

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 16: General and Miscellaneous**

#### ***Section 202: Civil partnerships on religious premises***

##### **Effect**

630. 1. This section amends section 6 of the Civil Partnership Act 2004, by repealing the prohibition on civil partnerships being registered in religious premises in England and Wales and repealing the definition of “religious premises”.
631. 2. This section also amends section 6A of the Civil Partnership Act 2004, which contains a power to make regulations about the approval of premises for the registration of civil partnerships, by making clear that such regulations may provide for different premises to be approved for registration of civil partnerships from those approved for registration of civil marriages, and for different provision to be made for different kinds of premises. In particular it enables the regulations to set out, in relation to particular denominations, who has the authority to decide whether civil partnerships can be registered on any of their premises, and makes clear that nothing in the Civil Partnership Act 2004 obliges any religious organisation to host civil partnerships if they do not wish to.
632. 3. It also inserts into section 6A definitions of “civil marriage” and “religious premises”. Both definitions are the same as existing definitions in the Civil Partnership Act 2004.

##### **Background**

633. 4. The Civil Partnership Act 2004 included an express prohibition on civil partnership registrations taking place in religious premises. The regulations governing the approval of premises for the registration of civil partnerships are the Marriages and Civil Partnerships (Approved Premises) Regulations 2005. They currently align provision for civil partnerships with that for civil marriage.

##### **Examples**

- Regulations under section 6A could provide that, for example, Church of England premises may be approved for the registration of civil partnerships only with the consent of the General Synod of the Church of England.
- A couple seeking to register their civil partnership in a church that had not been approved for that purpose could not require those responsible for the church to allow them to hold the registration there. Nor could they require the denomination responsible for the church to seek approval to enable this.

### **Section 203: Harmonisation**

#### **Effect**

634. This section enables a Minister of the Crown by order to amend the Act and the Equality Act 2006, to ensure consistency across the legislation where changes required by European law would otherwise result in inconsistent provision. Section 2(2)(a) of the European Communities Act 1972 allows a Minister by regulations or order to give effect to a right or obligation arising out of an EU law provision. Where provisions of this Act and equality law of the UK more generally deal with a sector on a single basis some of the matters covered may not be within the reach of EU law and so outside section 2(2)(a). This arises for instance in the case of nationality and colour which are not dealt with under the EU law provisions on race discrimination but are covered by the UK provisions. Section 2(2)(b) of the European Communities Act 1972 would not allow amendment of all relevant parts of the legislation in these circumstances, because the change required in respect of, say nationality or colour, would not be consequential on or arising out of the EU obligation. In order to retain the unitary approach to discrimination law it is necessary to have a power such as this so that in appropriate cases amendments can also be made to those areas of the Act unaffected by new EU law obligations.
635. A Minister may use this power only after consulting interested parties on the Government's proposals; and where the consultation prompts the Minister to consider changes to those proposals, these changes must be the subject of such further consultation as the Minister considers appropriate. Following the consultation, the Minister must act in accordance with the requirements in section 204.
636. A Minister must report to Parliament every two years on the use of this power.

#### **Background**

637. This is a new provision designed to ensure that the areas of the Act that are covered by European law and those that are domestic in origin do not get out of step, as was the case with the previous legislation.

#### **Example**

- A future European Court of Justice judgement on the Race Directive requires an amendment to alter the definition of indirect discrimination. This power could be used to ensure that any such amendment applies to the "colour and nationality" elements of race in the Act, as well as those in relation to which EU law applies.

### **Section 204: Harmonisation: procedure**

#### **Effect**

638. This section sets out the procedure to be followed by a Minister following a consultation under section 203.
639. The Minister must lay an explanatory report on the consultation findings alongside any draft order being laid before each House of Parliament for debate and approval. The explanatory report must include the reasons for making harmonising provision, and why the conditions for using the power in section 203 are satisfied. It must also set out details of the consultation, the responses and any changes that were made in response to them. This section also provides protection against disclosure of information in representations provided on a confidential basis.
640. A Minister must not lay any instrument before Parliament until the minimum consultation period of 12 weeks has expired.

### ***Section 205: Crown application***

#### **Effect**

641. This section sets out how the Act applies to Ministers, government departments and certain statutory bodies – collectively known as the Crown. The section does not affect the Sovereign in her private capacity.

#### **Background**

642. This section replicates the effect of similar provisions in previous legislation. The principle is that the machinery of government, both elected and administrative, should be subject to the Act in the same way as everybody else, unless there are good reasons for it not being. The section also replicates the arrangements in the previous discrimination legislation for taking proceedings against the Crown.

#### **Example**

- A government department as employer must not discriminate against an employee because of race; just as any other employer is prohibited from doing so under the Act.

### ***Section 206: Information society services***

#### **Effect**

643. This section gives effect to Schedule 25, which applies the Act to information society service providers established in Great Britain (see the explanatory notes to Schedule 25).

#### **Background**

644. The provisions in Schedule 25 are new.

### ***Section 207: Exercise of power***

#### **Effect**

645. This section makes provision for the powers to make secondary legislation under the Act. Unless it is stated otherwise, they will be exercised by a Minister of the Crown and be statutory instruments. It also provides that orders and regulations may deal with different situations differently and include consequential and other provisions dealing with transition to the new provisions.

646. In some cases, the power to make consequential provision can be exercised to amend an enactment, including in relation to section 197 (age) and section 216 (commencement) of this Act. For example, this power would enable a consequential amendment to be made to this Act where it is necessary to update a reference to other legislation that has been passed since this Act received Royal Assent but before it comes into force.

647. The section also enables matters that need to be dealt with on commencement of a particular section, such as transitional provisions and consequential amendments, to be dealt with in more than one order and, if necessary, at different times and by different procedures. For example, it would enable consequential amendments to primary legislation, which require an affirmative resolution, to be dealt with in a separate commencement order or orders from other provisions which do not require a parliamentary procedure.

648. This section also provides that the negative parliamentary procedure applies to an Order in Council made under section 82.

## **Background**

649. As with any Act delegating the power to legislate, this section is needed to set out the arrangements for how Ministers are to exercise such delegated power. This is a large Act with a number of provisions that confer power to amend primary legislation. Much of the Act involves consolidation and harmonisation of previous legislation, so that the range of possible consequential amendments is likely to be limited. It is thought convenient to specify in one place those powers to amend primary legislation that include a power to make consequential amendments to primary legislation. It is also thought that having a general broad power of the kind often found in other legislation would create duplication in those cases where it is considered that power to make consequential amendments is required and might raise doubt in those cases where it is not. The power in the form used in this Act allows for separate orders for consequential amendments and will in practice produce the same result as a general consequential power of the usual kind would.

### ***Section 208: Ministers of the Crown, etc.***

#### **Effect**

650. This section establishes which parliamentary procedures apply to the regulations and orders which can be made by Ministers of the Crown or the Treasury under the Act.

#### **Background**

651. In common with any Act containing powers to make secondary legislation, this section is needed to set out the arrangements for how Parliament is to control the use of powers in the Act. It provides for any instrument amending any Act of Parliament (including this Act), any Act of the Scottish Parliament or Act or Measure of the Welsh Assembly to be made only using the affirmative resolution procedure. There are some exceptions. In a few other cases (for example, where regulations under section 78 are made to introduce a requirement on employers to publish their gender pay gap), the affirmative resolution procedure must also be used and the relevant order or regulations must be approved by both Houses of Parliament before they can come into force.

### ***Section 209: The Welsh Ministers***

#### **Effect**

652. This section establishes the parliamentary procedures that apply to regulations and orders under the Act made by Welsh Ministers.
653. A few instruments, including those which impose the socio-economic duty or the public sector equality specific duties on public authorities or cross-border authorities, must be considered by the National Assembly for Wales before they can come into force. The rest do not automatically need to be considered by the Assembly but in most cases they can be opposed, in which case a debate may be held.

#### **Background**

654. In common with any Act containing powers to make secondary legislation, this section is needed to set out who is to make regulations and orders (usually a Minister), how their effect may vary according to particular circumstances and the arrangements for Assembly control over their exercise.

### ***Section 210: The Scottish Ministers***

#### **Effect**

655. This section establishes the parliamentary procedures that apply to regulations and orders under the Act made by Scottish Ministers.
656. A few instruments, including those which impose the socio-economic duty or public sector equality specific duties on public authorities or cross-border authorities, must be debated by the Scottish Parliament before they can come into force. The rest do not automatically need to be debated by the Scottish Parliament but in most cases they can be opposed, in which case a debate may be held.

#### **Background**

657. In common with any Act containing powers to make secondary legislation, this section is needed to set out who is to make regulations and orders (usually a Minister), how their effect may vary according to particular circumstances and the arrangements for parliamentary control over their exercise.

### ***Section 211: Amendments, repeals and revocations***

#### **Effect**

658. This section gives effect to Schedules 26 and 27. Schedule 26 contains amendments to other primary legislation which are necessary as a consequence of the Act's provisions. Schedule 27 lists the provisions in previous legislation which will cease to have effect when the relevant provisions of the Act are brought into force.

### ***Section 212: General interpretation***

#### **Effect**

659. This section explains what is meant by various words and phrases which appear in more than one Part of the Act.

#### **Background**

660. While a key objective of the Act is to present discrimination law in plain language and most words used in the Act have an ordinarily obvious meaning, it is sometimes necessary to make clear the specific legal meaning of some words and phrases that are used several times in the Act.
661. Subsection (5), which expands the meaning of "detriment" in subsection (1), makes clear that although the express prohibition of sexual orientation harassment does not apply for example to schools, a pupil who is bullied by a school employee as a result of his or her sexual orientation may nevertheless bring a claim of direct discrimination if the bullying caused the pupil to suffer a "detriment".
662. Other important words and phrases appear in only one Part or Chapter of the Act. Where necessary these are defined in the Part or Chapter where they appear. Others are not defined at all, either because they are clear, or because they are to be interpreted in accordance with the Interpretation Act 1978.

### ***Section 213: References to maternity leave, etc.***

#### **Effect**

663. This section explains what is meant by the different periods of maternity leave which are referred to in the Act.

## **Background**

664. The rights of female employees to statutory maternity leave are provided for in the Employment Rights Act 1996. Compulsory maternity leave, ordinary maternity leave and additional maternity leave are the three types of maternity leave provided for in sections 72(1), 71(1) and 73(1) of that Act respectively.

### ***Section 214: Index of defined expressions***

#### **Effect**

665. This section gives effect to Schedule 28, which provides an index of the expressions that are defined in the Act.

### ***Section 215: Money***

#### **Effect**

666. This section is included to comply with rules of procedure on financial matters. It does not, of itself, authorise expenditure that is not covered elsewhere in the Act.

### ***Section 216: Commencement***

#### **Effect**

667. This section sets out when provisions of the Act come into effect. Certain provisions came into force automatically on the day on which the Act received Royal Assent, for example the sections relating to commencement, short title, subordinate legislation and interpretation. The rest of the Act will be brought into force by commencement orders made by a Minister of the Crown with the exception of the sections related to family property (Part 15) which will be brought into force by a commencement order made by the Lord Chancellor. The orders will set out the date on which specific provisions start to have legal effect.

### ***Section 217: Extent***

#### **Effect**

668. This section explains that all of the provisions of the Act are part of the law of England and Wales.

669. All of the provisions of the Act, except for section 190 (improvements to let dwelling houses) and Part 15 (family property), are also part of the law of Scotland.

670. In relation to Northern Ireland, the Act is not part of Northern Ireland's law, except for the following:

- Section 82 (offshore work);
- Section 105(3) and (4) (expiry of Sex Discrimination (Election Candidates), Act 2002);
- Section 199 (abolition of presumption of advancement).

### ***Section 218: Short title***

#### **Effect**

671. This section sets out the short title of the Act.

### ***Schedule 1: Disability: supplementary provision***

#### **Effect**

672. **Part 1** of this Schedule clarifies the definition of disability in section 6 and provides a number of regulation-making powers to enable the definition to be amended at a later date if required.
673. **Part 2** describes what can be included in guidance about the definition of disability and prescribes adjudicating bodies which are obliged to take account of guidance, the role of Ministers in developing and publishing guidance and the associated parliamentary procedures.

#### **Background**

674. This Schedule replaces similar provisions in the Disability Discrimination Act 1995. However, the Act introduces one change by removing a requirement to consider a list of eight capacities, such as mobility or speech, hearing or eyesight, when considering whether or not a person is disabled. This change will make it easier for some people to demonstrate that they meet the definition of a disabled person. It will assist those who currently find it difficult to show that their impairment adversely affects their ability to carry out a normal day-to-day activity which involves one of these capacities.

#### **Example**

675. A man with depression finds even the simplest of tasks or decisions difficult, for example getting up in the morning and getting washed and dressed. He is also forgetful and can't plan ahead. Together, these amount to a "substantial adverse effect" on his ability to carry out normal day-to-day activities. The man has experienced a number of separate periods of this depression over a period of two years, which have been diagnosed as part of an underlying mental health condition. The impairment is therefore considered to be "long-term" and he is a disabled person for the purposes of the Act.

### ***Schedule 2: Services and public functions: reasonable adjustments***

#### **Effect**

676. This Schedule explains how the duty to make reasonable adjustments in section 20 applies to a service provider or person exercising a public function where a disabled person is placed at a substantial disadvantage. It includes definitions of "substantial disadvantage" and "physical features" and stipulates that the duty does not require fundamental changes to the nature of the service. As the duty is owed to disabled persons generally, it is an anticipatory duty which means service providers and people exercising public functions must anticipate the needs of disabled people and make appropriate reasonable adjustments.
677. This Schedule also explains how the duty to make reasonable adjustments in section 20 applies to operators of transport vehicles. It specifies that the duty applies in different ways to different types of vehicle. It provides that a transport service provider is not required to make adjustments to the physical features of vehicles or to whether vehicles are provided, except in specified circumstances. It provides a power to make regulations to allow further amendments to be made to this paragraph in the future.

#### **Background**

678. This Schedule replaces similar provisions in the Disability Discrimination Act 1995.

## **Examples**

- The manager of a large shop in a national chain installs a ramp, automatic entry doors, hearing induction loops and waives the “no dogs policy” in respect of assistance dogs, to comply with the duty to make reasonable adjustments.
- A police officer is carrying out a public function when interviewing a witness who is deaf. Arranging a British Sign Language / English interpreter for the interview might be a reasonable adjustment to make.
- It might be a reasonable adjustment for a rail service provider to arrange an alternative catering service for disabled people who cannot get to the buffet or dining car, or to provide assistance from staff where passengers have a sensory or physical impairment.

## ***Schedule 3: Services and public functions: exceptions***

679. This Schedule sets out exceptions from the prohibitions on discriminating against, harassing or victimising a person when providing services or exercising a public function set out in section 29 of the Act.

## **Part 1: Constitutional matters: paragraphs 1-5**

### **Effect**

680. **Part 1** of this Schedule provides that the prohibitions do not apply to:
- the exercise of parliamentary functions and functions linked to the undertaking of parliamentary business;
  - preparing, making, approving or considering primary legislation or particular forms of secondary legislation, including legislation of the Scottish Parliament and the National Assembly for Wales;
  - exercising judicial functions or deciding not to commence or continue criminal proceedings.
681. **Part 1** also provides that the prohibition on discriminating against a person when exercising a public function does not apply to the armed forces in respect of the protected characteristics of age, disability, gender reassignment and sex when the reason for such acts is to ensure combat effectiveness.
682. It also provides that the prohibitions on discriminating against, harassing or victimising a person when providing a service or exercising a public function do not apply to the Security Service, the Security Intelligence Service, the Government Communications Headquarters (GCHQ) or any part of the armed forces assisting GCHQ.

### **Background**

683. **Part 1** of this Schedule is designed to replicate the effect of exceptions contained in previous legislation where discrimination, harassment and victimisation in the exercise of a public function are already prohibited, and apply the exception to relevant protected characteristics.

