



Memorandum to the Women and Equalities Select Committee on the Post- Legislative Assessment of the Equality Act 2010



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Presented to Parliament by the Secretary of State for Education and Minister for
Women and Equalities by Command of Her Majesty
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**MEMORANDUM TO THE WOMEN AND EQUALITIES SELECT COMMITTEE:
POST-LEGISLATIVE SCRUTINY OF THE EQUALITY ACT 2010**

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INTRODUCTION

This memorandum provides a preliminary assessment of the Equality Act 2010 (referred to as ‘the Act’ throughout this document) and has been prepared by the Government Equalities Office (GEO).

It is published as part of the process set out within Chapter 40 of the Cabinet Office Guide to Making Legislation¹, which was last updated in July 2014, and the Government’s approach to post-legislative scrutiny². In line with the agreed approach, the work completed in order to prepare this memorandum does not constitute full post-legislative scrutiny by itself, but is intended to provide Parliament with an update on developments since the Act was introduced and a preliminary assessment which explores whether it has so far achieved the aims set out during the passage of the Equality Bill.

The Equality Act 2010 obtained Royal Assent on 8 April 2010 and the majority of its provisions came into force on 1 October 2010. Some key measures came into force at later dates, such as the combined public sector Equality Duty (s.149) and positive action provisions in relation to recruitment and promotion (s.159), which were introduced in April 2011; and age discrimination in the provision of services and public functions, which came into force in October 2012. There are some provisions, including Part One of the Act (socio-economic inequalities) which remain unimplemented.

The legislation applies across England, Scotland and Wales.

Overall approach

This memorandum sets out:

- The background to the legislation and what it aimed to achieve.
- A factual account of developments since the Act received Royal Assent, including a summary of which provisions have and have not been commenced, how the courts have been interpreting the legislation and its ongoing interaction with EU law.

¹ <https://www.gov.uk/government/publications/guide-to-making-legislation>

² Post-legislative scrutiny - the Government’s approach, CM 7320, March 2008

- A preliminary assessment of how the legislation has been operating to date, relative to the stated objectives of the Act. The evidence used to inform the preliminary assessment includes the organisational surveys conducted in 2011, the review of the public sector Equality Duty (PSED) and the Red Tape Challenge on Equalities. It also provides high-level data, where available, on the number of discrimination cases and how these have progressed.

SECTION 1: KEY OBJECTIVES OF THE EQUALITY ACT AND POLICY

RATIONALE

1.1 The Equality Bill was introduced into Parliament in April 2009, and received Royal Assent in April 2010, with the bulk of the Act coming into force on 1 October 2010.

Two overarching objectives were clearly set out when the Equality Bill was introduced in 2009:

- to harmonise discrimination law; and
- to strengthen the law to support progress on equality.

These objectives were stated, in these terms, in the explanatory notes for the Act and had previously been included in policy documents that set out the rationale for a single, consolidated Equality Act.

1.2 The then Government committed itself (through the Labour Party 2005 Election manifesto) to introduce an Equality Bill to review, simplify and modernise discrimination law. The Discrimination Law Review (DLR) was launched in February 2005 to consider “*the opportunities for creating a clearer and more streamlined equality legislation framework which produces better outcomes for those who experience disadvantage [...] while reflecting better regulation principles.*”

1.3 The DLR was set up alongside an independent Equalities Review, chaired by Trevor Philips, to look at the underlying societal and cultural causes of disadvantage and inequality. The Equalities Review published its final report, *Fairness and Freedom*, on 28 February 2007.

1.4 The DLR culminated in June 2007 with the publication of the consultation paper: *A Framework for Fairness: Proposals for an Equality Bill for Great Britain* which outlined the DLR’s proposals to simplify, modernise, and increase the effectiveness of discrimination law. In addition to setting out the general need for harmonisation, the Green Paper sought views on a range of new measures to update the legislation, including the creation of a combined public sector Equality Duty to replace the previous single Equality Duties on Race, Gender and Disability and proposals to harmonise the definitions of prohibited conduct for different protected groups.

1.5 Work on this issue was carried forward by the Government Equalities Office with the close involvement of other government departments, including the Department for Work and Pensions, the Department for Children Schools and Families, the Department for Business, Enterprise and Regulatory Reform, Department for Communities and Local Government, the Ministry of Justice, the Department of Health and the devolved administrations.

1.6 This was followed in June and July 2008 by two Command Papers: *Framework for a Fairer Future – the Equality Bill* (Cm 7431); and *The Equality Bill – Government Response to the Consultation* (Cm 7454). These documents set out the Government's thinking following the findings from the Discrimination Law Review and the subsequent consultation exercise, and detailed the key objectives and principles which were carried forward when drafting the 2010 Act.

1.7 The thinking behind the Equality Act 2010 thus evolved over a number of years before the Act was introduced in Parliament. There was strong support for a simpler, more streamlined framework for equality legislation because prior to the Act, organisations and individuals needed to be familiar with over 100 different statutes, regulations and case precedents in order to understand the range of equality laws in place. The legislative vehicle needed to achieve this also provided an opportunity to pursue the second objective of strengthening the law to enhance existing levels of protection and introduce new measures that could achieve greater progress on equality.

