section 1 to consider socio-economic inequalities and to make consequential amendments (section 2); the power to make regulations setting out a process for the making of adjustments to common parts of residential premises in Scotland (section 37); the power to make

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procedural rules for the hearing of disability discrimination claims by the Additional Support Needs Tribunals for Scotland (paragraph 10 of Schedule 17); the power, on the application of the governing body of an educational establishment (and if satisfied that it would be educationally beneficial) to modify an endowment whose benefits are restricted to persons of one sex (paragraph 2 of Schedule 14); the power to prescribe the regulator, qualifications body and relevant qualifications in Scotland (section 96); the power to make transitional exemption orders for single-sex education authorities or grant-aided schools in Scotland which alter their admissions arrangements so as to cease being a single-sex establishment (paragraph 4 of Schedule 11); a power to make regulations in relation to designated transport facilities (section 162).

17. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. A Legislative Consent Motion in respect of the Act was passed by the Scottish Parliament on 28 January 2010.

### ***Wales***

18. Under the Welsh devolution settlement the subject matter of equal opportunities is not devolved to Wales. Section 2 of the Act provides a power for the Welsh Ministers to add any relevant Welsh body to the bodies subject to the duty in section 1 to consider socio-economic inequalities and to make consequential amendments. The Act also confers powers on the Welsh Ministers in relation to the public sector equality duty. Sections 153 and 154 give Welsh Ministers power to impose specific duties on relevant Welsh bodies and section 151 gives them power by order to amend Part 2 of Schedule 19 which specifies relevant Welsh bodies subject to the general public sector equality duty. A procedure is specified in relation to the imposition of specific duties on cross-border Welsh bodies added to Schedule 19 by a Minister of the Crown. The procedure enables the Welsh Ministers to impose specific duties in relation to the devolved Welsh functions of the cross-border bodies or provide for specific duties to be imposed by a Minister of the Crown only after consultation with the Welsh Ministers.

### ***Northern Ireland***

19. Equal opportunities and discrimination are “transferred matters” under the Northern Ireland Act 1998. As such, with a few exceptions the Act does not form part of the law of Northern Ireland. As a result, the Disability Discrimination Act 1995 (as amended), which extends throughout the United Kingdom, will remain in force for Northern Ireland as the repeal of that Act only forms part of the law of England and Wales and Scotland.
20. [Section 82](#) enables an Order in Council to provide that Northern Ireland legislation applies in the case of persons in offshore work; and the provisions of section 105 amend the Sex Discrimination (Election Candidates) Act 2002 with the effect that the extension of the expiry date for women-only shortlists will apply in Northern Ireland as well as Great Britain.

### ***Transposition of EU Directives***

21. The Act does not itself implement EU Directives for the first time. It replaces earlier legislation which has implemented EU Directives, most of which is set out in paragraph 4 above.

### ***Commencement***

22. The following provisions will come into force on the day on which the Act is passed:
  - the whole of Part 16 except sections 202 (which amends the Civil Partnership Act 2004 to allow civil partnership registrations to take place on religious premises),

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206 (which brings Schedule 25 into effect) and 211 (which brings the Schedules of amendments and repeals into effect);

- section 186(2) which repeals Schedule 20 (on rail vehicle accessibility) if that Schedule is not brought into force before the end of 2010.

The remainder will be brought into force on a day or days appointed by commencement order made by a Minister of the Crown, or in the case of Part 15, an order made by the Lord Chancellor.