### **Examples**

- Activity related to the preparation and making of primary legislation, such as this Act, would be excepted from the prohibition on discrimination. However, activity related to the making of a bye-law by a local authority would not be within the exceptions in this Schedule.
- A decision of a judge on the merits of a case would be within the exceptions in this Schedule. An administrative decision of court staff, about which contractor to use to carry out maintenance jobs or which supplier to use when ordering stationery would not be.



## **Part 2: Education**

### **Education: paragraph 6**

#### **Effect**

684. Paragraph 6 provides that the prohibitions on discrimination in Part 3 do not, so far as they relate to age, or religion or belief, apply to a local authority performing its function under sections 13 and 14 of the Education Act 1996, which relate to providing primary and secondary schools for children in a given catchment area.

#### **Background**

685. Similar exceptions for religion or belief were in the Equality Act 2006. The age exceptions are new because of the extension of age discrimination law in this Act.
686. The reason for the provision in paragraph 6 is to prevent a local authority being bound to provide schools for pupils of different faiths, or no faith, or for particular age groups, in every catchment area.

#### **Examples**

- Catholic parents will not be able to claim that their local authority is discriminating unlawfully if there is no Catholic school in their catchment area, or if there are fewer places in Catholic schools than in Church of England schools.
- Parents of secondary age children will not be able to claim that it is age discrimination if their children have to travel further than younger ones to reach their school.

### **Education: paragraph 7**

#### **Effect**

687. Paragraph 7 makes similar provision for Scotland as is made by paragraph 6 for England and Wales.

### **Education: paragraph 8**

#### **Effect**

688. This paragraph provides an exception from the prohibition on sex discrimination in Part 3 in relation only to the establishment of a school. A local authority will not be prevented from establishing single-sex schools, but must provide similar numbers of places for boys and girls.

#### **Background**

689. This provision is designed to replicate the effect of provisions in the Sex Discrimination Act 1975.

### **Education: paragraph 9**

#### **Effect**

690. Paragraph 9 excepts from the prohibition on age discrimination in Part 3 (to the extent that it is not excepted elsewhere), the exercise by any public authority of functions in a number of areas that relate to schools.

#### **Background**

691. These exceptions ensure that policies and practices which relate to things which schools are allowed to do under the Act do not become unlawful when carried out by public authorities.

#### **Examples**

- School admissions policies can continue to be based on the ages of prospective pupils.

- School transport can be provided for children of a particular age only.

### **Education: paragraph 10**

#### Effect

692. Paragraph 10 provides an exception for local authorities from the provisions requiring reasonable adjustments in Part 3, in respect of their activities in relation to school education, from the requirement to alter physical features of premises when making reasonable adjustments for disabled people.

#### Background

693. These exceptions are designed to replicate the effect of provisions in the Disability Discrimination Act 1995 and ensure that local authorities, when carrying out their education functions, do not have to take account of altering physical features since such things will fall within the requirements on them to produce accessibility strategies as set out in Schedule 12. This mirrors the requirements placed on schools themselves.

### **Education: paragraph 11**

#### Effect

694. Paragraph 11 provides an exception from the prohibition on religious or belief-related discrimination in Part 3 (to the extent that it is not excepted elsewhere), in relation to the exercise by any public body of functions in a number of areas that relate to faith and non-faith educational institutions. In relation to all schools those areas are the curriculum, collective worship, school transport and the establishment, alteration and closure of schools; and in relation to schools which have a religious ethos the exception also applies to admission of pupils and the responsible body of such a school.

#### Background

695. This provision is designed to replicate the effect of provisions in Part 2 of the Equality Act 2006. It ensures that policies and practices which relate to things which schools are allowed to do under the Act do not become unlawful when carried out by public authorities.

#### Examples

- A public body will not be open to claims of religious discrimination as a result of its decision to establish, alter or close a faith school.
- A local authority can select a person of a particular religion or belief to be a governor of a school with a religious ethos.

## **Part 3: Health and care**

### **Blood services: paragraph 13**

#### Effect

696. Paragraph 13 provides that it is not unlawful for a person operating a blood service to refuse to accept someone's donation of blood provided they have reliable evidence that accepting it would put the public or the individual donor at risk and that such a refusal would not be unreasonable.
697. A blood service is a service that collects donations of human blood and blood components to use for medical purposes, for example the NHS Blood and Transplant Special Health Authority.
698. "Blood" includes components, for instance plasma or red blood cells.

## **Background**

699. This provision is designed to replicate the effect of Regulation 28 of the Equality Act (Sexual Orientation) Regulations 2007, and extend the exception to the other protected characteristics. It also provides that a refusal to allow somebody to donate blood or blood components because of a risk to the donor's own health would not be unlawful.

## **Examples**

- If there is evidence that people who have been sexually active in a particular country are more likely to be infected with HIV, the operator of the blood service can refuse to accept donations of blood or blood components from people who have been sexually active there, even if that disproportionately affects members of a particular nationality and so might otherwise be unlawful indirect discrimination because of race.
- If there is evidence that women who have recently given birth are likely to suffer detrimental effects from giving blood or blood components, then a blood service can refuse to accept donations from them. This would not be unlawful direct discrimination because of maternity.

## **Health and safety: paragraph 14**

### Effect

700. [Paragraph 14](#) provides that it is not unlawful for a person to discriminate against a pregnant woman by refusing to provide her with a service or only providing the service to her on certain conditions if he or she reasonably believes that to do otherwise would create a risk to her health or safety and he or she would take similar measures in respect of persons with other physical conditions.

### Background

701. Provisions making it unlawful for a person to discriminate against a pregnant woman in the provision of services were introduced into the Sex Discrimination Act 1975 by the Sex Discrimination Act 1975 (Amendment) Regulations 2008. Those provisions contained an equivalent exception on health and safety grounds.

### Examples

- A leisure centre could refuse to allow a pregnant woman to use certain gym equipment (for example, a rowing machine) after a certain point in her pregnancy if it reasonably believed that allowing her to use the equipment would create a risk to her health and safety and it would also refuse, for example, to allow a man with a serious heart condition to use the equipment.
- An airline could refuse to allow a pregnant woman to travel beyond her 35th week of pregnancy if it reasonably believed that allowing her to travel would create a risk to her health and safety and it would also refuse people with other physical conditions that affect their health and safety to travel.

## **Care within the family: paragraph 15**

### Effect

702. [Paragraph 15](#) is designed to ensure that people who provide foster care, or other similar forms of care, in their own home are not subject to the prohibitions on discriminating against, harassing or victimising a person in the provision of services while providing that care.

703. It applies irrespective of whether or not the person is paid for providing the care service.

### Background

704. Similar provisions existed in previous legislation for race, religion or belief and sexual orientation. This provision extends the exception to all of the protected characteristics.

### Examples

- A Muslim family could choose to foster only a Muslim child. This would not constitute discrimination against a non-Muslim child.
- A woman who is the main carer for her mother decides to provide care for another person too, and decides to restrict any offer of care to another woman. This would not constitute discrimination against a man who needed similar care.

## **Part 4: Immigration**

### **Disability: paragraph 16**

#### **Effect**

705. **Paragraph 16** provides an exception from the prohibition on discriminating against a person when providing a service or exercising a public function because he or she has a disability, in relation to certain immigration decisions, including making a decision not to allow someone to enter the country or a decision not to allow him or her to remain in the country. However, this exception only applies where the decision is necessary for the public good.

#### **Background**

706. This is a new exception. An express exception was not previously needed since the Disability Discrimination Act 1995 did not prohibit direct disability discrimination in the provision of services or exercise of a public function and because disability-related discrimination, which did apply to the provision of services or exercise of a public function, could be justified if it was necessary for a number of reasons, including not to endanger the health or safety of any person.

### **Nationality and ethnic or national origins: paragraph 17**

#### **Effect**

707. **Paragraph 17** provides an exception from the prohibition on discriminating against a person in the provision of services or the exercise of a public function because of his or her ethnic or national origins or nationality, in relation to the exercise of immigration functions.

#### **Background**

708. This is designed to replicate the effect of a provision in the Race Relations Act 1976.

#### **Examples**

- Different visa requirements for nationals of different countries, which arise for a variety of historical and political reasons, do not constitute unlawful race discrimination.
- Granting asylum to members of a minority ethnic group being targeted by the majority ethnic group in a country would similarly not be unlawful discrimination.

### **Religion or belief: paragraph 18**

#### **Effect**

709. **Paragraph 18** provides an exception from the prohibition on discriminating against a person in the provision of services or the exercise of a public function because of their religion or belief in relation to decisions not to allow someone to enter the country or to remove someone from the country, if that decision is made on the grounds that it is conducive to the public good to exclude that person from the country or it is not desirable to permit the person to remain in United Kingdom.

710. It also provides an exception for decisions relating to an application for entry clearance or leave to enter to cover people entering the country to provide services in connection with religion or belief, such as a Minister or clergyman.

#### **Background**

711. This is designed to replicate the effect of provisions in the Equality Act 2006.

#### Examples

- The immigration services may differentiate between certain religious groups in order to allow a person such as a minister of religion to enter the UK to provide essential pastoral services, without being challenged by groups which could operate against the public interest, but which might also claim to represent a religion.
- A decision to prevent a person who holds extreme religious views from entering or remaining in the country if his or her presence is not conducive to the public good, for example, preachers who use the pulpit to incite violence, would not constitute unlawful discrimination because of religion or belief.

### **Part 5: Insurance, etc.**

#### **Services arranged by employer: paragraph 20**

##### **Effect**

- Paragraph 20 provides an exception to section 29 (provision of services, etc) for group insurance schemes and group personal pensions (“group schemes”). As group schemes are offered to employees as part of the employment relationship:
- the employer is responsible for ensuring that the provision of benefits under group schemes complies with the requirements of Part 5 (work); and
- the insurer or pension provider is not responsible for ensuring that the provision of benefits complies with the requirements of Part 3 (services and public functions).

##### **Background**

712. Group policies and schemes are arrangements between an employer and an insurer for the benefit of the employees, their partners and their dependants. They are entered into not on the basis of the individual characteristics of each employee but on the basis of the employer’s business and the profile of the employees. Employees can sign up to the benefits under such policies on standard terms that are the same for all employees. This is a new provision but one that reflects current practice.

##### **Example**

713. An employer enters into a contract with an insurer for the provision of health insurance to employees. As the health insurance is part of the package of benefits provided by the employer to the employee, the employer must ensure that the provision complies with Part 5. So, if benefits under the health insurance policy differ between men and women, the employer may have to justify the difference by reference to paragraph 20 of Schedule 9 (insurance contracts, etc.).

#### **Disability: paragraph 21**

##### **Effect**

714. **Paragraph 21** provides an exception from the prohibition on discriminating against disabled people in the provision of services connected with insurance business (as defined) where the decision in question is based on relevant and reliable information. It enables insurance providers to offer different premiums and benefits to disabled people where it is reasonable to do so.

##### **Background**

715. These provisions are designed to replicate the effect of provisions in the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005. This exception has been carried forward into the Act because it is

recognised that insurers may need to distinguish between people on the basis of the risks against which they are insuring. The consensus is that it works well.

#### Examples

- A disabled person with cancer applies for a life insurance policy. The insurance company refuses to provide life insurance cover based on a medical report from the person's doctor which provides a prognosis on the person's condition.
- An insurer charges higher premiums for travel insurance for a person with a particular disability because actuarial evidence suggests that people with this disability are at increased risk of having a heart attack.

#### **Sex, gender reassignment, pregnancy and maternity: paragraph 22**

716. [Paragraph 22](#) provides exceptions to allow insurers to calculate different premiums and benefits for men and women, relating to pregnancy and maternity or gender reassignment on the basis of actuarial data.
717. Sub-paragraph (1) provides an exception for an annuity, life assurance policy, accident insurance policy or similar matter which involves the assessment of risk. Under this exception, the difference in treatment must be done by reference to actuarial or other reliable data, and must be reasonable in all the circumstances. Sub-paragraph (2) applies to a contract of insurance, or for related financial services, entered into before 6 April 2008. In such a case, the exception only applies in relation to differences in premiums and benefits applicable to a person under that contract.
718. Sub-paragraph (3) applies sub-paragraph (1) to contracts of insurance, or for related financial services, entered into on or after 6 April 2008. It permits differences in treatment which are proportionate having regard to relevant and accurate data, which the insurance industry has compiled, published and updated in accordance with Treasury guidance. For contracts entered into on or after 22 December 2008, the differences must not result from costs related to a woman's pregnancy or her having given birth within the previous 26 weeks.
719. Insurers must calculate premiums and benefits based on the sex of the person seeking such services (sub-paragraph (5)).

#### Background

720. This paragraph is designed to replicate the effect of section 45 of the Sex Discrimination Act 1975 in respect of insurance and financial services. Services relating to premises or education are dealt with under Parts 4 and 6 of the Act.

#### Example

- An insurer can lawfully quote higher motor insurance premiums for young men if this is based on actuarial and statistical up-to-date data that is published so that customers can see the information that justifies proportionate differences in male and female premiums and benefits.

#### **Existing insurance policies: paragraph 23**

##### Effect

721. [Paragraph 23](#) provides an exception so that insurers will not be discriminating unlawfully if they continue to apply terms of insurance policies entered into before the date on which this paragraph comes into force. Where pre-existing policies are renewed, or have their terms reviewed, on or after the date this paragraph comes into force, the exception no longer applies to them.

##### Background

722. This paragraph provides an exception for existing insurance policies, which may not comply with subsequently altered discrimination law. But where such a policy is renewed or reviewed, it would need to be amended to meet the requirements of this Act.

## Examples

- An existing life insurance policy which was taken out in 1989, and has not been subsequently renewed or reviewed, continues to be lawful and does not have to be altered to comply with current relevant discrimination law.
- A company has a death in service benefit insurance policy for its employees which has been in place for many years and whose terms have not been reviewed. It benefits from the exception unless and until the policy is reviewed or renewed.

## Part 6: Marriage

### Gender reassignment: England and Wales: [paragraph 24](#)

#### Effect

723. [Paragraph 24](#) contains exceptions from the general prohibition of gender reassignment discrimination in section 29 of the Act for the religious solemnisation of marriages.
724. A person with a full Gender Recognition Certificate acquired under the Gender Recognition Act 2004 is able to marry someone of the opposite gender to his or her acquired gender. The Marriage Act 1949 imposes an obligation on a clergyman in the Church of England or a clerk in Holy Orders of the Church in Wales to marry anyone residing in his or her parish, or who fits other stated connection criteria. However, section 5B of that Act contains an exception where the clergyman or clerk reasonably believes one of the parties' gender is acquired under the Gender Recognition Act. The legislation that preceded this Act did not prohibit discrimination because of gender reassignment in the field of public functions. As this Act now prohibits this, [paragraph 24](#) provides an exception for Anglican clergy in England and Wales, as well as those of other faiths in England and Wales whose consent is required to conduct marriages in religious premises registered under the Marriage Act, and others who may solemnise marriages.

#### Background

725. This paragraph is new. There was previously no prohibition on discriminating against people because of gender reassignment in the exercise of public functions, hence there was no exception in relation to solemnising marriages.

#### Example

- A clergyman in the Church of England advises an engaged couple that he will not solemnise their marriage as he reasonably believes that one of the couple has acquired his or her gender under the Gender Recognition Act 2004. This would not be unlawful discrimination because of gender reassignment.

### Gender reassignment: Scotland: [paragraph 25](#)

#### Effect

726. [Paragraph 25](#), which applies to Scotland, contains a similar exception to [paragraph 24](#).
727. An "approved celebrant" is not obliged to marry a person if he or she reasonably believes the person to have acquired his or her gender under the Gender Recognition Act 2004. An "approved celebrant" is a person defined in the Marriage (Scotland) Act 1977 as a person entitled under that Act to solemnise religious marriages.

#### Background

728. This paragraph is new. There is currently no prohibition on discriminating against people because of gender reassignment in the exercise of public functions, hence there is no exception in relation to solemnising marriages.

#### Example

- A Roman Catholic priest, who is recognised as an “approved celebrant” in Scotland, advises an engaged couple that he will not solemnise their marriage as he reasonably believes that one of the couple has acquired his or her legal gender under the Gender Recognition Act 2004. This would not be unlawful discrimination because of gender reassignment.