1.8 Prior to the Act, the legal protections against different types of discrimination had evolved over many years on an issue by issue basis, with separate laws introduced to tackle areas such as race, sex and religious discrimination. As the framework of anti-discrimination law grew and developed over time, there were efforts by successive Governments to update the older laws with newer language and legal concepts. This was achieved in specific areas through significant overhauls of the previous relevant legislation e.g. the Race Relations Act 1976 updated the Race Relations Act 1968 with key concepts established by the Sex Discrimination Act 1975, including the introduction of indirect discrimination and the right to compensation for discrimination claims in employment cases. The legal framework was also updated by way of secondary legislation in order to extend protection and

implement EU directives, e.g. regulations to cover employment as regards sexual orientation, age and religion or belief.

1.9 Despite the time and efforts involved to maintain a level of consistency across anti-discrimination laws, there were naturally problems associated with using such a piecemeal approach. It led to varying levels of protection in place according to the type of discrimination being experienced and the circumstances involved. For example, prior to the Act, indirect discrimination could not be applied for the protected characteristics of disability and gender reassignment. Inconsistencies such as this led to a complicated system for people to interpret.

1.10 The issue of exceptions against claims of direct discrimination illustrated how the law had developed in changing ways for different groups. For example, the Sex Discrimination Act 1975 and the Race Relations Act 1976 listed the specific circumstances, or Genuine Occupational Requirements, where employers could limit a recruitment exercise to people of a particular gender or ethnicity to fill a position e.g. in order to create an 'authentic' dramatic performance. A different approach was adopted for other areas, such as sexual orientation, with employers needing to satisfy a particular test by considering the nature of the particular role and the context in which it was carried out, but with no specific list.

Harmonising the Equalities Framework

1.11 The primary intention for introducing the Act was to harmonise the framework for equality law, by bringing together in one place the various discrimination laws which had evolved over time since the first Race Relations Act in 1965. The Discrimination Law Review had found '*widespread agreement that everyone who needs to understand discrimination law will benefit from having it in a Single Equality Act which simplifies the law as far as this can be done*'³. This was echoed within the responses received to the Government's consultation, with nearly all of the 4,226 respondents agreeing with the need to streamline the law to create a single Equality Act to replace the nine major pieces of discrimination legislation and supporting regulations.

³ Discrimination Law Review- A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain, 2007

1.12 The Act repealed and restated the majority of the provisions from the following key pieces of legislation:

- the Equal Pay Act 1970;
- the Sex Discrimination Act 1975;
- the Race Relations Act 1976;
- the Disability Discrimination Act 1995;
- the Employment Equality (Religion or Belief) Regulations 2003;
- the Employment Equality (Sexual Orientation) Regulations 2003;
- the Employment Equality (Age) Regulations 2006;
- the Equality Act 2006, Part 2;
- the Equality Act (Sexual Orientation) Regulations 2007.

1.13 In repealing and restating the main provisions, the intention was also to iron out any inconsistencies which had developed over time and provide a single approach where possible. In doing this, and in bringing the different pieces of discrimination legislation together, the general aim was to make equality laws simpler to understand and therefore easier to explain.

1.14 The following principles guided the approach towards harmonisation:

- Existing protections should not be eroded;
- Common approaches should be adopted wherever practicable;
- Definitions, tests and exceptions should be practical and reflect the realities of people's experience of discrimination and the way business operates;
- and British discrimination law should comply with the requirements of European law⁴.

1.15 The majority of Part 1 of the Equality Act 2006 remained in force so far as it relates to the constitution and operation of the Equality and Human Rights Commission.

⁴ The Equality Bill – Government response to the Consultation, Cm 7454, July 2008

To Strengthen Progress on Equality

1.16 In addition to harmonising the approach towards anti-discrimination, the Act also aimed to strengthen the progress on equality. This was done through either enhancing existing levels of protection or by introducing new measures.

1.17 Following the findings of the Discrimination Law Review, the Government highlighted certain areas where the law could be strengthened to address inequalities in its *Framework for a Fairer Future – the Equality Bill*, including:

- Creating a combined public sector Equality Duty (PSED) to bring together the three previous duties on race, gender and disability and extend it to cover gender reassignment, age, sexual orientation, pregnancy and maternity, and religion or belief.
- Ending age discrimination to prohibit unjustifiable age discrimination, after further consultation, by those providing goods, facilities and services.
- Promoting greater transparency, including through banning pay secrecy clauses and gathering evidence on the effectiveness of equal pay audits in closing the gender pay gap.
- Extending positive action provisions, so that employers would be able to take into account, when selecting between two equally qualified candidates, under-representation of disadvantaged groups. Also, extending the permission to use women-only shortlists in selecting parliamentary candidates to 2030.
- Strengthening enforcement by allowing tribunals to make wider recommendations in discrimination cases and exploring how to allow discrimination claims to be brought on combined multiple grounds.

