

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Equality: Key Concepts**

#### *Chapter 2: Prohibited conduct*

#### *Section 13: Direct discrimination*

#### **Effect**

58. This section defines direct discrimination for the purposes of the Act.
59. Direct discrimination occurs where the reason for a person being treated less favourably than another is a protected characteristic listed in section 4. This definition is broad enough to cover cases where the less favourable treatment is because of the victim's association with someone who has that characteristic (for example, is disabled), or because the victim is wrongly thought to have it (for example, a particular religious belief).
60. However, a different approach applies where the reason for the treatment is marriage or civil partnership, in which case only less favourable treatment because of the victim's status amounts to discrimination. It must be the victim, rather than anybody else, who is married or a civil partner.
61. This section uses the words "because of" where the previous legislation contains various definitions using the words "on grounds of". This change in wording does not change the legal meaning of the definition, but rather is designed to make it more accessible to the ordinary user of the Act.
62. The section also provides that:
  - for age, different treatment that is justified as a proportionate means of meeting a legitimate aim is not direct discrimination;
  - in relation to disability it is not discrimination to treat a disabled person more favourably than a person who is not disabled;
  - racial segregation is always discriminatory;
  - in non-work cases, treating a woman less favourably because she is breast-feeding a baby who is more than six months old amounts to direct sex discrimination; and
  - men cannot claim privileges for women connected with pregnancy or childbirth.

#### **Background**

63. The section replaces the definitions of direct discrimination in previous legislation and is designed to provide a more uniform approach by removing the former specific requirement for the victim of the discrimination to have one of the protected characteristics of age, disability, gender reassignment and sex. Accordingly, it brings

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

the position in relation to these protected characteristics into line with that for race, sexual orientation and religion or belief in the previous legislation.

**Examples**

- If an employer recruits a man rather than a woman because she assumes that women do not have the strength to do the job, this would be direct sex discrimination.
- If a Muslim shopkeeper refuses to serve a Muslim woman because she is married to a Christian, this would be direct religious or belief-related discrimination on the basis of her association with her husband.
- If an employer rejects a job application form from a white man who he wrongly thinks is black, because the applicant has an African-sounding name, this would constitute direct race discrimination based on the employer's mistaken perception.
- If an employer advertising a vacancy makes it clear in the advert that Roma need not apply, this would amount to direct race discrimination against a Roma who might reasonably have considered applying for the job but was deterred from doing so because of the advertisement.
- If the manager of a nightclub is disciplined for refusing to carry out an instruction to exclude older customers from the club, this would be direct age discrimination against the manager unless the instruction could be justified.