## **Part 7: Separate and single services**

### **Separate services for the sexes: paragraph 26**

#### **Effect**

729. This paragraph contains exceptions to the general prohibition of sex discrimination which allow the provision of separate services for men and women.
730. A provider can deliver separate services for men and women where providing a combined service would not be as effective. A provider can deliver separate services for men and women in different ways or to a different extent where providing a combined service would not be as effective and it would not be reasonably practicable to provide the service otherwise than as a separate service provided differently for each sex. In each case such provision has to be justified.
731. The exceptions also cover the exercise of public functions in respect of the “back-room” managerial, administrative and finance decisions which allow separate services to be provided.

#### **Background**

732. This paragraph replaces similar provisions in the Sex Discrimination Act 1975 that only cover public functions. The exceptions have been extended to cover all services, whether privately or publicly provided.

#### **Example**

- It would not be unlawful for a charity to set up separate hostels, one for homeless men and one for homeless women, where the hostels provide the same level of service to men and women because the level of need is the same but a unisex hostel would not be as effective.

### **Single-sex services: paragraph 27**

#### **Effect**

733. This paragraph contains exceptions to the general prohibition of sex discrimination to allow the provision of single-sex services.
734. Single sex services are permitted where:
- only people of that sex require it;
  - there is joint provision for both sexes but that is not sufficient on its own;
  - if the service were provided for men and women jointly, it would not be as effective and it is not reasonably practicable to provide separate services for each sex;
  - they are provided in a hospital or other place where users need special attention (or in parts of such an establishment);
  - they may be used by more than one person and a woman might object to the presence of a man (or vice versa); or
  - they may involve physical contact between a user and someone else and that other person may reasonably object if the user is of the opposite sex.
735. In each case, the separate provision has to be objectively justified.



*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

736. These exceptions also cover public functions in respect of the “back-room” managerial, administrative and finance decisions which allow such single-sex services to be provided.

**Background**

737. This paragraph replaces some similar provisions that only covered public functions and some that applied to services in the Sex Discrimination Act 1975. These exceptions have been extended to cover both services and public functions.

**Examples**

738. These exceptions would allow:

- a cervical cancer screening service to be provided to women only, as only women need the service;
- a fathers’ support group to be set up by a private nursery as there is insufficient attendance by men at the parents’ group;
- a domestic violence support unit to be set up by a local authority for women only but there is no men-only unit because of insufficient demand;
- separate male and female wards to be provided in a hospital;
- separate male and female changing rooms to be provided in a department store;
- a massage service to be provided to women only by a female massage therapist with her own business operating in her clients’ homes because she would feel uncomfortable massaging men in that environment.

**Gender reassignment: paragraph 28**

**Effect**

739. This paragraph contains an exception to the general prohibition of gender reassignment discrimination in relation to the provision of separate- and single-sex services. Such treatment by a provider has to be objectively justified.

**Background**

740. This paragraph replaces a similar provision in the Sex Discrimination Act 1975.

**Example**

- A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.

**Services relating to religion: paragraph 29**

**Effect**

741. This paragraph contains an exception to the general prohibition of sex discrimination to allow ministers of religion to provide separate and single-sex services.

742. The minister can provide such services so long as this is done for religious purposes, at a place occupied or used for those purposes and it is either necessary to comply with the tenets of the religion or for the purpose of avoiding conflict with the strongly held religious views of a significant number of the religion’s followers. This does not apply to acts of worship (which are not themselves “services” within the meaning of the Act so no exception is required).

**Background**

743. This paragraph replaces a similar provision in the Sex Discrimination Act 1975. The requirement regarding avoiding conflict with the religion’s followers has been altered

in order to give consistency within the Act and some explanatory provisions have been added for the same reason.

#### Example

- A synagogue can have separate seating for men and women at a reception following a religious service.

### **Services generally provided only for persons who share a protected characteristic: [paragraph 30](#)**

#### Effect

744. [Paragraph 30](#) provides that a service provider does not breach the requirement in section 29 not to discriminate in the provision of a service if he or she supplies the service in such a way that it is commonly only used by people with a particular protected characteristic (for example, women or people of Afro-Caribbean descent) and he or she continues to provide that service in that way. If it is impracticable to provide the service to someone who does not share that particular characteristic, a service provider can refuse to provide the service to that person.

#### Background

745. This is designed to replicate the effect of provisions previously contained in the Sex Discrimination Act 1975 and the Equality Act 2006, and extends the clarification they provide across all other protected characteristics for the first time.

#### Examples

- A hairdresser who provides Afro-Caribbean hairdressing services would not be required to provide European hairdressing services as well. However, if a white English person wanted his hair braided and there was no technical difficulty to prevent that, it would be unlawful for the hairdresser to refuse to provide her services to him.
- A butcher who sells halal meat is not required also to sell non-halal meat or kosher meat. However, if a non-Muslim customer wanted to purchase the meat that was on offer, he could not refuse to sell it to her.

## **Part 8: Television, radio and on-line broadcasting and distribution**

### ***Paragraph 31***

#### Effect

746. [Paragraph 31](#) makes it clear that claims for discrimination, harassment and victimisation cannot be brought in relation to broadcasting and distribution of content, as defined in the Communications Act 2003. This would include, for example, editorial decisions on the content of a television programme or the distribution of on-line content.
747. This paragraph does not, however, extend to the provision of an electronic communications network, service or associated facility, which are also defined in the Communications Act 2003. This will ensure that the act of sending signals is not excluded by the exception in sub-paragraph (1), only the content of what is broadcast.

#### Background

748. This provision is new and is intended to safeguard the editorial independence of broadcasters when broadcasting or distributing content, whether on television, radio or on-line.

#### Examples

- An aggrieved person is not entitled to bring a claim for discrimination against a broadcaster in relation to an editorial decision about what programmes to commission; on what day a specific programme should be shown; or who should appear in a particular programme.

- An aggrieved person is, however, entitled to bring a claim for discrimination against a broadcaster in relation to a decision to refuse to send a signal to his house purely on the basis that he has a particular protected characteristic.

## **Part 9: Transport**

### **Application to disability: paragraph 32**

#### **Effect**

749. Paragraph 32 applies the exceptions listed in paragraphs 33 and 34 in relation to disability, thereby stipulating the extent to which providers of transport services are bound by the disability provisions of the Act.

#### **Background**

750. These provisions replicate the effect of provisions contained in the Disability Discrimination Act 1995.

### **Transport by air: paragraph 33**

#### **Effect**

751. Paragraph 33(1) provides an exception to the prohibition of discrimination, so far as it relates to disability, in respect of the provision of services in connection with air transport.
752. Paragraph 33(2) ensures that there is no duplication where there would otherwise be an overlap between the disability provisions of the Act and Regulation (EC) No1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (“EC Regulation 1107/2006”).

#### **Background**

753. These provisions replicate the effect of provisions in the Disability Discrimination Act 1995.

#### **Examples**

- An airline is required to make reasonable adjustments to its booking services to ensure that they are accessible to disabled people. It is not required to make any structural adjustments to the cabin environment inside an aircraft by reason of the derogation in Article 4(1)(a) of EC Regulation 1107/2006.
- An airport owner charges a disabled person for wheelchair assistance to board an aircraft. This would be a breach of EC Regulation 1107/2006, so section 29 of the Act would not apply. However, if the same airport owner fails to make adjustments to allow disabled people to access car parks at the airport, this would fall within the scope of the Act.

### **Transport by land: paragraph 34**

#### **Effect**

754. Paragraph 34 provides an exception from section 29 for all services of transporting people by land, except those listed. The definitions of the vehicles listed are contained in paragraph 4 of Schedule 2.

#### **Background**

755. This paragraph replicates the effect of provisions in the Disability Discrimination Act 1995.

#### **Example**

- A train operating company is required to provide a reasonable alternative when a disabled person is unable to access the buffet car due to his or her disability.

## **Part 10: Supplementary**

### **Power to amend: paragraph 35**

#### **Effect**

756. [Paragraph 35](#) contains a power for a Minister of the Crown to add, vary, or remove exceptions in this Schedule relating to both services and public functions in respect of disability, religion or belief and sexual orientation. It allows a Minister of the Crown also to add, vary or remove the exceptions that relate to the provision of public functions only, in relation to gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
757. This power cannot, however, be used to omit or reduce the scope of the exceptions in respect of the functions of Parliament; the preparation, making, consideration or approval of legislation; and the functions of the courts which are set out in paragraphs 1 to 3 of this Schedule.
758. In relation to transport by air, a Minister of the Crown can also vary, remove or add exceptions in relation to the provision of services and the exercise of public functions for disability only. For these purposes, it does not matter where the transport in fact takes place.
759. The Minister must consult the Equality and Human Rights Commission before exercising the power under this paragraph.

#### **Background**

760. This paragraph broadly reflects the substance of powers contained in previous legislation.

### ***Schedule 4: Premises: reasonable adjustments***

#### **Effect**

761. This Schedule explains how the duty to make reasonable adjustments in section 20 applies to a controller of “let” premises or of premises “to let” and to the commonhold association where a disabled tenant (or prospective tenant) or unit-holder in commonhold land or the disabled person legally occupying the property is placed at a substantial disadvantage, so that the disabled person can enjoy the premises or make use of them. It stipulates that the duty does not require the removal or alteration of a physical feature, and makes clear what are not “physical features” for these purposes. The duty only applies if a request for an adjustment is made by or on behalf of a disabled person.
762. This Schedule also explains how the duty to make reasonable adjustments in section 20 applies in relation to “common parts”, for example an entrance hall in a block of flats. These provisions relate specifically to physical features and set out the process that must be followed by the person responsible for the common parts (for example in England and Wales either a landlord or, in the case of commonhold land, the commonhold association) if a disabled tenant or someone on his or her behalf requests an adjustment. This includes a consultation process with others affected which must be carried out within a reasonable period of the request being made. If the responsible person decides to make an adjustment to avoid the disadvantage to the disabled person, a written agreement must be entered into between them setting out their rights and responsibilities. Section 37 provides the corresponding process for common parts in Scotland.
763. The Schedule also makes it unlawful for a controller or responsible person to victimise a disabled tenant because costs have been incurred in making a reasonable adjustment.

## **Background**

764. This Schedule partly replaces similar provisions in the Disability Discrimination Act 1995. However, the Act introduces a new requirement for disability-related alterations to the physical features of the common parts of let residential premises or premises owned on a commonhold basis.

## **Examples**

- A landlord has a normal practice of notifying all tenants of any rent arrears in writing with a follow-up visit if the arrears are not reduced. A learning-disabled person explains to the landlord that he cannot read standard English so would not be aware that he was in arrears. He asks to be notified of any arrears in person or by telephone. The landlord arranges to visit or telephone the learning-disabled person to explain when he has any arrears of rent. This personal contact may be a reasonable adjustment for the landlord to make.
- A landlord is asked by a disabled tenant to install a ramp to give her easier access to the communal entrance door. The landlord must consult all people he thinks would be affected by the ramp and, if he believes that it is reasonable to provide it, he must enter into a written agreement with the disabled person setting out matters such as responsibility for payment for the ramp. The landlord can insist the tenant pays for the cost of making the alteration.

## ***Schedule 5: Premises: exceptions***

### **Effect**

765. This Schedule sets out limited exceptions to the prohibitions on discrimination and harassment contained in the premises provisions in Part 4 of the Act.
766. The first exception applies where a person who owns and lives in a property disposes of all or part of it privately (for example by selling, letting or subletting) without using the services of an estate agent, or publishing an advertisement.
767. This exception does not apply to race discrimination in disposing of premises. It only applies to discrimination in relation to permission to dispose of premises where it is based on religion or belief or sexual orientation.
768. This exception also exempts a controller of leasehold premises (as defined in section 36) from the duty to make reasonable adjustments provided that:
- where the premises have been let, the premises are (or have been) the controller's main or only home and he or she has not used the services of a manager since letting the premises (paragraph 2(1));
  - where the premises are to let, they are the controller's main or only home and he or she has not used the service of an estate agent for letting purposes (paragraph 2(3)).
769. The second exception applies to disposal, management or occupation of part of small premises. It applies where a person engaging in the conduct in question, or a relative of that person, lives in another part of the premises and the premises include facilities shared with other people who are not part of their household.
770. This exception does not apply to race discrimination when disposing of or giving permission for the disposal of premises, or in the management of premises.
771. The small premises exception also exempts a controller of premises or a person responsible in relation to common parts (as defined in section 36) from the duty to make reasonable adjustments where the premises are small, where that person or a relative of that person lives in one part of the premises and residents who are not members of that person's household live in another part of the premises. The definitions of "small premises" and "relative" in paragraph 3 apply.

772. [Paragraph 5](#) contains a power for a Minister of the Crown to amend or repeal the small premises exception.

### **Background**

773. This Schedule replaces similar provisions in previous legislation.

### **Examples**

- A homeowner makes it known that she is preparing to sell her flat privately. A work colleague expresses an interest in buying it but she refuses to sell it to him because he is black. That refusal would not be covered by this exception and so would be unlawful.
- A homeowner makes it known socially that he wants to sell his house privately. Various prospective buyers come forward and the homeowner opts to sell it to a fellow Christian. The other prospective buyers cannot claim that they were discriminated against because the homeowner's actions were covered by this exception.
- A single woman owns a large house in London and lives on the top floor, although the bathroom and toilet facilities are on the first floor. The ground floor is unoccupied and she decides to take in a lodger, sharing the bathroom and toilet facilities. Various prospective tenants apply but she chooses only to let the ground floor to another woman. This would be permissible under this exception.
- A Jewish family own a large house but only live in part of it. They decide to let out an unoccupied floor but any new tenant will have to share kitchen and cooking facilities. The family choose only to let the unoccupied floor to practising Jews as they are concerned that otherwise their facilities for keeping their food kosher may be compromised. This would be permissible under this exception.

### ***Schedule 6: Office-holders: excluded offices***

#### **Effect**

774. This Schedule provides that an office or post is not treated as a personal or public office in the Act in circumstances where the office-holder is protected by one of the other forms of protection given in Part 5 of the Act – employment, contract work, employment services (as they relate to work experience), partnerships, limited liability partnerships, barristers and advocates. It also provides that political offices, life peerages, and any other dignity or honour conferred by the Crown are not personal or public offices for the purposes of the Act.

#### **Background**

775. The Schedule replaces similar provisions in previous legislation. The conferral of honours and dignities is treated as a public function for the purposes of the Act, and the specific provisions formerly found in the Race Relations Act 1976 alone are not replicated. Public bodies' activities in relation to honours and dignities will also be subject to the public sector equality duty.

#### **Example**

- A person appointed as a commissioner of a public body may be both an employee and an office-holder. Such a person will be protected under the employment provisions in section 39 as against his employer, and under the office-holder provisions in sections 49 or 50 and 51 as against the person who appointed him and/or any relevant person.

## **Schedule 7: Equality of terms: exceptions**

### **Part 1: Terms of work**

#### **Compliance with laws regulating employment of women, etc.**

776. **Part 1** of this Schedule sets out exceptions to the operation of a sex equality clause or a maternity equality clause. It provides that such clauses will not have effect on any terms of employment, appointment or service that are governed by laws regulating employment of women. A few of these remain, mainly for health and safety purposes. A sex equality clause will also have no effect on terms giving special treatment to women in connection with pregnancy or childbirth.

#### **Background**

777. This Schedule replaces similar provisions in the Equal Pay Act 1970.

### **Part 2: Occupational pension schemes**

#### **Effect**

778. **Part 2** of this Schedule sets out certain circumstances where a sex equality rule does not have effect in relation to occupational pension schemes.

779. It allows payments of different amounts for comparable men and women, in prescribed circumstances, if the difference is only because of differences in retirement benefits to which men and women are entitled. It permits payment of different amounts where those differences result from the application of prescribed actuarial factors to the calculation of the employer's contributions to an occupational pension scheme. It also permits payment of different amounts where actuarial factors are applied to the determination of certain prescribed benefits.