1.18 All of the above recommendations were taken forward in the Act and, with the exception of the measures mentioned above in the area of strengthening enforcement, have now been implemented. The provision allowing tribunals to make wider recommendations has now been repealed. Further details of these changes and other new measures introduced by the Act follow in section 3 of this memorandum.

Section 2: Harmonising the Legal Framework for Equalities

2.1 The Equality Act 2010 harmonised the framework for equalities legislation by bringing together separate pieces of legislation into one single Act.

2.2 The Act repealed key discrimination laws in their entirety, and certain provisions or sections within other relevant pieces of legislation, and restated the measures. It also revoked a number of regulations which had been introduced to support the different elements of primary legislation.

2.3 Part 1 of the Equality Act 2006 remains in force for the functions and operations of the Equality and Human Rights Commission.

European law

2.4 The Act implements European Law on equal treatment by incorporating legislation that previously implemented EU equal treatment directives. The following directives are now transposed into GB law through the Act:

- The Employment Equality Framework Directive 2000/78 EC (Disability, age, religion or belief, sexual orientation in employment)
- Racial Equality Directive 2000/43/EC (Race)
- The Gender Directive 2004/113/EC (Sex in service provision)
- Recast Directive 2006/54/EC (Sex in employment)

No new directives have been adopted for implementation since Royal Assent was granted for the Act.

Territorial Extent

2.5 The Act forms part of the law of England and Wales, and with the exception of section 190 and Part 15, forms part of the law of Scotland. A few provisions also form part of the law of Northern Ireland.

Scotland

2.6 The Act replicated previous powers for Scottish Ministers to impose specific duties on Scottish public bodies and on the devolved functions of cross-border bodies to enable them to carry out the public sector equality duty more effectively.

Under the Act, Scottish Ministers are also able to impose specific duties on relevant Scottish bodies (sections 153 and 154) and by order to amend Part 3 of Schedule 19 which lists the relevant Scottish bodies to which the general public sector Equality Duty applies (section 151).

2.7 The Act also contains a number of provisions which confer additional powers on the Scottish Ministers to make secondary legislation, including:

- the power to make regulations setting out a process for the making of adjustments to common parts of residential premises in Scotland (section 37);
- the power to make procedural rules for the hearing of disability discrimination claims by the Additional Support Needs Tribunals for Scotland (paragraph 10 of Schedule 17);
- the power, on the application of the governing body of an educational establishment, to modify an endowment whose benefits are restricted to persons of one sex (paragraph 2 of Schedule 14);
- the power, in relation to education, to prescribe the regulator, qualifications body and relevant qualifications in Scotland (section 96);
- the power to make transitional exemption orders for single-sex education authorities or grant-aided schools in Scotland which alter their admissions arrangements so as to cease being a single-sex establishment (paragraph 4 of Schedule 11);
- a power to make regulations in relation to designated transport facilities (section 162).

Wales

2.8 As is the case for Scotland, the Act confers powers on the Welsh Ministers in relation to the public sector Equality Duty. This includes the same powers including the power to impose specific duties on relevant Welsh bodies, amend Part 2 of Schedule 19 which specifies relevant Welsh bodies subject to the general public sector Equality Duty and to impose specific duties in relation to the devolved Welsh functions of cross-border bodies.

Structure of the Equality Act 2010

2.9 The Equality Act 2010 harmonised the previous anti-discrimination laws by establishing the key concepts (protected characteristics and prohibited conduct), within part 2 of the Act, and then applying these concepts to the different fields covered in subsequent parts of the Act; employment, education, provision of services, providing public functions, premises, associations and transport. A summary of the structure and different parts of the Act is included at Annex A to this memorandum.

2.10 The following protected characteristics are listed at section 4 of the Equality Act 2010 (at Part 2, Chapter 1):

- Race,
- Sex
- Disability
- Age
- Sexual Orientation
- Religion or Belief
- Gender Reassignment
- Marriage and Civil Partnership
- Pregnancy and maternity.

2.11 Broadly speaking, the prohibited conduct (detailed at Part 2 Chapter 2) is then applied in a similar range of circumstances to people who have any of the above characteristics, subject to specific exceptions. There are some remaining differences in the application of subsequent parts of the Act, particularly in respect of the protected characteristic of pregnancy and maternity. It is also important to note that discrimination under the protected characteristic of marriage and civil partnerships only applies within the context of employment.

2.12 The section on prohibited conduct includes definitions of:

- Direct discrimination
- Discrimination arising from disability
- Indirect discrimination
- Harassment

- Victimisation

The definitions for the different protected characteristics and types of prohibited conduct largely mirror what existed before in previous legislation. Any material changes are summarised in the next section.

2.13 The detailed provisions on how these core concepts apply in different fields are set out after part 2 of the Act. [See table at Annex B]

Provision of Services/Public Functions

2.14 Part 3 of the Act covers services and public functions. It prohibits discrimination, harassment and victimisation by those who supply services (including goods and facilities) or perform public functions. If an act of discrimination, harassment or victimisation is made unlawful by other Parts of the Act covering premises, work or education, then those provisions take precedence and this section does not apply.

2.15 This section largely replicated the previous legislation but aimed to get a more uniform approach across the different protected characteristics. For example, there had previously been no protection from discrimination in the exercise of public functions because of pregnancy and maternity, or because of gender reassignment. There was also no protection for discrimination because of age, either in the provision of services or in the exercise of public functions. The Act levelled out these differences and established a more consistent approach. However, it should be noted that some exceptions still apply e.g. under those under 18 years of age are not protected by the age discrimination provisions in Part 3 of the Act. Furthermore the provisions in Part 3 of the Act do not apply to the protected characteristic of marriage and civil partnership. Neither do these provisions apply to ships and hovercraft, where the previous legislation will continue to apply unless or until regulations are made under section 30(1) prescribing the circumstances in which this Part of the Act does apply to them.

Premises

2.16 Part 4 of the Act prohibits discrimination, harassment and victimisation in relation to the disposal, management and occupation of premises. As is the case

under part 3, it does not apply for the protected characteristic of marriage and civil partnership. It also does not apply in respect of the protected characteristic of age.

Work

2.17 Part 5 of the Act sets out the protections that are available in employment and other forms of work, namely the obligations placed on employers and others in respect of their recruitment practices and other matters. This Part generally replicates previous legislation but has harmonised the provisions so that they apply more equally across all the protected characteristics. The provisions relating to equal pay between men and women formerly in the Equal Pay Act were essentially recreated in this Part.

2.18 Notable changes which were introduced by the Act included the introduction of positive action measures at Part 11, ss158-159 of the Act (there were positive action provisions in the previous legislation but these were applied unevenly across the protected characteristics) and a ban on asking health and disability related questions within recruitment exercises (Part 5, s.60). In 2010, the Government Equalities Office published quick start guides on these areas in order to help employers understand the changes.

Education

2.19 Part 6 of the Act prohibits discrimination, harassment and victimisation in the field of education. It replicates the position in previous legislation, but also extends protection to students with the protected characteristics of gender reassignment and pregnancy and maternity. Other significant changes include positive action measures which allow education bodies to target assistance for students with particular protected characteristics to help them overcome a disadvantage that is shared with others in that group. The Act also makes it unlawful to victimise a child because their parent or sibling has done a 'protected act' (see paragraph 3.17), and extends the reasonable adjustment duty to require schools to provide auxiliary aids and services to disabled pupils, which came into force on 1 September 2012.

Associations

2.20 Part 7 of the Act sets out the way in which an association should treat its members, guests and associates. It also explains when an association can restrict its

membership and the benefits of membership to people who share a particular protected characteristic. This means that as well as tackling inequality, the Act also maintains provisions that enable a club to cater for individuals with a specific protected characteristic: for example, a club for those with a sight impairment, or from a specific racial background, or which caters for people specifically and exclusively on the basis of gender.

2.21 The main change is that the Act replaces associations' separate obligations relating to disability, race and sexual orientation with a single set of requirements covering these characteristics, and extends them to include religion or belief, gender reassignment, pregnancy and maternity, sex and age.

Ancillary Measures

2.22 Part 8 of the Act covers the ancillary measures which sit alongside the main concepts of prohibited conduct, including discrimination or harassment which has occurred after a relationship has ended. It replaced similar provisions in previous legislation, but also extended protection after a relationship has ended to cover discrimination outside the workplace because of religion or belief, sexual orientation and age discrimination. This part of the Act also sets out the way the law applies to principals and agents.

Enforcement

2.23 Part 9 of the Act covers enforcement under the Act, with detailed sections on civil courts and employment tribunals, including matters such as time limits for claims. The provisions do not affect the enforcement action which can be undertaken by the Equality and Human Rights Commission (as covered by part 1 of the Equality Act 2006) or judicial review proceedings. This section did not introduce any major changes to the previous legislation, with the exception of an additional power for tribunals to make recommendations that will benefit the wider workforce when an employer has been found to be in breach of the Act. This provision was subsequently repealed as part of the Government's deregulatory programme.

Contracts

2.24 Part 10 of the Act covers contracts and prevents employers from entering into agreements which would allow the prohibited conduct specified within the Act. The

Act also provides that contractual terms that would enable prohibited conduct are unenforceable. In relation to disability only, the provisions on unenforceable terms also apply to terms of non-contractual agreements within the provision of employment services, or staff insurance arrangements for employees.

Advancing Equality

2.25 Part 11 of the Act, 'Advancing Equality', contains two key measures which organisations can use to actively take action to tackle disadvantages; the public sector Equality Duty (chapter 1) and positive action (chapter 2). Both areas are covered in more detail within Section 3, which explores how the Act strengthened progress on equality.

Disability and transport

2.26 Part 12 of the Act specifically relates to the issue of transport and disability, with separate sections on taxis, public service vehicles and rail vehicles. The majority of the provisions were transposed from the previous legislation, with few material differences.