780. It also contains a regulation-making power to vary or add to these circumstances. The regulations may make provision for past periods, but not for pensionable service before 17 May 1990.

#### **Background**

781. This replaces similar provisions in section 64 of the Pensions Act 1995.

## **Schedule 8: Work: reasonable adjustments**

#### **Effect**

782. This Schedule explains how the duty to make reasonable adjustments in section 20 applies to an employer or other persons under Part 5 of the Act. It sets out the three requirements of the duty which apply where an "interested" disabled employee or job applicant is placed at a substantial disadvantage compared with non-disabled employees or applicants. As the duty is owed to an "interested" disabled employee or job applicant, it is not an anticipatory duty which means that an employer is not required to anticipate the needs of potential disabled employees or job applicants and make reasonable adjustments in advance of their having an actual disabled employee or job applicant.

783. The tables set out who is an interested disabled person in relation to different categories of "relevant matters" and the circumstances in which the duty applies in each case. These tables capture how the duty applies in a number of areas related to work, for example to qualifications bodies and to trade organisations and there is a regulation-making power to enable further detail to be set out about how the duty applies to local authorities in respect of disabled members.

784. The Schedule also sets out the circumstances in which lack of knowledge of the person's disability or that a disabled person may be an applicant for a job means that the duty does not apply.

### **Background**

785. This Schedule replaces similar provisions in the Disability Discrimination Act 1995. The Schedule provides greater clarity than in the previous legislation that a duty to make reasonable adjustments includes a requirement to provide an auxiliary aid if this would overcome the substantial disadvantage to the disabled person.

### **Examples**

- An employer provides specially adapted furniture for a new employee with restricted movement in his upper limbs. This is likely to be a reasonable adjustment for the employer to make.
- A large employer is recruiting for posts which routinely attract a high number of applications. He arranges for large-print application forms to be available for any visually impaired people applying for a job. This is likely to be a reasonable adjustment for the employer to make.

### **Schedule 9: Work: exceptions**

#### **Part 1: Occupational requirements**

786. **Part 1** of this Schedule concerns requirements for particular kinds of work.

#### **General: paragraph 1**

##### **Effect**

787. This paragraph provides a general exception to what would otherwise be unlawful direct discrimination in relation to work. The exception applies where being of a particular sex, race, disability, religion or belief, sexual orientation or age – or not being a transsexual person, married or a civil partner – is a requirement for the work, and the person whom it is applied to does not meet it (or, except in the case of sex, does not meet it to the reasonable satisfaction of the person who applied it). The requirement must be crucial to the post, and not merely one of several important factors. It also must not be a sham or pretext. In addition, applying the requirement must be proportionate so as to achieve a legitimate aim.
788. The exception can be used by employers, principals (as defined in section 41) in relation to contract work, partners, members of limited liability partnerships and those with the power to appoint or remove office-holders, or to recommend an appointment to a public office.

##### **Background**

789. This paragraph replicates the effect of exceptions for occupational requirements in current discrimination legislation, and creates new exceptions in relation to disability and to replace the existing exceptions for occupational qualifications in relation to sex, gender reassignment, colour and nationality. It differs from the existing exceptions for occupational requirements in that it makes clear that the requirement must pursue a legitimate aim and that the burden of showing that the exception applies rests on those seeking to rely on it.

##### **Examples**

- The need for authenticity or realism might require someone of a particular race, sex or age for acting roles (for example, a black man to play the part of Othello) or modelling jobs.
- Considerations of privacy or decency might require a public changing room or lavatory attendant to be of the same sex as those using the facilities.



- An organisation for deaf people might legitimately employ a deaf person who uses British Sign Language to work as a counsellor to other deaf people whose first or preferred language is BSL.
- Unemployed Muslim women might not take advantage of the services of an outreach worker to help them find employment if they were provided by a man.
- A counsellor working with victims of rape might have to be a woman and not a transsexual person, even if she has a Gender Recognition Certificate, in order to avoid causing them further distress.

**Religious requirements relating to sex, marriage etc., sexual orientation:  
paragraph 2**

**Effect**

790. This specific exception applies to employment for the purposes of an organised religion, which is intended to cover a very narrow range of employment: ministers of religion and a small number of lay posts, including those that exist to promote and represent religion. Where employment is for the purposes of an organised religion, this paragraph allows the employer to apply a requirement to be of a particular sex or not to be a transsexual person, or to make a requirement related to the employee's marriage or civil partnership status or sexual orientation, but only if –
- appointing a person who meets the requirement in question is a proportionate way of complying with the doctrines of the religion; or,
  - because of the nature or context of the employment, employing a person who meets the requirement is a proportionate way of avoiding conflict with a significant number of the religion's followers' strongly held religious convictions.
791. The requirement must be crucial to the post, and not merely one of several important factors. It also must not be a sham or pretext. Applying the requirement must be a proportionate way of meeting either of the two criteria described in paragraph 790 above.
792. The requirement can also be applied by a qualifications body in relation to a relevant qualification (within the meaning of section 54), if the qualification is for employment for the purposes of an organised religion and either of the criteria described in paragraph 790 above is met.

**Background**

793. This exception replaces and harmonises exceptions contained in previous discrimination law.

**Examples**

- This exception would apply to a requirement that a Catholic priest be a man and unmarried.
- This exception is unlikely to permit a requirement that a church youth worker who primarily organises sporting activities is celibate if he is gay, but it may apply if the youth worker mainly teaches Bible classes.
- This exception would not apply to a requirement that a church accountant be celibate if he is gay.

*Other requirements relating to religion or belief: paragraph 3*

**Effect**

794. This paragraph allows an employer with an ethos based on religion or belief to discriminate in relation to work by applying a requirement to be of a particular religion or belief, but only if, having regard to that ethos:

*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

- being of that religion or belief is a requirement for the work (this requirement must not be a sham or pretext); and
- applying the requirement is proportionate so as to achieve a legitimate aim.

795. It is for an employer to show that it has an ethos based on religion or belief by reference to such evidence as the organisation's founding constitution.

**Background**

796. This paragraph is designed to replicate the effect of provisions in current legislation.

**Example**

- A religious organisation may wish to restrict applicants for the post of head of its organisation to those people that adhere to that faith. This is because to represent the views of that organisation accurately it is felt that the person in charge of that organisation must have an in-depth understanding of the religion's doctrines. This type of discrimination could be lawful. However, other posts that do not require this kind of in-depth understanding, such as administrative posts, should be open to all people regardless of their religion or belief.

**Armed forces: paragraph 4**

**Effect**

797. This paragraph allows women and transsexual people to be excluded from service in the armed forces if this is a proportionate way to ensure the combat effectiveness of the armed forces.

798. It also exempts the armed forces from the work provisions of the Act relating to disability and age.

**Background**

799. This paragraph replicates the effects of exemptions for the armed forces in previous legislation, but narrows the scope of the former combat effectiveness exception so that this applies only to direct discrimination in relation to recruitment and access to training, promotion and transfer opportunities.

**Example**

- Only ground close-combat roles requiring Service personnel to deliberately close with and kill the enemy face-to-face are confined to men. Women and transsexual people are, therefore, currently excluded from the Royal Marines General Service, the Household Cavalry and Royal Armoured Corps, the Infantry and the Royal Air Force Regiment only.

**Employment services: paragraph 5**

**Effect**

800. This paragraph makes it lawful for an employment service-provider to restrict a service to people with a particular protected characteristic if the treatment relates either to work for which having that characteristic is an occupational requirement, or to training for such work.

801. The service-provider can rely on the exception by showing that he or she reasonably relied on a statement from a person who could offer the work in question that having the particular characteristic was an occupational requirement. It is, however, a criminal offence for such a person to make a statement of that kind which they know to be false or misleading.

**Background**

802. This paragraph is designed to replicate the effect of provisions in previous legislation.

**Example**

- The provider of a Catholic theological training course required exclusively for those training to be Catholic priests may limit access to the course to Catholics because the training

relates to work the offer of which can be limited to Catholics by virtue of an occupational requirement.

**Interpretation: paragraph 6**

**Effect**

803. This paragraph defines “work” for the purposes of Part 1 of the Schedule and provides that the exceptions in this Part are available in respect of direct discrimination in recruitment, access to promotion, transfer or training, or (except in the case of sex discrimination) dismissal only. None of these exceptions can be used to justify indirect discrimination or harassment.

**Part 2: Exceptions relating to age**

**Retirement: paragraph 8**

**Effect**

804. This paragraph allows employers to dismiss on the grounds of retirement employees at the age of 65 or over without this being regarded as age discrimination and/or unfair dismissal. However, where an employee has a normal retirement age which is applicable to him or her which exceeds the age of 65, if the employee is dismissed on the grounds of retirement before he or she has reached that normal retirement age, this is capable of amounting to age discrimination and/or unfair dismissal.
805. This exception applies only to employees within the meaning of section 230(1) of the Employment Rights Act 1996, those in Crown employment, and House of Lords and House of Commons staff. This paragraph needs to be read closely with the amendments to the unfair dismissals provisions of Part 10 of the Employment Rights Act 1996, which were amended by Schedule 8 to the [Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#) (“the 2006 Regulations”) and which amendments remain in place when this paragraph is commenced.
806. Under paragraph 8(3) retirement is a reason for dismissal only if it is a reason for dismissal by virtue of Part 10 of the Employment Rights Act 1996. Schedule 6 to the 2006 Regulations (which remains in place) sets out the procedures that need to be followed by an employer in order for the reason for the dismissal to be retirement under the sections inserted into Part 10 of the Employment Rights Act 1996 by Schedule 8 to the 2006 Regulations, and in order for the dismissal to be fair.

**Background**

807. [Paragraph 8](#) preserves the exception for retirement previously provided for by regulation 30 of the 2006 Regulations, and accompanying provisions at Schedule 6 and Schedule 8 to the 2006 Regulations.
808. Before the coming into force of the 2006 Regulations, the concept of retirement was not legally defined. Where an employee was either over 65 or the employer’s normal retirement age, the employee did not have the right to claim unfair dismissal. The employee could be compulsorily retired once he had reached the employer’s normal retirement age, or 65. The removal of this age cap on the right to claim unfair dismissal was removed by the 2006 Regulations.
809. Compulsory retirement ages are a form of direct age discrimination. Where the retirement age is below the age of 65 (or the employer’s normal retirement age if over the age 65) it needs to be objectively justified.
810. The Government considers this exception for retirement ages of 65 and over to be within the exemption contained in article 6(1) of the Council Directive [2000/78/EC](#) (“the Directive”) as being justified by reference to a legitimate aim of social policy.

811. This provision is being reviewed during 2010. It is intended that any changes resulting from the review will be implemented during 2011.

### **Examples**

- An employee has reached the age of 65. His employer has followed the correct procedure for the reason for dismissal to be deemed retirement. He is dismissed by reason of retirement. This is not direct age discrimination.
- An employer dismisses an employee on her 65th birthday by giving her notice, but does not follow the correct procedure. This is direct age discrimination.

### **Applicants at or approaching retirement age: [paragraph 9](#)**

#### Effect

812. As a result of this paragraph it is not unlawful discrimination for an employer to decide not to offer employment to a person where, at the time of the person's application to the employer, he or she is over the employer's normal retirement age or he or she is over the age of 65 if the employer has no normal retirement age.
813. It is also not unlawful to refuse to offer employment where the applicant will reach the employer's normal retirement age or the age of 65 (if the employer has no normal retirement age) within six months of the application for employment.
814. For these purposes, the employer's normal retirement age must be 65 or over and has the same meaning as is given in section 98ZH of the Employment Rights Act 1996 (as inserted by Schedule 8 to the 2006 Regulations).
815. The employees to which paragraph 9 applies are the same group of employees to which paragraph 8 (exception for retirement) applies: that is to say, employees within the meaning of section 230(1) of the Employment Rights Act 1996, Crown employees, House of Lords staff and House of Commons staff.

#### Background

816. [Paragraph 9](#) preserves the exception previously provided for at regulation 7(4) of the 2006 Regulations.
817. The rationale for this exclusion from the requirement not to discriminate flows from the rationale for paragraph 8 (exception for retirement). There is little point in requiring an employer not to discriminate at the point of receiving an application from a prospective employee when, if he or she were to employ the person, that person could be retired (without it amounting to discrimination to do so) within six months of their appointment.
818. The appointment provisions are also being reviewed during 2010. It is intended that any changes resulting from the review will be implemented in 2011.

#### Examples

- An applicant is 66 years old at the time of applying for a job to work in an organisation where there is no normal retirement age. It is lawful for the employer to refuse her application simply on the basis of the applicant's age.
- An applicant is 69 years and 8 months old at the time of making an application to work in an organisation that has a normal retirement age of 70. Because the applicant will reach the age of 70 within 6 months, it is lawful for the employer to refuse his application.

### **Benefits based on length of service: [paragraph 10](#)**

#### Effect

819. This paragraph ensures that an employer does not have to justify paying or providing fewer benefits to a worker with less service than a comparator, should such a practice constitute indirect discrimination because of age. The employer can rely on the

*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

exception as an absolute defence where the benefit in question was awarded in relation to service of five years or less.

820. If the length of service exceeds five years, the exception applies only if it reasonably appears to an employer that the way in which he uses length of service to award benefits will fulfil a business need of his undertaking. For example, by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers.
821. Sub-paragraph (6) contains provisions which ensure that in calculating an employee's length of service previous service is taken into account where that is the result of the operation of section 218 of the Employment Rights Act 1996 or any other enactment such as an Order made under section 155 of that Act.
822. Sub-paragraph (7) defines what a benefit is and expressly rules out benefits provided only by virtue of a person's ceasing to work.

#### Background

823. The intention is to replicate the effect of regulation 32 of the 2006 Regulations (as amended by the Employment Equality (Age) Regulations 2006 (Amendment) Regulations 2008).
824. This paragraph enables employers to continue to effect employment planning, in the sense of being able to attract, retain and reward experienced staff through service-related benefits. This exception cannot be used to justify the level of payments when a worker leaves as service-related termination payments are not a reward for experience from which the employer can benefit. Therefore, redundancy payment is dealt with separately.

#### Examples

- An employer's pay system includes an annual move up a pay spine, or a requirement that a certain amount of time must elapse before an employee is entitled to be a member of an employee benefits scheme. Provided that the pay spine or time it takes to get the benefit is no longer than five years or can be justified the exception will apply.
- An employer's terms and conditions relating to annual leave entitlement provide that employees are entitled to an additional five days' leave after ten years of service. Such an entitlement needs to be justified as reasonably fulfilling a business need.

### **The national minimum wage: young workers: [paragraph 11](#)**

#### Effect

825. This paragraph allows employers to base their pay structures on the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 1999 ("the 1999 Regulations"). Employers cannot rely on this exception, however, if they do not base their pay structure on the national minimum wage legislation.
826. This will allow employers to continue to use the development bands of the national minimum wage without the threat of legal challenge on the grounds of age discrimination.

#### Background

827. This paragraph is designed to replicate the effect of the exception in regulation 31 of the 2006 Regulations.

#### Examples

- It is lawful for an employer to pay 16 to 21 year olds a lower rate of minimum wage than that given to adults, when based on the development bands set out in 1999 Regulations. For example, based on the 2009/10 rates:
  - 16-17 a rate of £3.57 per hour
  - 18-21 a rate of £4.83 per hour

whereas the national minimum wage for those 22 and over is £5.80.

- Rather than pay the amounts stated by the 1999 Regulations, this paragraph also permits an employer to base its pay scales on the development bands and so, for example, it may pay 16-17 year olds £4 per hour, 18-21 year olds £5 per hour and those over 22 £6 per hour.

### **The national minimum wage: apprentices: paragraph 12**

#### Effect

828. This paragraph deals with apprentices. It enables an employer to pay an apprentice who is not entitled to the national minimum wage (any apprentice who is under 19 or in the first year of his apprenticeship) less than an apprentice who is entitled to the national minimum wage (any apprentice who is 19 or over and not in the first year of his apprenticeship). Employers cannot rely on this exception, however, if they do not base their pay structure on the national minimum wage legislation.