2.27 The Equality Act 2010 included provisions requiring drivers of wheelchair accessible taxis and private hire vehicles to physically assist wheelchair passengers so that they can use their vehicles and not charge passengers extra fees for doing so. These measures were previously in the Disability Discrimination Act 1995 but were never commenced, and this remains the case notwithstanding their transposition into the Equality Act 2010.

Section 3: Strengthening Progress on Equality

3.1 This section highlights the areas where the Act made substantive changes to the previous equality laws. Further details of the new measures are also provided. Relevant updates against each substantive change or new measure are included alongside the summary of the change described.

Prohibited Conduct

3.2 The core definitions of discrimination have been largely unchanged from those in previous equality legislation. However, the protections are now applied across all the protected characteristics, with some limited exceptions.

Direct Discrimination

3.3 The basic definition of direct discrimination has not been altered by the Act. However, the Act has achieved a more uniform approach for those situations where someone is treated less favourably because they are thought to have a protected characteristic (discrimination by perception) or because they associate with someone who has a protected characteristic (discrimination by association). Discrimination by perception had previously applied to the characteristics of Age, Race, Religion or Belief and Sexual Orientation, but was extended by the Act to cover Disability, Gender Reassignment and Sex. Discrimination by association had previously applied to the characteristics of Race, Religion or Belief and Sexual Orientation, but was extended to cover Age, Disability, Gender Reassignment and Sex.

3.4 The general definition of direct discrimination applies to all protected characteristics, except for the following circumstances:

- Direct discrimination can be justified in respect of age discrimination if it is a proportionate means of achieving a legitimate aim.
- Separate provisions exist in respect of discrimination against a woman on the grounds of pregnancy or maternity (sections 17 and 18 of the Act).

Indirect Discrimination

3.5 The Act did not significantly alter the definition of indirect discrimination, but it did harmonise some of the minor differences which had existed in previous legislation, and the definition of objective justification. Indirect discrimination had

already applied in respect of age, race, religion or belief, sex, sexual orientation and marriage and civil partnership. The Act extended this to cover disability and gender re-assignment. However, it does not apply to the protected characteristic of pregnancy or maternity.

Discrimination arising from Disability

3.6 This is a new provision introduced by the Act and describes discriminatory behaviour if a disabled person is treated unfavourably because of something arising in consequence of their disability, and this treatment cannot be justified as a proportionate means of achieving a legitimate aim. This replaced the concept of “disability related discrimination” which had been in the Disability Discrimination Act 1995, as amended but had been restricted in scope following the judgment in the House of Lords on the *London Borough of Lewisham v Malcolm* case in 2008. The House of Lords decision in this case made it more difficult for a disabled person to prove disability-related discrimination. (A summary of the Malcolm case is included in Section 4 on Legal Issues.)

3.7 Under this new category of discrimination, there is no need to establish less favourable treatment through the use of a comparator. If an employer or service provider did not know and could not reasonably have been expected to know of the disabled person's disability, then the unfavourable treatment will not amount to discrimination. However, the employer or service provider is expected to take reasonable action to find out if a person has a disability.

Duty to make Reasonable Adjustments

3.8 The Act consolidates and extends the existing duties upon employers and suppliers of goods and services from the Disability Discrimination Act 1995 to make reasonable adjustments for disabled persons.

3.9 The person to whom the duty applies needs to take into account the three following elements of the duty:

- Reasonable steps need to be taken to avoid putting disabled people at a substantial disadvantage by a provision, criterion or practice, in comparison to people who are not disabled.

- Reasonable steps need to be taken to avoid putting disabled people at a substantial disadvantage due to a physical feature, in comparison with persons who are not disabled.
- Reasonable steps need to be taken to provide auxiliary aids where a disabled person would, but for the provision of an auxiliary aid, be at a substantial disadvantage in comparison with people who are not disabled.

3.10 Where the provision, criterion or practice in question or the auxiliary aid required relates to the provision of information, 'reasonable steps' include making sure that the information is in an accessible format.

3.11 The duty relating to the provision of auxiliary aids previously only applied to premises and goods and services, but has now been extended to employment. Schedules 2 and 8 of the Act provide information on how the duty should operate within the contexts of goods and services and employment.

3.12 In relation to the provision of goods, facilities and services to members of the public, the duty to provide a reasonable adjustment is **anticipatory**. This means that providers of goods, facilities and services must anticipate and where reasonable make, the adjustments that disabled people might in future require in order to purchase/use their goods, facilities and services without being put at a substantial disadvantage compared to those that do not have a disability.

3.13 Schools and education authorities already had a duty to provide reasonable adjustments for disabled pupils from 2002 under the Disability Discrimination Act 1995. From 1 September 2012 the reasonable adjustments duty for schools and education authorities includes a duty to provide auxiliary aids and services for disabled pupils.