#### Background

829. This paragraph is designed to replicate the effect of the exception in regulation 31 of the 2006 Regulations.

#### Examples

- It is lawful for an employer to pay an apprentice who is under the age of 19 or in the first year of his apprenticeship at a lower rate than an apprentice who is 19 or over and not in the first year of his apprenticeship. For example, based on the 2009/10 rates:
  - an 18 year old apprentice is not entitled to the minimum wage;
  - a 19 year old apprentice in the first year of his apprenticeship is not entitled to the minimum wage;
  - a 19 year old apprentice in his 2nd year of apprenticeship is entitled to £4.83 per hour based on the National Minimum Wage Rate for 18-21 year olds.
- So it is lawful to pay an 18 year old apprentice and a 19 year old apprentice in the first year of her apprenticeship £5 per hour and to pay a 19 year old in the second year of his apprenticeship £5.50 per hour.

### **Redundancy: paragraph 13**

#### Effect

830. This paragraph permits employers to provide redundancy schemes which mirror the statutory redundancy payments scheme contained in Part 11 of the Employment Rights Act 1996 but offer more generous terms.

831. The statutory redundancy scheme at Part 11 of the Employment Rights Act 1996 (“ERA 1996”) requires an employer to make a payment upon redundancy, the amount of which is dependent upon the employee’s age, length of service, and weekly pay (subject to a cap: see Schedule 227 to the ERA 1996). The statutory redundancy scheme is lawful under Directive [2000/78/EC](#) as it is objectively justified under Article 6.1 of the Directive.

832. An employer who makes a redundancy payment to an employee in accordance with Part 11 ERA 1996 does not have to justify it. Both the statutory authority exemption (in Schedule 22) and this regulation make it clear that the employer is acting lawfully, even though the payment is calculated using age-related criteria.

833. But this paragraph is not aimed at such employers. The principal object of this provision is to assist those employers who base their redundancy schemes on the statutory scheme but who are more generous than the statutory scheme requires them to be.

#### Background

834. This exception is designed to replicate the effect of an existing exception in regulation 33 of the 2006 Regulations.

#### Examples

- An employer may pay qualifying employees an enhanced redundancy payment based on their actual week's pay rather than the maximum amount as specified in section 227 ERA 1996 (currently £380).
- So an employee (P) aged 45 with 18 years continuous employment earning £600 a week would receive one and a half weeks pay for each year of employment in which he was not below the age of 41 and one week's pay for each year of employment in which he was not below the age of 22 so P would receive the following:  $3 \times (1.5 \times £600) + (15 \times £600) = £11,700$ .
- An employer may pay qualifying employees an enhanced redundancy payment calculated in accordance with section 162 of ERA 1996 but after calculating the appropriate amount for each year of employment, the employer may apply a multiple of two rather than one. So the employer could pay P £23,400 rather than £11,700.
- Alternatively, the employer could apply the maximum amount of £380 to P's payment but apply a multiple of 2 and pay P the following:  $2 \times 3 \times (1.5 \times £380) + (15 \times £380) = 2 \times (£1710 + 5700) = £14820$ .

### **Life assurance: paragraph 14**

#### Effect

835. This paragraph provides an exception for employers who provide life assurance cover to workers who have had to retire early because of ill health.

#### Background

836. This paragraph is designed to replicate the effect of the exception in regulation 34 of the 2006 Regulations.

837. Life assurance cover is usually provided in respect of people below the age of 65 (or the employer's normal retirement age if different). Such cover is not provided in respect of older people because, as the probability of death increases, it becomes more and more expensive to provide. If employers were no longer able to impose – or had to objectively justify – a “cut off” for the provision of such cover to those who have retired early, there is a real risk they would simply “level down”: in other words, they would cease to offer it to anyone. This exception is intended to avoid that happening.

#### Examples

- An employer who has no normal retirement age provides life assurance cover for an employee who has retired early due to ill health. If the employer then ceases to provide such cover when the employee reaches the age of 65, this is lawful.
- An employer who operates a normal retirement age of 70 provides life assurance cover for an employee who has retired early due to ill health. If the employer then ceases to provide such cover when the employee reaches the age of 70, this is lawful.

### **Child care: paragraph 15**

#### Effect

838. This paragraph creates an exception from the prohibition of age discrimination in employment and certain other work relationships for benefits which relate to the provision of child care, and to which access is restricted to children of a particular age group. The exception applies not only to natural parents, but also to others with parental responsibility for a child.

839. The exception covers benefits which relate to the provision of care for children aged up to and including 16.

## Background

840. This is a new provision. Following the ruling of the European Court of Justice in *Coleman v Attridge Law and another (Case C-303/06) [2008] ECR I-5603* it could potentially be direct discrimination for an employer to treat an employee less favourably because of the age of an employee's child. There is, therefore, a potential impact on the provision of facilities, such as child care, where access is limited by reference to the child's age.
841. The exception allows employers to continue to offer employees child care facilities based on the age of a child without being open to a challenge of direct discrimination from other employees.

## Examples

- An employer may provide a crèche for employees' children aged two and under; or a holiday club open only to employees' children aged between 5 and 9. In each of these examples, the exception allows an employer to discriminate against employees because of their association with a child who does not fall within the specified age groups.
- The exception does not apply to employee benefits which do not have a close relationship with the provision of child care. For example, if an employer offers luncheon vouchers, gym membership or a company car only to those employees with children of a particular age group, the exception does not apply as none of these benefits involves child care.
- Neither does the exception apply to benefits conferred as a result of the employee's employment, but applying directly to the child, where child care is not involved. For example, an employer may offer private healthcare to employees' children up to a certain age, or use of the employer's services (e.g. free train tickets if the employer is a train company) by such children.

## **Contributions to personal pension schemes: paragraph 16**

### Effect

842. This paragraph gives a Minister of the Crown the power to specify practices, actions or decisions relating to age in respect of employer contributions to personal pension schemes that an employer can use without breaching a non-discrimination rule.

### Background

843. Exceptions to the non-discrimination rule in relation to age in respect of employer contributions to personal pension schemes were previously set out at Schedule 2 to the [Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#).

## **Part 3: Other exceptions**

### **Non-contractual payments to women on maternity leave: paragraph 17**

#### Effect

844. This paragraph sets out an exception to the prohibitions on pregnancy and maternity discrimination by employers which allows an employer not to offer an applicant or provide an employee who is on maternity leave the benefits of the non-contractual terms and conditions of her employment. It also explains what is and is not covered by this exception.

#### Background

845. This paragraph is designed to replicate the effect of provisions in the Sex Discrimination Act 1975. It does for non-contractual terms and conditions of employment relating to pay what is done for contractual terms in section 74.

#### Examples



*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

- An employer would not have to pay a woman on maternity leave a discretionary bonus if the only condition of eligibility for the bonus was that the employee must be in active employment at the time of payment.
- If a discretionary bonus amounted to retrospective payment for time worked over a specific period (such as the past year) during which a woman took maternity leave, the employer must include any part of that period the woman spent on compulsory maternity leave in calculating the bonus.

**Benefits dependent on marital status: paragraph 18**

Effect

846. This paragraph concerns a specific exception to the prohibition of discrimination because of sexual orientation in the field of work. The exception concerns the provision of benefits by reference to marital status in respect of periods of service before 5 December 2005 (the coming into force of the Civil Partnership Act 2004). It also concerns benefits restricted to married persons and civil partners.

Background

847. This exception is intended to preserve the effect of regulation 25 of the Employment Equality (Sexual Orientation) Regulations 2003.

Examples

- An example of an employment benefit provided by reference to marital status is an occupational pension scheme which pays benefits to an employee's spouse on the death of the employee, but does not similarly compensate an unmarried employee's partner.
- A scheme which pays out only to surviving married and civil partners could be indirectly discriminatory because it might disadvantage gay couples, but it is permitted by the exception.
- A scheme which pays out to surviving married partners must also pay out to surviving civil partners in respect of any employee service since 5 December 2005 (when the Civil Partnership Act 2004 came into force). Provided the scheme does that, the exception allows it, even though it may (directly or indirectly) discriminate by paying out only to married partners for service before that date.

**Provision of services, etc. to the public: paragraph 19**

Effect

848. This paragraph provides that an employer who provides services to the public at large is not liable for claims of discrimination or victimisation by an employee under Part 5 of the Act in relation to those services. Rather, where individuals are discriminated against or victimised in relation to those services, they can make a claim in the county court under Part 3. If on the other hand the service differs from that provided to other employees, is provided under the terms and conditions of employment, or the service is to do with training, the individual can bring a claim in an employment tribunal for breach of the provisions in Part 5. These provisions are also applicable to services provided by principals, firms, limited liability partnerships and relevant persons (in respect of personal or public office-holders).

Background

849. This section is designed to replace similar provisions in previous legislation and has been extended to partnerships.

Examples

- If an employee of a car hire company is denied the hire of one of its cars (on the same terms available to the general public) because he is black, the employee must claim under the "services" section of the Act in the county court, rather than through an employment tribunal under the "work" provisions of the Act.

- If the same employee's employment contract provides that he is allowed to hire the company's cars at a discount (which members of the public would not get), but the employee is refused the discount when he goes to hire one of the firm's cars because he is a Muslim, then the employee would be able to make a discrimination claim under section 39.

### **Insurance contracts etc.: paragraph 20**

#### **Effect**

850. This paragraph applies where annuities, life assurance policies, accident insurance policies or similar matters which involve the assessment of risk are provided in the field of employment. It allows for employers to provide for payment of premiums or benefits that differ for men and women, persons who are or are not married or in a civil partnership, pregnancy or maternity or gender reassignment so far as this is reasonable in the light of actuarial or other reliable data.

#### **Background**

851. This paragraph is designed to replace a similar exception in the Sex Discrimination Act 1975. It permits differences in treatment for insurance or risk-related matters where the difference is done by reference to reliable actuarial or other data and it is reasonable in all the circumstances.

#### **Example**

- An employer makes access to a group insurance policy available as a result of being employed by it. The employer, not the insurer, is responsible for ensuring that the provision of benefits under the policy complies with this Act – see paragraph 20 of Part 5 of Schedule 3. In providing access to these group policies the employer may take advantage of this exception.

### ***Schedule 10: Accessibility for disabled pupils***

852. This Schedule provides for accessibility arrangements for pupils in schools as set out in section 88.

#### **Effect**

853. Local authorities must prepare written accessibility strategies which will increase disabled pupils' access to the school curriculum, improve the physical environment for such pupils and improve the provision of information to them. Strategies must be implemented by local authorities after taking account of pupils' disabilities and preferences expressed by them and their parents. They should be reviewed regularly, and revised if needed.

854. Local authorities must have regard to the need to allocate adequate resources to implementation of the strategy and use any guidance which may be issued by a Minister of the Crown in England and the Welsh Ministers in Wales.

855. Schools must develop written accessibility plans which will increase the access of disabled pupils to the school curriculum, improve the physical environment for such pupils and improve the provision of information to them. Plans must be implemented by schools after taking account of disabled pupils' disabilities and preferences expressed by them and their parents. They should be reviewed regularly, and revised if needed. Inspections of schools by OFSTED can look at the performance of these duties by schools.

856. Schools must have regard to the need to allocate adequate resources to the plans.

857. If the Secretary of State in England or the Welsh Ministers in Wales determine that a maintained school or Academy or local authority has failed to discharge these duties, has acted unreasonably in respect of these duties or has failed to comply with an order of the First-tier Tribunal or the Special Educational Needs Tribunal for Wales, they may give directions to the school or local authority about discharging the duty or compliance

with the order. However, a Secretary of State in England may not issue directions if the matter has been, or could have been, referred to the Local Commissioner unless, if the matter has been referred to the Local Commissioner, the school has not complied with any recommendation given.

858. [Paragraph 6](#) gives a power, in England to a Minister of the Crown, and in Wales to the Welsh Ministers, to make regulations to say what is, and is not, education and a benefit, facility or service.

### **Background**

859. These provisions are designed to replicate the effect of provisions in the Disability Discrimination Act 1995, and require schools and local authorities to plan to make all aspects of school more accessible to disabled pupils, particularly as the requirement to make reasonable adjustments to physical features of premises does not apply to schools.

### **Example**

- A school discusses with its disabled pupils their needs and requirements in order to help it develop a written accessibility plan. The plan includes a strategy to improve the physical environment of the school by putting in ramps and more easily accessible rooms, putting in hearing loops and producing newsletters in Braille.

## ***Schedule 11: Schools: exceptions***

### **Part 1: Sex discrimination**

860. [Part 1](#) of this Schedule makes exceptions from the prohibition on sex discrimination by schools in section 85 to allow for the existence of single-sex schools and for single-sex boarding at schools, and to make transitional provisions for single-sex schools which are turning co-educational.

### **Background**

861. These provisions are designed to replicate the effect of provisions in the Sex Discrimination Act 1975.

### **Admission to single-sex schools: [paragraph 1](#)**

#### **Effect**

862. This paragraph allows a single-sex school to refuse to admit pupils of the opposite sex. A school is defined as single-sex if it admits pupils of one sex only. This is so even if it admits a small number of pupils of the opposite sex on an exceptional basis or in relation to particular courses or classes only. Limiting those pupils to particular courses or classes is not discrimination. However, other forms of sex discrimination by the school against its opposite-sex pupils would still be unlawful.

#### **Examples**

- A school which admits only boys is not discriminating unlawfully against girls.
- If the daughters of certain members of staff at a boys' school are allowed to attend, it is still regarded as a single-sex school.
- A boys' school which admits some girls to the Sixth Form, or which lets girls attend for a particular GCSE course not offered at their own school is still regarded as a single-sex school.
- A boys' school which admits girls to A-level science classes is not discriminating unlawfully if it refuses to admit them to A-level media studies or maths classes.

- A boys' school which admits girls to the Sixth Form but refuses to let them use the same cafeteria or go on the same visits as other Sixth Form pupils would be discriminating unlawfully against them.

### **Single-sex boarding at schools: paragraph 2**

#### Effect

863. This paragraph provides that a mixed-sex school some of whose pupils are boarders may lawfully admit only pupils of one sex to be boarders. The exception applies even if some members of the other sex are admitted as boarders, so long as their numbers are comparatively small. It allows a school to refuse to admit a pupil to a boarding place at the time he or she initially joins the school, or to provide him or her with boarding facilities at a later stage.

#### Example

- A mixed-sex school has facilities for female boarders and can lawfully state in its prospectus that males cannot be accepted as boarders.

### **Single-sex schools turning co-educational: paragraphs 3 and 4**

#### Effect

864. Paragraphs 3 and 4 enable a school which is going through the process of changing from a single-sex to a co-educational institution to apply for a transitional exemption order to enable it to continue to restrict admittance to a single sex until the transition from single-sex is complete.

865. Paragraph 4 sets out the procedures for applying for a transitional exemption order for each type of school.

#### Examples

If a transitional exemption order is made in accordance with the arrangements in paragraph 4:

- A boys' school which decides to become co-educational by starting to admit girls to Year 7 while keeping upper classes as they are, will not be discriminating unlawfully by refusing to admit girls to other years, until co-educational classes have been phased in throughout the school.
- A girls' school which decides to become co-educational by initially admitting a certain number of boys to each year group will not be discriminating unlawfully by reserving a number of places in each year group for boys.
- A school in the process of becoming co-educational must treat its male and female pupils equally once they have been admitted, since the transitional exemption order only relates to admissions.

## **Part 2: Religious or belief-related discrimination**

866. Part 2 of this Schedule makes some exceptions to the prohibition on discrimination because of religion or belief in relation to schools with a religious character, and to acts of worship or other religious observance in any school.

### **Background**

867. These exceptions, and the amending powers in paragraph 7, are designed to replicate the effect of provisions in Part 2 of the Equality Act 2006.