Harassment

3.14 The prohibition of harassment does not apply to pregnancy and maternity, or marriage and civil partnership. Essentially harassment takes place where there is unwanted conduct which is related to a relevant characteristic and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or violating the complainant's dignity. For harassment related to a protected characteristic, 'related to' includes where the

employee or client being harassed has a protected characteristic or where there is any connection with a protected characteristic. 'Any connection' includes a situation where the employee or client being harassed has an association with someone who has a protected characteristic or where they are wrongly perceived as having a particular protected characteristic.

3.15 The Act also introduced third party harassment where employers could also be found liable for harassment by third parties who they do not employ (e.g. contractors), and this was extended to cover age, disability, gender reassignment, race, religion or belief and sexual orientation. However, this measure was repealed in October 2013 as part of the Government's deregulatory programme to reduce red tape and unnecessary burdens on business. The provision was deemed no longer necessary since changes in the law prior to 2010 meant that a claim of harassment by a third party might succeed under the main harassment provision at S.26 of the Act.

3.16 Harassment by a service provider is unlawful if it is related to age (except in relation to persons under the age of 18), disability, gender reassignment, race, pregnancy and maternity and sex.

Victimisation

3.17 Victimisation occurs when a person subjects another person to a detriment because the person has carried out (or it is believed they have or may have carried out) what is referred to as a 'protected act'.

3.18 A protected act includes bringing proceedings or being involved in proceedings under the Act, giving evidence in connection with proceedings under the Act, doing anything which is related to the provisions of the Act and making allegations against another person about breaches of the Act.

3.19 The victim need not have a protected characteristic in order to be protected from victimisation under the Act; for example they could have been supporting a person with a protected characteristic who is making a claim.

The Protected Characteristics (section 4)

There have been some changes to the definitions of individual characteristics, which are set out below.

Age (section 5)

3.20 The Act protects adults (and 16 and 17 year olds in the case of employment) from unlawful age discrimination. This is the only protected characteristic where direct discrimination may be justified, but employers may only be able to justify differential treatment on the grounds of age if they can demonstrate that the different treatment is a proportionate means of achieving a legitimate aim.

3.21 The ban on Age Discrimination within the provision of goods and services came into force on 1 October 2012 and makes it unlawful to discriminate on the basis of age unless:

- the practice is covered by an exception from the ban
- good reason can be shown for the differential treatment ('objective justification')

Part 3 of the Act dealing with services and public functions does not protect young people under 18 years.

Disability (section 6 and Schedule 1)

3.22 The Work and Pensions Committee in the House of Commons considered the provisions in the single Equality Bill, looking specifically at how disability equality fitted with a single Equality Act. It noted that⁵ *"In the process of harmonising and simplifying the law the government will make a number of improvements to discrimination law for disabled people in the Equality Bill. The Equality Bill will:*

- *Make it more straightforward for disabled people to show that they are disabled;*

⁵ Work and Pensions Committee - Third Report, The Equality Bill: how disability equality fits within a single Equality Act, April 2009

- *Simplify the definitions of discrimination in accessing goods, facilities and services etc.;*
- *Introduce [the concept of] direct discrimination to the supply of goods, facilities and services etc.;*
- *Introduce a common threshold for the duty to make reasonable adjustments;*
- *Introduce a new duty on landlords to make disability–related alterations to the common parts of let residential premises; and*
- *Remove the possibility of justifying a failure to make a reasonable adjustment outside of employment.”*

3.23 The duty on landlords to make disability related alterations to the common parts of rented accommodation (section 36) has not been commenced to date. This is an extension of an existing duty for landlords to adapt rented accommodation and is currently taking place on a voluntary basis.

3.24 The definition of disability remains essentially unchanged from the wording used in the Disability Discrimination Act 1995, as amended. A person has a disability if they:

- have a physical or mental impairment, and
- the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

However, the Equality Act 2010 updated the definition of Disability so that it is no longer necessary to consider the previous list of eight capacities when considering whether or not a person is disabled⁶.

3.25 The Act removed this list because of the restrictions it posed for people with some impairments such as mental health conditions, and instead provided for a system whereby tribunals and courts could determine whether or not a particular impairment has a “*substantial and long-term adverse effect*” on day-to-day activities.

⁶ The previous eight ‘capacities’ were: mobility; manual dexterity; physical coordination; continence; ability to lift, carry or otherwise move everyday objects; speech, hearing or eyesight; memory or ability to concentrate, learn or understand; and the perception of the risk of physical danger

The meaning of the term 'substantial' is now defined in S. 212 (1) of the Act as being more than minor or trivial. The statutory guidance to the Act "*Guidance on matters to be taken into account in determining questions relating to the definition of disability*" provides further clarification on the meaning of what constitutes a '*substantial adverse effect*'.

3.26 Section 60 of the Act also includes a new provision which makes it unlawful, except in certain circumstances, for employers to ask about a candidate's disability or health before offering them work. Only the Equality and Human Rights Commission can enforce this provision.

3.27 As mentioned in paragraph 3.6 above, the Act includes a new protection from discrimination arising from disability and disability is also now covered against indirect discrimination.