### **Schools with religious character, etc.: paragraph 5**

#### Effect

868. This paragraph allows schools which have a religious character or ethos (often referred to as faith schools) to discriminate because of religion or belief in relation to admissions and in access to any benefit, facility or service. It means that faith schools may have admissions criteria which give preference to members of their own religion and it allows them to conduct themselves in a way which is compatible with their religious character or ethos. It does not allow faith schools to discriminate because of any other of the protected characteristics, such as sex, race or sexual orientation. Nor does it allow them to discriminate because of religion in other respects, such as by excluding a pupil or subjecting him to any other detriment.

#### Examples

- A Muslim school may give priority to Muslim pupils when choosing between applicants for admission (although the Admissions Code will not allow it to refuse to accept pupils of another or no religion unless it is oversubscribed). However, it may not discriminate between pupils because of any other of the protected characteristics, such as by refusing to admit a child of the school's own faith because she is black or a lesbian.
- A Jewish school which provides spiritual instruction or pastoral care from a rabbi is not discriminating unlawfully by not making equivalent provision for pupils from other religious faiths.
- A Roman Catholic school which organises visits for pupils to sites of particular interest to its own faith, such as a cathedral, is not discriminating unlawfully by not arranging trips to sites of significance to the faiths of other pupils.
- A faith school would be acting unlawfully if it sought to penalise or exclude a pupil because he or she had renounced the faith of the school or joined a different religion or denomination.

#### **Curriculum, worship etc.: paragraph 6**

##### Effect

869. This paragraph disapplies the prohibition on religious discrimination from anything done in relation to acts of worship or other religious observance organised by or on behalf of a school, whether or not it is part of the curriculum.

##### Background

870. This exception applies to any school, not just faith schools, and reflects the need to avoid any conflict with the existing legislative framework in respect of religious worship in schools, which generally requires collective worship to be of a broadly Christian nature. While parents can remove their children from collective worship, and sixth form pupils may decide to withdraw themselves, schools are under no obligation to provide opportunities for separate worship for the different religions and beliefs represented among their pupils. The exception in paragraph 6 maintains that position. It is designed to replicate the position in the Equality Act 2006.

##### Examples

- Under education law, a school must allow Jewish or Hindu parents to withdraw their children from daily assemblies which include an element of worship of a mainly Christian character, but it will not be discriminating unlawfully against those children by not providing alternative assemblies including Jewish or Hindu worship.
- Schools are free to organise or to participate in ceremonies celebrating any faith, such as Christmas, Diwali, Chanukah or Eid, without being subject to claims of religious discrimination against children of other religions or of none.

#### **Power to amend: paragraph 7**

##### Effect

871. [Paragraph 7](#) provides a power for a Minister of the Crown to add to, amend or repeal these religious discrimination exceptions.

##### Background

872. This power is designed to replicate the effect of provisions in Part 2 of the Equality Act 2006, which first prohibited religious discrimination in schools. It has not yet been used. Its purpose is to enable a Minister of the Crown to review the working of these provisions once they have been in effect for a sufficient period and make any changes which appear to be necessary in the light of that experience, using secondary legislation.

### **Part 3: Disability discrimination**

#### **Permitted form of selection: paragraph 8**

##### **Effect**

873. This paragraph provides that schools will not be discriminating against disabled children when applying a permitted form of selection that they are using.

##### **Background**

874. This provision is designed to replicate the effect of provisions in the Disability Discrimination Act 1995. Permitted forms of selection are the selective admission arrangements operated by grammar schools, and selection by ability and aptitude in accordance with the School Standards and Framework Act 1998.

##### **Example**

- The parents of a disabled pupil cannot claim disability discrimination against a particular school if that pupil fails to meet any educational entry requirements set by the school.

### **Schedule 12: Further and higher education exceptions**

#### **Part 1: Single-sex institutions**

##### **Effect**

875. **Part 1** of this Schedule makes exceptions from the prohibition on sex discrimination by further and higher education institutions to allow for the existence of single-sex colleges and to make transitional provisions for single-sex institutions which are turning co-educational.

##### **Background**

876. These provisions are designed to replicate the effect of provisions in the Sex Discrimination Act 1975.

#### **Admission to single-sex institutions: paragraph 1**

##### **Effect**

877. This paragraph allows a single-sex institution to refuse to admit members of the opposite sex. An institution is defined as single-sex if it admits students of one sex only. An institution which exceptionally admits students of the opposite sex, or which admits a comparatively small number of opposite-sex students to particular courses or classes only, is still regarded as single-sex. Limiting those students to particular courses or classes is permitted. However, other forms of sex discrimination by the institution against its opposite-sex students would still be unlawful.

##### **Examples**

- A women's college which admits only female students is not discriminating unlawfully against men.

*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

- If the college admits a small number of men to make up the numbers on a particular course of study, it is still regarded as a single-sex college. It is not discriminating unlawfully by refusing to admit men to other courses.
- A women's college which admits men to certain courses but refuses to let them use the student cafeteria would be discriminating unlawfully against them.

**Single-sex institutions turning co-educational: paragraphs 2 and 3.**

**Effect**

878. These paragraphs enable a college which is going through the process of changing from a single-sex to a co-educational institution to apply for a transitional exemption order, to enable it to continue restricting admittance to a single sex until the transition from single-sex is complete.

879. [Paragraph 3](#) sets out the procedures for applying for a transitional exemption order.

**Background**

880. These provisions are designed to replicate the effect of provisions in the Sex Discrimination Act 1975.

**Examples**

- If a transitional exemption order is made in accordance with the arrangements in paragraph 3:

A women's college which decides to become co-educational by starting to admit a certain number of male undergraduates to the first year of its degree courses will not be discriminating unlawfully by limiting the number of men it admits, or by refusing men access to postgraduate degree courses.

A college in the process of becoming co-educational must treat its male and female students equally once they have been admitted, since the transitional exemption order relates only to discrimination in relation to admissions.

**Part 2: Other exceptions**

**Occupational requirements: paragraph 4**

**Effect**

881. This paragraph enables a higher or further education institution to treat a person differently based on a protected characteristic in relation to providing training which would only fit them for work which, under exceptions in Schedule 9, can lawfully be restricted to people of a particular race, sex, religion, sexual orientation or age, or who are not transgendered or who are not married or in a civil partnership and for which they would therefore be ineligible.

**Background**

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

**Example**

- A Catholic theological college can refuse to admit a woman to a training course which was designed only to prepare candidates for the Catholic priesthood. However, a Church of England college could not confine training for the priesthood to men since women may also become Anglican priests.

**Institutions with a religious ethos: paragraph 5**

**Effect**

883. This paragraph confers on a Minister of the Crown a power to designate an institution if the Minister is satisfied that the institution has a religious ethos. If an institution is designated it may admit students who share the relevant religion or belief in preference to those who do not, but only in relation to admissions to courses which do not constitute vocational training.

#### Background

884. This is designed to enable the previous position under an exception in the Employment Equality (Religion or Belief) Regulations 2003 to be maintained. Schedule 1B to those Regulations modified the prohibition on discrimination for a small number of sixth form colleges with a religious ethos. The intention is that this power will be used to designate those colleges.

### **Benefits dependent on marital status, etc.: paragraph 6**

#### Effect

885. A higher or further education institution which confines any benefit, facility or service – such as access to residential accommodation – to married people and civil partners will not be discriminating because of sexual orientation against people who are unmarried or not in a civil partnership.

#### Background

886. This is designed to replicate the effect of a provision in the Employment Equality (Sexual Orientation) Regulations 2003 so far as it related to higher or further education institutions.

### **Child care: paragraph 7**

#### Effect

887. This paragraph provides that a higher or further education institution is permitted to provide, or make arrangements for, or facilitate, care for the children of students which is confined to children of a particular age group. This includes all kinds of assistance with child care including paying for or subsidising it, or enabling parents to spend more time caring for the child.

#### Background

888. The Act makes it unlawful for higher or further education institutions to discriminate because of the age of a person with whom a student is associated, and not the student's own age. The exception makes it clear that where child care for students' children who are aged 16 or under is concerned, it is not unlawful for this to be based on the age of the child.

#### Example

- If a college provides a crèche for the pre-school children of students, this will not be unlawful age association discrimination against a student who is the parent of an older child. The college will not have to demonstrate that the provision and the age limits are objectively justified.

### **Schedule 13: Education: reasonable adjustments**

889. This Schedule provides for reasonable adjustments to be made by educational bodies in relation to disabled people.

#### Effect

890. **Paragraph 2**, which relates to admissions, the provision of education and access to benefits, facilities and services, requires schools to comply with requirements to:
- ensure that any provisions, criteria or practices do not place disabled pupils at a substantial disadvantage in comparison with non-disabled pupils:



*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

- provide any reasonable auxiliary aids which might help remove any such disadvantage.
891. [Paragraph 3](#) requires higher or further education institutions in relation to admissions, education, access to benefits, facilities and services, and the conferring of qualifications to comply with requirements to take reasonable steps to:
- ensure that any provisions, criteria or practices do not place disabled students at a substantial disadvantage in comparison with non-disabled students;
  - take reasonable steps to change physical features which place disabled students at a disadvantage;
  - provide any reasonable auxiliary aids which might help remove any substantial disadvantage.
892. [Paragraph 4](#) defines who is an “interested disabled person”, in relation to conferment of qualifications. It also sets out that a provision, criterion or practice does not include an application of a competence standard, which is also defined.
893. [Paragraph 5](#) requires local authorities and maintained schools which are providing higher education or further education to take reasonable steps to ensure that any provisions, criteria or practices do not place disabled people at a substantial disadvantage, and provide any reasonable auxiliary aids to help remove any disadvantage in relation to enrolling people on courses of further or higher education, and to services provided once enrolled. Local authorities providing such services also need to take reasonable steps to change physical features which place disabled students at a disadvantage.
894. [Paragraph 6](#) requires local authorities providing recreational or training facilities to take reasonable steps to ensure that any provisions, criteria or practices do not place disabled people at a substantial disadvantage. They must also take reasonable steps to change physical features which place disabled students at a disadvantage and provide reasonable auxiliary aids to help remove any disadvantage in relation to their arrangements for providing recreational or training facilities.
895. [Paragraph 7](#) requires educational institutions to consider the relevant code of practice produced by the Equality and Human Rights Commission when determining reasonable steps.
896. [Paragraph 8](#) requires that, when making any reasonable adjustment for a particular person, the educational institution needs to consider any request made by that person to keep the nature and existence of that person’s disability confidential.
897. [Paragraph 9](#) sets out that qualifications bodies must take reasonable steps to:
- ensure that any provision, criterion or practice does not place disabled people at a substantial disadvantage;
  - change physical features which put disabled candidates at a substantial disadvantage;
  - provide auxiliary aids to disabled candidates who are at a substantial disadvantage in the conferring of qualifications.

## **Background**

898. These provisions are designed to mainly replicate the effect of provisions in the Disability Discrimination Act 1995.

## **Examples**

- A school with a number of disabled pupils could negotiate special arrangements for pupils who are taking exams.
- A school could provide Braille texts to a blind pupil at the start of lessons so they have access to the same information as other pupils.
- A university has a revolving door which causes some problems for disabled pupils and under these duties it may be reasonable for them to replace the door with a sliding one.
- To ensure that a pupil who needs a wheelchair is not disadvantaged by being left out of PE lessons, a school consults a physiotherapist and devises special activities for the pupil to carry out in PE.

## ***Schedule 14: Educational charities and endowments***

### **Educational charities: paragraph 1**

#### **Effect**

899. This paragraph provides for trust deeds or other instruments concerning educational charities which restrict available benefits to a single sex to be modified by a Minister of the Crown. This cannot be done within 25 years of the trust being created without the consent of the donor, or the donor's or testator's personal representatives. Applicants need to publish particulars of the proposal and invite representations for the Minister to consider before making the order.

#### **Background**

900. This paragraph replicates provisions in section 78 of the Sex Discrimination Act 1975. It is likely to happen when a single-sex school becomes co-educational, and so wants to enable both sexes to benefit from a particular charity connected with the school.

#### **Example**

- A single-sex (boys') grammar school now allows girls into its sixth form and wishes to modify a trust deed which offers scholarships and help with tuition for boys of the school wanting to go to university – so that it can also offer help to girls.

#### **Educational endowments: paragraph 2**

901. A similar power to that in paragraph 1 is given to the Scottish Ministers to modify educational endowments administered in Scotland.

## ***Schedule 15: Associations: reasonable adjustments***

### **Effect**

902. This Schedule explains how the duty to make reasonable adjustments in section 20 applies to associations. Paragraph 2 explains that the duty applies in respect of disabled members and guests including prospective members and guests and that the association must comply with all three reasonable adjustment requirements. It describes the types of adjustments an association must make, stipulates what the duty does not require and provides further information on the meaning of "physical features". It is an anticipatory duty which means associations must anticipate the needs of disabled members and guests including prospective members and guests and make appropriate reasonable adjustments.

### **Background**

903. This Schedule is designed to replicate the effect of similar provisions in the Disability Discrimination Act 1995.

## **Examples**

- A private club with 30 members usually holds its annual dinner upstairs in a local restaurant. However, as there is no lift, the room is not accessible to two new disabled members who have severe difficulty in climbing stairs. Under the duty the club would need to think about changing the venue to a downstairs room to accommodate the new members. This is likely to be a reasonable adjustment for the club to make.
- A club has members who cannot read standard print. Under the duty it would need to think about providing information in large print and on audio tape for them. These are likely to be reasonable adjustments for the club to make.

## **Schedule 16: Associations: exceptions**

904. **Schedule 16** contains exceptions from the association provisions in Part 7 of the Act.

### **Single characteristic associations: paragraph 1**

#### Effect

905. This paragraph allows an association whose main purpose is to bring together people who share a particular characteristic (such as a particular nationality, sexual orientation or a particular disability) to continue to restrict membership to such people, and impose similar restrictions on those who can exercise the rights of an associate, or who can be invited as guests.

906. It is however unlawful for an association to restrict its membership to people of a particular colour.

#### Background

907. An exception for associations which bring together people who share a particular protected characteristic was provided in previous legislation in relation to race and sexual orientation. This exception has been extended to cover all of the protected characteristics in line with the prohibition on discrimination.

#### Example

- A club for deaf people can restrict membership to people who are deaf and would not need to admit people with other disabilities, such as a blind person.

### **Health and safety: paragraph 2**

#### Effect

908. This paragraph is designed to ensure that it is not unlawful for an association to treat a pregnant woman differently in the terms on which she is admitted as a member or is given access to benefits as a member if the association reasonably believes that to do otherwise would create a risk to her health or safety and the association would take similar measures in respect of persons with other physical conditions. Equivalent provision is made in respect of associates and guests.

#### Background

909. Provisions making it unlawful for an association to discriminate against a pregnant woman have been introduced for the first time in this Act. The provisions in this paragraph, which are similar to those which apply in the provision of services to the public, are therefore also new.

#### Example

- A private members' gym may wish to restrict access to squash courts after a certain point in the pregnancy (for example, after 36 weeks).

## **Schedule 17: Disabled pupils: enforcement**

### **Part 1: Introductory**

910. This Schedule sets out the arrangements for making disability discrimination claims in respect of school pupils.

### **Part 2: Tribunals in England and Wales**

#### **Jurisdiction: paragraph 3**

911. Disability discrimination claims in respect of school pupils are made to the First-tier Tribunal in England and to the Special Educational Needs Tribunal in Wales, unless they relate to admissions or exclusions. Claims are brought by the child's parent.

#### **Time for bringing proceedings: paragraph 4**

912. Claims need to be made within six months of conduct commencing. This period can be extended to nine months if the Equality and Human Rights Commission makes arrangements for conciliation in respect of disputes. In addition, tribunals could consider cases beyond this time limit.

#### **Powers: paragraph 5**

913. If a tribunal finds that a school has discriminated against a pupil, it can make any orders it sees fit, particularly in order to remove or reduce the problem. However, it may not award the payment of compensation.

#### **Procedure: paragraph 6**

914. The Welsh Ministers are given powers to make regulations to govern the procedure of claims heard by the Welsh Tribunal.

### **Part 3: Tribunals in Scotland**

915. In Scotland the power to make procedural rules for the hearing of disability discrimination claims by the Additional Support Needs Tribunals for Scotland will be exercised by the Scottish Ministers.

### **Part 4: Admissions and exclusions**

916. If the disability discrimination claim made is in respect of admissions to, or permanent exclusion from, a maintained school or an Academy, then the claim will be brought under independent education appeals panel arrangements as set out in education legislation, rather than going to the tribunals.

### **Background**

917. This Schedule is designed to replicate the effect of provisions in the Disability Discrimination Act 1995.

### **Examples**

- A school pupil is not allowed to join other children in the playground at break-times because of his wheelchair and his parents believe he is being discriminated against because of his disability. They are able to bring a claim against the school which is heard by the First-tier Tribunal (in England). The Tribunal rules in favour of the pupil and makes an order for the school to alter the practice which caused the discrimination and make arrangements for the pupil to join his peers at break time.

- A pupil is refused admission to a school and her parents believe that it is because of her disability and make a claim. The claim cannot be heard by the First-tier Tribunal and is heard by an independent education appeals panel under education legislation.

### ***Schedule 18: Public sector equality duty: exceptions***

#### **Effect**

918. This Schedule lists exceptions to the coverage of the public sector equality duty.
919. [Paragraph 1](#) disapplies the equality duty with respect to age in relation to the education of pupils in schools and the provision of services to pupils in schools and in relation to children's homes.
920. [Paragraph 2](#) disapplies the equality of opportunity limb of the equality duty in relation to immigration functions in respect of race (except as it includes "colour"), religion or belief and age.
921. [Paragraph 3](#) disapplies the equality duty in respect of judicial functions or functions exercised on behalf of, or on the instructions of, a person exercising judicial functions. A judicial function includes judicial functions which are carried out by persons other than a court or tribunal, for example courts martial.
922. [Paragraph 4](#) disapplies the equality duty in respect of any public functions (as that term is defined for the purposes of the Human Rights Act 1998) performed by the persons listed in sub-paragraph (2), or in relation to the functions listed in sub-paragraph (3).
923. [Paragraph 5](#) contains a power for a Minister of the Crown by order to add, change or remove an exception to the scope of the equality duty. However, this power cannot be used to remove or limit the exceptions relating to judicial functions or those relating to Parliament, the Scottish Parliament, the National Assembly for Wales and the General Synod.

#### **Background**

924. This Schedule replaces the exception for immigration functions from the race duty in section 71A of the Race Relations Act. It also replaces sections 76A(3) and (4) of the Sex Discrimination Act 1976 and sections 49C and 49D of the Disability Discrimination Act 1995 relating to excepted bodies and functions and applies similar provision to the protected characteristics that did not previously have equality duties associated with them.

#### **Examples**

- A school will not be required to consider advancing equality of opportunity between pupils of different ages. Nor will it be required to consider how to foster good relations between pupils on different ages. But it will still need to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between pupils in respect of the other protected characteristics.
- The UK Border Agency, when taking immigration-related decisions, will not be required to have due regard to the need to advance equality of opportunity for people of different races, religious beliefs or age when taking those decisions. However, it will still be required to have due regard to the need to advance equality of opportunity for disabled people, for men and women, for people of all sexual orientations and transsexual people when making those decisions.

### ***Schedule 19: Public authorities***

#### **Effect**

925. This Schedule lists those public bodies which are subject to the public sector equality duty contained in section 149(1). It is divided into three Parts: public bodies generally; relevant Welsh bodies; and relevant Scottish bodies. There is provision for a fourth part to be added for cross-border Welsh and Scottish bodies. Subsection (2) of section 149 applies the public sector equality duty to other persons who are not listed in the Schedule, but who are carrying out public functions, but only with regard to the exercise of those functions. The powers in sections 153 and 154 to impose specific duties only apply to bodies listed in Schedule 19; they do not extend to persons who are subject to the public sector equality duty by virtue of subsection (2) of section 149.

#### Background

926. This Schedule uses as its starting point Schedule 1A to the Race Relations Act 1976.

### ***Schedule 20: Rail vehicle accessibility: compliance***

927. The provisions of this Schedule are tied to those of section 186 which provides for the Schedule to be repealed if not brought into force (either fully or to any extent) by 31 December 2010.

928. This Schedule was included in the Act because, during its passage through Parliament, the Department for Transport was consulting on draft regulations under section 46 of the Disability Discrimination Act 1995. These were prepared following a policy reappraisal which favoured a move away from compliance certification and civil enforcement powers for rail vehicle accessibility. The Government's preferred option, adoption of Health and Safety at Work etc Act 1974 enforcement powers with the Office of Rail Regulation being designated as enforcement authority, would make accessibility enforcement on light rail consistent with recent changes to accessibility enforcement on the main line rail system resulting from the introduction of new European standards which came into force in July 2008. The consultation period ended on 3 July 2009 but, in order not to pre-empt the outcome, the option to use compliance certification and civil enforcement powers was retained in the Act.

929. Consultation responses indicated that the Government's preferred option of non-commencement of this Schedule was widely supported by stakeholders. The Government therefore proceeded with the implementation of a package of secondary legislation under the Disability Discrimination Act 1995 which did not include compliance certification and replaced the originally envisaged civil enforcement regime with enforcement by the Office of Rail Regulation under their existing Health and Safety at Work etc Act 1974 powers. The enforcement provisions were contained in the [Rail Vehicle Accessibility \(Non-Interoperable Rail System\) Regulations 2010 \(S.I. 2010/432\)](#) which came into force on 6 April 2010.

930. Government policy is therefore not to bring this Schedule into force. However, the provisions are still explained in detail below to assist the reader's understanding.

### ***Paragraphs 1 to 4***

931. These paragraphs introduce the concept of "compliance certification" into the rail vehicle accessibility regime. The effect would be to require prescribed rail vehicles to have a rail vehicle accessibility compliance certificate (which certifies compliance with accessibility standards).

### **Rail vehicle accessibility compliance certificates: paragraph 1**

#### **Effect**

932. This paragraph provides for the introduction of compliance certification into the rail vehicle accessibility regime by prohibiting a regulated rail vehicle from being used in passenger service unless a valid compliance certificate has been issued for that rail vehicle. Regulations would be required to set out which rail vehicles would require a compliance certificate.
933. It also contains provisions to enable a penalty to be paid to the Secretary of State should a regulated rail vehicle, which is required to have a compliance certificate, be operated in passenger service without one.
934. In circumstances where the Secretary of State has refused to issue a compliance certificate, provisions are made for the applicant to ask for a review of that decision, within a maximum time period to be set in regulations, taking into account any written representations that may be presented by the applicant. A fee could be charged to recover the costs of undertaking such a review.

#### Background

935. This paragraph replicates the provisions of sections 47A and 47D of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

### **Regulations as to compliance certificates: paragraph 2**

#### Effect

936. This paragraph enables regulations to be made setting out how the compliance certification regime introduced by paragraph 1, would operate in practice. For example, the regulations could specify who may apply for a compliance certificate, the conditions to which they would be subject and the period for which the conditions would remain in force.

#### Background

937. This paragraph replicates some of the provisions of section 47B(1) to (3) of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

### **Regulations as to compliance assessments: paragraph 3**

#### Effect

938. This paragraph provides for regulations to be made for the undertaking of compliance assessments, including provision as to who may carry out assessments, and which may provide that assessments be carried out by persons appointed by the Secretary of State (to be known as an “appointed assessor”).
939. Sub-paragraph (3) enables regulations to make provision about the appointment of appointed assessors, for them to charge fees in connection with their work, to prescribe procedures and for the referral of disputes between an appointed assessor and a person who requested a compliance assessment.

#### Background

940. This paragraph replicates the remaining provisions of section 47B of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

### **Fees in respect of compliance certificates: paragraph 4**

#### Effect

941. This paragraph enables regulations to be made setting out the fees which the Secretary of State may charge to recover the costs of carrying out certain administrative tasks relating to the issuing of compliance certificates. Any fees which are received must be paid into the Consolidated Fund. Before making any regulations under this paragraph, the Secretary of State must consult representative organisations.

## Background

942. This paragraph replicates the provisions of section 47C of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

## **Paragraphs 5 to 12**

943. **Paragraphs 5 to 12** make provision for a civil enforcement regime which would enable penalties to be levied for non-compliance with rail vehicle accessibility regulations.

## **Penalty for using rail vehicle that does not conform with accessibility regulations: paragraph 5**

### Effect

944. This paragraph sets out the procedure to be followed by the Secretary of State in respect of an operator of a regulated rail vehicle which appears not to comply with the construction requirements of rail vehicle accessibility regulations. The procedure would involve the issue of “improvement” and “final” notices and, if the vehicle is used despite still being non-compliant with those elements of rail vehicle accessibility regulations with which it is required to conform, the Secretary of State could impose a penalty. The various timescales leading up to the imposition of the penalty would have to be set out in regulations.

## Background

945. This paragraph replicates the provisions of section 47E of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

## **Penalty for using rail vehicle otherwise than in conformity with accessibility regulations: paragraph 6**

### Effect

946. This paragraph makes similar provisions to paragraph 5 but in respect of vehicles used in a way which does not comply with the operational, rather than technical, requirements of accessibility regulations. For example, a regulated rail vehicle may have appropriate equipment to assist a disabled person in getting on or off the vehicle, such as a lift or ramp, but no member of staff is available to operate it.

## Background

947. This paragraph replicates the provisions of section 47F of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

## **Inspection of rail vehicles: paragraph 7**

### Effect

948. This paragraph sets out powers of inspection, to be available where the Secretary of State has reasonable grounds for suspecting that a regulated rail vehicle does not conform with those provisions of accessibility regulations with which it is required to conform. The paragraph also grants similar powers of inspection following the issuing of notices under paragraph 6. “Inspectors” would be empowered to examine and test such rail vehicles and to enter premises at which it is believed they are kept. If an inspector was intentionally obstructed in the exercise of these powers by an operator, or someone acting on the operator’s behalf, the Secretary of State could in certain circumstances impose a penalty on the operator.

## Background

949. This paragraph replicates the provisions of section 47G of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

## **Supplementary powers: paragraph 8**

### Effect



950. This paragraph would allow the Secretary of State to issue a notice to a rail vehicle operator requiring it to provide information by a specified deadline to enable a rail vehicle which is described in that notice to be identified. A penalty could be imposed on the recipient of such a notice if it fails to provide the information required by the deadline, which must be a minimum of 14 days from the date on which the notice was given.
951. Provision is also included to incentivise compliance with notices served under paragraphs 5 or 6 (notices requiring rail operators to make vehicles, or their use, compliant with accessibility regulations). Operators could be required to state what steps they are taking to comply with such notices.
952. In default of providing this information, the Secretary of State is empowered to proceed to the “further notice” stage under paragraphs 5 or 6, a precursor to charging a penalty for non-compliance.

#### Background

953. This paragraph replicates the provisions of section 47H of the Disability Discrimination Act 1995 as inserted by the Disability Discrimination Act 2005 but not yet in force.

### **Penalties: amount, due date and recovery: paragraph 9**

#### Effect

954. This paragraph makes provision in relation to the amount, due date and recovery of penalties imposed under paragraphs 1 and 5 to 8. It stipulates that the maximum penalty cannot exceed the amount prescribed in regulations, or 10 per cent of the turnover of the rail vehicle operator subject to the penalty, whichever is the lesser amount. “Turnover” must be determined in accordance with provisions set out in regulations and the Secretary of State is able to take court proceedings to recover any penalty payable to him. All penalties must be paid into the Consolidated Fund.

#### Background

955. This paragraph replicates section 47J (1) to (7) of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force. The other aspects of section 47J are replicated at paragraph 10.

### **Penalties: code of practice: paragraph 10**

#### Effect

956. This paragraph would require the Secretary of State to issue a code of practice to set out matters that must be considered in determining the level of a penalty. The Secretary of State would be required to take account of the code when imposing a penalty under this Schedule or in considering any objections received to the imposition of a penalty. A court must also take account of the code in considering an appeal against a penalty (see paragraph 12).
957. Before issuing either the first or a revised code of practice, the Secretary of State would have to lay a draft before Parliament, and could bring it into operation by order.

#### Background

958. This paragraph replicates the remaining provisions of section 47J of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

### **Penalties: procedure: paragraph 11**

#### Effect

959. This paragraph sets out the procedure for the imposition of penalties under this Schedule. In particular it specifies the information which the Secretary of State would have to provide when notifying a rail vehicle operator that it is liable to a penalty, and outlines the operator’s right to object to the imposition, or amount of, a penalty. Should

an objection be received, the Secretary of State would be under an obligation to consider the objection and take appropriate action.

#### Background

960. This paragraph replicates the provisions of section 47K of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

#### **Penalties: appeals: paragraph 12**

##### Effect

961. This paragraph sets out the right of an operator, on whom a penalty has been imposed, to appeal to a court on the grounds that either it is not liable to a penalty, or that the amount is too high. An appeal under this section is a re-hearing of the Secretary of State's original decision to impose a penalty, and may be brought whether or not the operator has given a notice of objection (under paragraph 11), or the Secretary of State has already reduced a penalty.

#### Background

962. This paragraph replicates the provisions of section 47L of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

#### **Forgery, etc.: paragraph 13**

##### Effect

963. This paragraph would make it a criminal offence for a person, with intent to deceive, to forge, alter, use, or lend a compliance certificate, to allow one to be used by another person, to make or have possession of a document which closely resembles one, or to knowingly make a false statement for the purpose of obtaining one.
964. It would also make it a criminal offence for a person, with intent to deceive, to impersonate an inspector authorised by the Secretary of State under paragraph 7.

#### Background

965. This paragraph replicates elements of the provisions of section 49 of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

#### **Regulations: paragraph 14**

966. This paragraph provides that any power to make regulations provided for in the Schedule is exercisable by the Secretary of State.

#### **Interpretation: paragraph 15**

##### Effect

967. This paragraph defines what is meant by the terms "compliance assessment", "compliance certificate" and "operator" in relation to this Schedule.
968. Under sub-paragraph (2), if a rail vehicle to which this Schedule applies is the subject of an exemption order issued under section 183, then a reference in this Schedule to a rail vehicle accessibility requirement would not include a requirement from which that vehicle is exempt.

#### Background

969. This paragraph replicates elements of the provisions of section 47M of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

### ***Schedule 21: Reasonable adjustments: supplementary***

#### **Effect**

970. The provisions in this Schedule apply to earlier Schedules in the Act dealing with reasonable adjustments where a person providing services or carrying out public functions, an employer, an education provider or an association is required to consider reasonable adjustments to premises which it rents and would require landlord consent to do so. It sets out what steps it is reasonable for a person to take in discharging a duty to make reasonable adjustments in a case where a binding agreement requires that consent must be obtained from a third party before that person may proceed to make the adjustment to let premises or the common parts of let premises.
971. Where a person wishes to make an adjustment in order to fulfil a duty to make reasonable adjustments but is unable to do so, the Schedule enables the adjustment to be made by deeming the tenancy to include certain provisions. For example the tenancy may have effect as if a tenant is able to make alterations with the consent of the landlord.
972. Where a landlord has refused consent to an alteration or gives consent subject to a condition, the person requesting the consent (or a disabled person who has an interest in the alteration being made) can refer the refusal (or the conditional consent) to a county or sheriff court.
973. The Schedule also provides for a landlord to be joined as a party to proceedings before an employment tribunal, county or sheriff court where a disabled person is bringing an action under the reasonable adjustment duty.
974. The Schedule provides a power to make regulations about matters such as when a landlord is taken to have refused consent, when such refusal is unreasonable and when it is reasonable. Words and phrases used in the Schedule are interpreted consistently with the parts of the Act to which it cross-refers.

#### **Background**

975. This Schedule replaces similar provisions in the Disability Discrimination Act 1995. It also applies in relation to the new duty to make alterations to the physical features of common parts of let and commonhold residential premises in England and Wales.