Gender Reassignment (section 7)

3.28 The definition of 'transsexual' was altered for the purposes of the Act. The Act defines a transsexual person as someone who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning a person's sex. The Act no longer requires a person to be under medical supervision to be protected e.g. a woman who decides to live as a man but does not undergo any medical procedures would be covered.

3.29 The Act also specifies that it is discriminatory to treat transsexual people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated as if they were absent because they were ill or injured.

Marriage and Civil Partnership (section 8)

3.30 Discrimination on grounds of marriage or civil partnership is prohibited under the Act. The prohibition applies only in relation to employment and not the provision of goods and services, premises, education, or associations.

Race (section 9)

3.31 The position on 'race' remains unchanged under the Act. It is unlawful to discriminate on grounds of colour, nationality or ethnic/national origins. Since changes made by the Enterprise and Regulatory Reform Act 2013, this section also contains a duty to add 'caste' as an element of race, although (as with gypsies and travellers), case law (since 2013) has developed in a way that potentially enables a claim for race discrimination to be made on these grounds, notwithstanding that the duty has not so far been implemented.

Religion or Belief (section 10)

3.32 The position on religion or belief replaces similar provisions in the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006.

Sex (section 11)

3.33 Men and women are protected under the Act as before, with no material changes introduced by the Act.

Sexual Orientation (section 12)

3.34 Heterosexual, bisexual, gay and lesbian people remain protected under the Act. The Act did not introduce any substantive changes to this definition.

Pregnancy and Maternity (sections 17 and 18)

3.35 Discrimination of women on the grounds of pregnancy or maternity during pregnancy and a maternity period is prohibited under the Act. There are different provisions covering the work and non-work context.

3.36 In the non-work context (section 17), the Act replicated similar provisions from the Sex Discrimination Act 1975 but also extended protection to cover discrimination in relation to public functions, education, and to associations. Provisions in the work context (section 18) replicated provisions from previous legislation.

New Measures

3.37 The Act introduced a number of new measures to strengthen progress on equality:

- The Socio-economic Duty
- Extending the circumstances where conduct would be prohibited
- Dual Discrimination
- Public Sector Equality Duty
- Positive Action
- Women-only shortlists for political parties
- Diversity data reporting by political parties
- Tribunals - Wider Recommendations
- Property rights for Civil Partners
- Civil Partnerships in Religious Premises
- Discussions about pay
- Gender Pay Gap Information

Although this is not an exhaustive list of all the new measures contained within the Act, it includes the most significant changes. Each measure is outlined below, with an overview of what the measure was designed to achieve and relevant information on developments since the Act received Royal Assent.

Socio-Economic Duty

3.38 The Act introduced a new duty, set out within Section 1, on particular public bodies to factor in considerations about reducing socio-economic disadvantages when making strategic decisions about how to exercise their functions.

3.39 This measure was not implemented by the Coalition Government due to concerns about the extra regulatory burdens associated with commencing and enforcing it. Although it was not structured to pose a direct burden on businesses, it would have had significant resource implications for the public sector. It should be noted that both the Scottish and Welsh Government wish to commence the duty, and a relevant provision to this effect has been included in the Scotland Bill currently before Parliament.

Extending the circumstances for prohibited conduct

3.40 Relevant material changes have already been outlined above e.g. discrimination arising from a disability and indirect discrimination on the grounds of a disability. These extensions to the different types of prohibited conduct all came into force on 1 October 2010. All the changes under this category have remained in force, with the exception of Third Party Harassment which was repealed in October 2013.

Dual Discrimination

3.41 This measure enables claims of direct discrimination to be made on the grounds of the claimant having a combination of any two relevant protected characteristics (e.g. a disabled woman), therefore providing protection in situations where claims are considered to have less of a chance of succeeding if based on only one protected characteristic. The legislation does not require the claimant to demonstrate that a claim would need to succeed under each separate characteristic.

3.42 This provision has not been commenced to date due to insufficient evidence that it was needed and concerns that it represented an unnecessary burden to business since the current legislation already provides sufficient protection for individuals. Individuals can submit two or indeed multiple claims, each involving a different protected characteristic, in relation to the same alleged incident.

Public Sector Equality Duty – Section 149

3.43 The public sector Equality Duty (PSED) replaced the previous single equality duties on Race, Gender and Disability and introduced a new duty to be applied across all the protected characteristics.

3.44 The PSED places a requirement on listed public bodies (at Schedule 19 to the Act), and other bodies when carrying out public functions, to consider how their policies, programmes and service delivery will affect people with the protected characteristics. The PSED came into force in April 2011 and applies across England, Scotland and Wales.

3.45 Section 153 of the Act enables Ministers to introduce secondary regulations (also known as the ‘specific duties’) which will help public bodies to meet the PSED

more effectively. England, Scotland and Wales have taken different approaches towards their specific duties⁷. The English specific duties, which commenced in September 2011 adopted a less prescriptive approach than Scotland and Wales which gives public bodies more flexibility in how they demonstrate their compliance under the PSED.