#### **Examples**

- An insurance company works from a rented two storey building and has plans to install a stair lift to make the building more accessible to employees with mobility impairments. The terms of the lease preclude alterations to the staircase. The company writes to the landlord for permission to make the alteration. The landlord consults the superior landlord who agrees to waive this condition of the lease thereby allowing the installation of the chair lift to proceed. However, as a condition of consent, the landlord requires that the chair lift is removed on surrender of the lease.
- A disabled tenant asks to have automated doors put in at the entrance of her block of flats. Her landlord would like to agree but is unable to do so as he is a tenant of a superior landlord who does not agree to the alteration. The tenant's remedy is to bring an action against her landlord in the county court where she can ask that the superior landlord is brought in as an additional party to the case. The court can order the alteration to be made and order the superior landlord to pay compensation if it finds he has acted unreasonably in refusing his consent.

### ***Schedule 22: Statutory provisions***

#### **Statutory authority: paragraph 1**

#### **Effect**

976. **Paragraph 1** of this Schedule provides exceptions from several Parts of the Act, in relation to the protected characteristics of age, disability, religion or belief, sex and sexual orientation, for things done in accordance with what is, or may in future be, required because of some other law.

#### Background

977. **Paragraph 1** replaces the separate exceptions for statutory authority in previous legislation. However, the exception in section 41(1) of the Race Relations Act 1976, which excused certain race discrimination done under statutory authority in areas with which European law is not concerned, has been removed but not replaced.

#### Examples

- An employer can lawfully dismiss a disabled employee if health and safety regulations leave him with no other choice.
- An employer can lawfully refuse to employ someone to drive a large goods vehicle who is not old enough to hold a LGV licence.

### **Protection of women: paragraph 2**

#### Effect

978. This paragraph allows differential treatment based on sex or pregnancy and maternity at work which is required to comply with laws protecting women who are pregnant, who have recently given birth or against risks specific to women.

#### Background

979. The paragraph replaces separate exceptions for the protection of women in the Sex Discrimination Act 1975 and in the Employment Act 1989.

#### Examples

- A care home cannot lawfully dismiss, but can lawfully suspend, a night-shift worker because she is pregnant and her GP has certified that she must not work nights.
- It may be lawful for a road haulier to refuse to allow a woman lorry driver to transport chemicals that could harm women of child-bearing age.

### **Educational appointments, etc: religious belief: paragraphs 3 and 4**

#### Effect

980. **Paragraph 3** provides an exception from the provisions on sex or religious discrimination for certain posts in schools or institutions of further or higher education where their governing instrument requires the head teacher or principal to be of a particular religious order, or that a particular academic position must be held by a woman, or where the legislation or instrument which establishes a professorship requires the holder to be an ordained priest. In the case of academic positions reserved to women, the exception only applies where the governing instrument was made before 16 January 1990.

981. There is an order-making power conferred on a Minister of the Crown to withdraw the exception either in relation to a particular institution or a class of institutions.

982. **Paragraph 4** provides that it is not unlawful discrimination for schools which have a religious character or ethos (often referred to as faith schools) to do certain things which are permitted by the School Standards and Framework Act 1998. This includes:

- allowing teachers who have been appointed to give religious education to be dismissed if they fail to give it competently;
- allowing a faith school to take account of religious considerations when appointing a head teacher; and

*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

- allowing a voluntary aided school or an independent school to take account of religious considerations in employment matters.

#### Background

983. [Paragraph 3](#) is designed to replicate the effect of provisions in section 5 of the Employment Act 1989.
984. Universities restrict Canon Professorships to certain religions since such posts can only be held by ordained Ministers.
985. [Paragraph 4](#) is designed to replicate the effect of regulation 39 of the Employment Equality (Religion or Belief) Regulations 2003.

#### Examples

- Voluntary controlled and foundation schools with a religious ethos may appoint a head teacher on the basis of his ability and fitness to preserve and develop the religious character of the school.
- Voluntary aided schools with a religious ethos can restrict employment of teachers to applicants who share the same faith. For example most Catholic schools may require that applicants to teaching positions be of the Catholic faith.

#### **Crown employment, etc.: [paragraph 5](#)**

##### Effect

986. [Paragraph 5](#) allows restrictions on the employment of foreign nationals in the civil, diplomatic, armed or security and intelligence services and by certain public bodies. It also allows restrictions on foreign nationals holding public offices.

##### Background

987. The paragraph replaces similar provisions in the Race Relations Act 1976.

##### Examples

- Posts in the security and intelligence services are automatically reserved for UK nationals.
- People who are neither British, Commonwealth or Irish citizens nor British protected persons are generally prohibited from serving in the armed forces, with the notable exception of Gurkhas.

#### ***Schedule 23: General exceptions***

#### **Acts authorised by statute or the executive: [paragraph 1](#)**

##### Effect

988. This paragraph allows direct nationality discrimination and indirect race discrimination on the basis of residency requirements where the discrimination is required by law, Ministerial arrangements or Ministerial conditions.

##### Background

989. The paragraph replaces a similar exception in the Race Relations Act 1976.

##### Examples

- The points-based system which replaced the former work permit arrangements can discriminate on the basis of nationality in determining whether migrants from outside the European Economic Area and Switzerland should be given permission to work in the United Kingdom.
- The NHS can charge some people who are not ordinarily resident in the United Kingdom for hospital treatment they receive here.
- Overseas students at universities in England and Wales can be required to pay higher tuition fees than local students (there are no tuition fees in Scotland).

## **Organisations relating to religion or belief: paragraph 2**

### Effect

990. Paragraph 2 provides an exception for religious or belief organisations with regard to the provisions in the Act relating to services and public functions, premises and associations.
991. The types of organisation that can use this exception are those that exist to: practice, advance or teach a religion or belief; allow people of a religion or belief to participate in any activity or receive any benefit related to that religion or belief; promote good relations between people of different religions or beliefs. Organisations whose main purpose is commercial cannot use this exception.
992. The exception allows an organisation (or a person acting on its behalf) to impose restrictions on membership of the organisation; participation in its activities; the use of any goods, facilities or services that it provides; and the use of its premises. However, any restriction can only be imposed by reference to a person's religion or belief or sexual orientation.
993. In relation to religion or belief, the exception can only apply where a restriction is necessary to comply with the purpose of the organisation or to avoid causing offence to members of the religion or belief whom the organisation represents.
994. In relation to sexual orientation, the exception can only apply where it is necessary to comply with the doctrine of the organisation or in order to avoid conflict with the strongly held convictions of members of the religion or belief that the organisation represents. However, if an organisation contracts with a public body to carry out an activity on that body's behalf then it cannot discriminate because of sexual orientation in relation to that activity.
995. The exception also enables ministers of religion to restrict participation in the activities that they carry out in the performance of their functions as a minister and access to any goods, facilities or services they provide in the course of performing those functions.

### Background

996. This paragraph replicates the effect of similar provisions in Part 2 of the Equality Act 2006 and the Equality Act (Sexual Orientation) Regulations 2007.

### Examples

- A Catholic seminary can restrict places for students to those of the Catholic faith. This would not be unlawful religion or belief discrimination.
- A Church refuses to let out its hall for a Gay Pride celebration as it considers that it would conflict with the strongly held religious convictions of a significant number of its followers. This would not be unlawful sexual orientation discrimination.
- A religious organisation which has a contract with a local authority to provide meals to elderly and other vulnerable people within the community on behalf of the local authority cannot discriminate because of sexual orientation.

## **Communal accommodation: paragraph 3**

### Effect

997. This paragraph provides an exception to the general prohibition of sex and gender reassignment discrimination. It allows communal accommodation to be restricted to one sex only, as long as the accommodation is managed as fairly as possible for both men and women. It sets out factors which must be considered when restricting communal accommodation to one sex only, and provides that discriminatory treatment of transsexual people must be objectively justified.

*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

998. Communal accommodation is defined as residential accommodation which includes shared sleeping accommodation which should only be used by members of one sex for privacy reasons.
999. Where such accommodation is refused in the field of work, or a benefit linked to such accommodation is refused, alternative arrangements must be made where reasonable so as to compensate the person concerned.

**Background**

1000. This paragraph replaces similar provisions in the Sex Discrimination Act 1975. The scope of the exception has been extended from employment, education and services to all fields.

**Examples**

- A hostel only accepts male guests. It is not unlawful for it to refuse to accept female guests because the majority of the bedrooms are shared and there is only one communal bathroom.
- At a worksite the only available sleeping accommodation is communal accommodation occupied by men. A woman employee who wishes to attend a training course at the worksite is refused permission because of the men-only accommodation. Her employer must make alternative arrangements to compensate her where reasonable, for example by arranging alternative accommodation or an alternative course.

**Training provided to non-EEA residents, etc: [paragraph 4](#)**

**Effect**

1001. [Paragraph 4](#) allows less favourable treatment because of a person's nationality in relation to training and associated benefits that are intended for people who do not live in an EEA state, as long as the training provider believes that the person will not subsequently use the skills obtained in Great Britain. This means that an EEA resident cannot claim to have been discriminated against in relation to this type of activity.
1002. Employment or contract work can be covered by this exception where its sole or main purpose is the provision of training in skills. Special provision is made in relation to defence training to reflect current arrangements to help provide other nations with the skills to assist the United Kingdom in addressing global conflict and supporting the United Kingdom on multi-national operations.

**Background**

1003. The main purpose of this provision is to enable people from developing countries to acquire vital skills which may not be available in their country of residence. It replaces similar provisions in the Race Relations Act 1976. The general rule on non-residence has been extended from Great Britain to include all EEA states, except in relation to defence training which is provided to forces from other EEA states as well as those outside the EEA.

**Example**

- It is not unlawful for a company specialising in sustainable irrigation that offers a training scheme in Great Britain for people who live in Mozambique, who then return home to put the skills learned into practice, to refuse to offer the same training to someone who lives in Great Britain.

***Schedule 24: Harmonisation: exceptions***

**Effect**

1004. This Schedule sets out the provisions of the Act to which the power in section 203 does not apply. These are largely provisions where all the equality provisions are clearly governed by European law or where power exists under other legislation to deal with any anomalies that may otherwise arise. Accordingly it will not be possible to amend

these provisions using the power in section 203 to bring them into line, where needed, with changes in European law.

### **Schedule 25: Information society services**

#### **Effect**

1005. This Schedule ensures that the provisions of the Act do not conflict with the requirements of European Directive [2000/31/EC](#) of 8 June 2000, known as the E-Commerce Directive. The Directive concerns information society services, which are services provided from a distance by means of electronic equipment to businesses and consumers such as on-line shopping, direct marketing and advertising. It provides that where an information society service provider is established in Great Britain, the provisions of the Act apply to anything done by it in providing the information society service in another EEA state other than the United Kingdom. By contrast, where the provider is established in an EEA state other than the United Kingdom, then the Act does not apply to anything done by the provider in providing the information society service. Various exceptions to the provisions of the Act are provided in respect of intermediary internet service providers who carry out activities essential for the operation of the internet

#### **Background**

1006. These provisions are new. They are necessary to ensure the United Kingdom correctly transposes the Directive.

#### **Examples**

- An on-line holiday company established in Great Britain refuses to take bookings for shared accommodation from same-sex couples. In this instance a case of direct sexual orientation discrimination could be brought in the British courts regardless of whether the complainant was in the United Kingdom or another EEA member state.
- An on-line retailer, which provides tickets to major sporting events, provides discounts to large groups of men but not women when booking hospitality packages for the forthcoming football world cup. The on-line retailer is established in Germany, so in this instance a case of direct sex discrimination would have to be brought in the German courts regardless of whether the complainant was in the United Kingdom or another EEA member state.

### **Schedule 26: Amendments**

#### **Effect**

1007. This Schedule sets out a number of amendments to the following acts: the Local Government Act 1988, the Employment Act 1989 and the Equality Act 2006. These amendments are necessary to ensure that these Acts refer accurately to the new provisions contained in the Act and work properly with those new provisions. For example, where a new term or a new definition is used in the Act and another Act refers to the same or similar term which is contained in legislation which is being repealed, that other Act needs to be amended to refer to the new term or definition. In addition to the amendments set out in this Schedule, sections 216 and 207 used together provide a power to make similar consequential amendments to other primary legislation.

#### **Local Government Act 1988: paragraphs 1 to 4**

##### **Effect**

1008. This paragraph amends Part 2 of the Local Government Act 1988 (“the 1988 Act”) so as to provide that the public bodies to which that Part applies may exercise a function by reference to a non-commercial matter to the extent that the authorities consider it necessary or expedient to do so in order to comply with the equality duty.



## Background

1009. Section 17 of the 1988 Act prevents public bodies to which that Part applies from introducing certain non-commercial matters into the procurement process; these are set out at subsection 5 of that Act. Section 18 of the 1988 Act ensured that section 17 of that Act did not restrict those authorities from complying with their duties under the Race Relations Act 1976. It achieved this by permitting those authorities to ask six approved questions of their contractors.
1010. [The Local Government Best Value \(Exclusion of Non-commercial Considerations\) Order 2001 \(S.I. 2001/9090\)](#) modified sections 17(5)(a) and (d) of the 1988 Act so that matters relating to the terms and conditions of employment etc. of a contractor's workforce, and the conduct of contractors or their workers in industrial disputes cease to be non-commercial matters only so far as necessary or expedient to permit or facilitate compliance with the best value requirements of the Local Government Act 1999 or the Transfer of Undertakings (Protection of Employment Regulations) 1981. Similar amendments were made for Scotland and Wales.

## Examples

- A local authority which is not a Best Value Authority, which was previously permitted to ask only the six approved questions of its contractors on the race duty, will now be able to consider broader issues on equality when contracting for public supply or works as the authority sees fit in order to comply with the requirements of the public sector equality duty.
- A local authority wants to contract with a private company. It will be able to take into account the ethnic make-up of the workforce of that company, the behaviour of that company during an industrial dispute, and any other issue which is defined as non-commercial, when deciding to award the contract, but only if it considers it is necessary to do so in order to meet the requirements of the public sector equality duty.

## **Equality Act 2006: paragraph 13**

### Effect

1011. This amendment to the Equality Act 2006 allows the Equality and Human Rights Commission to use its enforcement powers, such as the power to conduct investigations and the power to apply for an injunction, in relation to unlawful direct and indirect discrimination under the Act, including the making of arrangements which would result in direct discrimination, if applied to an individual. It can also use its powers in relation to discrimination arising from disability and discrimination in cases where the relationship between the parties has ended; when an employer asks job applicants prohibited enquiries about disability and health; and to enforce any diversity reporting requirements imposed on political parties using the power in section 106.
1012. It allows the Equality and Human Rights Commission to use its powers whether or not it knows or suspects that an individual has been affected by the discrimination. It makes clear that nothing in the Equality Act 2006 affects an individual's right to bring a claim under the Act.

## Background

1013. This amendment partially replaces provisions in previous discrimination law relating to discriminatory practices and discriminatory advertisements. The substantive prohibition against discriminatory practices and advertisements is no longer required as it is covered elsewhere in the Act. This amendment does however extend enforcement by the Equality and Human Rights Commission to cover both direct and indirect discrimination because of any of the protected characteristics, as well as discrimination arising from disability. It also extends the use of the Commission's existing powers to situations where employers ask job applicants prohibited enquiries about disability and health, and to any diversity reporting requirements that may be imposed on political parties.

## Examples

*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

- A golf club operates an informal but well-known policy of not offering membership to people from ethnic minority communities, which discourages people from these communities from applying. The Equality and Human Rights Commission may investigate this unofficial discriminatory policy even though it is not aware of particular individuals directly affected by it.
- A Bed and Breakfast (B&B) advertises for customers but includes a statement that it does not welcome people from the Gypsy and Traveller communities. Even though the Equality and Human Rights Commission can take action, an individual who is discouraged from staying at the B&B can still bring a claim in his or her own right.

***Schedule 27: Repeals and revocations***

**Effect**

1014. This Schedule lists the legislative provisions which will cease to have effect once the relevant provisions in the Act come into force.

***Schedule 28: Index of defined expressions***

**Effect**

1015. This Schedule lists the terms and expressions which are defined in the Act and refers the reader to the provision in the Act where the definition can be found.