3.46 The Government announced a review of the PSED in May 2012 as part of a wider package of measures on the Red Tape Challenge on Equalities. The review, which was overseen by an independent Steering Group, concluded in September 2013 with a series of recommendations for improving the implementation of the PSED. The review recommended a further review of the PSED in 2016, by which time it will have been in operation for five years.

Positive Action – Section 158 and 159

3.47 The Act introduced powers allowing organisations to take steps, on a voluntary basis, to help existing or potential employees or customers to overcome or minimise a disadvantage arising from a protected characteristic.

3.48 Section 159 of the Act relates specifically to the use of positive action in recruitment and promotion. Employers are able to use positive action in specified circumstances to address needs or disadvantages shared by members of a protected group in relation to recruitment and promotion.

3.49 The Act also maintains the existing approach with regard to education and training which encourages employers to direct training at, and encourage applications from, groups considered to be under-represented.

The positive action provisions came into force in 1 October 2010.

Women-only shortlists - Section 104

3.50 The Act extended permission for political parties to use women-only shortlists for election candidates up until 2030. This came into force on 1 October 2010.

⁷ [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012 \(SSI 2012/162\)](#)
[Equality Act 2010 \(Specific Duties\) Regulations 2011 \(SI 2011/2260\)](#)
[Equality Act 2010 \(Statutory Duties\) \(Wales\) Regulations 2011 \(SI 2011/1064\)](#)

Diversity Data on Election Candidates – Section 106

3.51 This section has not been brought into force. The Coalition Government decided instead to pursue a voluntary approach in the first instance, and has worked with political parties to encourage greater transparency and report on the diversity of their political candidates.

Wider recommendations - Tribunals

3.52 This power enabled an employment tribunal to make a recommendation to a respondent who had lost a discrimination claim to take certain steps to remedy matters not just for the benefit of the individual claimant (who may have already left the organisation concerned) but also the wider workforce.

3.53 This measure was enacted on 1 October 2010, but was repealed on 26 March 2015 with effect from 1 October 2015 by the Deregulation Act 2015 as part of the Government's wider programme of deregulation.

3.54 Following the Red Tape Challenge on Equalities, the Coalition Government concluded that this power was unnecessary and unenforceable. It took the view that employers who lose a discrimination case often take such actions themselves in the interest of avoiding similar cases being brought against them in the future and those employers who are unlikely to take such remedial action are also unlikely to adhere to a wider recommendation. Furthermore, as the power did not include legislative sanctions, the tribunals could not enforce their suggested recommendations.

Property rights for Civil Partners

3.55 The Act amended family property law to remove discriminatory provisions and provides additional statutory property rights for civil partners in England and Wales.

Civil Partnerships in Religious Premises

3.56 The Act amended the Civil Partnership Act 2004 to remove the prohibition on civil partnerships being registered in religious premises. This was commenced in July 2011, following a Government consultation on the most appropriate way of enacting this measure, and regulations came into force in December 2011.

Discussions about Pay (section 77)

3.57 Under the Act, pay secrecy clauses within employment contracts are unenforceable if they are related to a protected characteristic.

Gender pay gap reporting (section 78)

3.58 Section 78 of the Equality Act 2010 (the Act) contains a power for the government to make regulations requiring mandatory gender pay gap reporting for private and voluntary sector employers with over 250 employees. The Coalition Government decided to pursue a voluntary approach in the first instance in order to minimise the regulatory burden on businesses.

3.59 In order to promote a voluntary approach, the Coalition Government launched the *Think, Act, Report* initiative in September 2011 to advance gender equality in the workplace by encouraging businesses to think about gender equality, taking steps to promote equality in their workplace and then share their progress publicly. Despite success in getting organisations to sign up to the scheme and adopt measures to promote gender equality, only a very small number of the companies had agreed to publish information about gender pay differences, after a three year period.

3.60 The Government amended the Small Business, Enterprise and Employment Act 2015 to create a duty to make regulations that will bring into force section 78 of the Equality Act. These regulations will deliver the Government's manifesto commitment to *“require companies with more than 250 employees to publish the difference between the average pay of their male and female employees”*.

Section 4 – Legal Issues

Overview

4.1 No legal cases, whether in the domestic or European courts, have so far resulted in any need to change the 2010 Act, notwithstanding occasional media accounts (relating e.g. to the Kaltoft case – see summary below) which might have suggested otherwise. And only in one relatively minor respect – the omission of protection against “post-relationship victimisation” (see case of *Rowstock v Jessemey* below) - is the Act now known to have been defective relative to the previous legislation. The bulk of this chapter therefore covers significant cases which have developed the law under the Act as it stands, together with some notes on case-law developments over a longer period which influenced the drafting of the Act.

4.2 While the then Government’s clear objective in introducing the Act was to harmonise, simplify and modernise discrimination law, it did so on the basis that many of the legal concepts in the pre-existing legislation had been tried and tested within the courts and tribunals. Where that caselaw was not codified, the Act sought to maintain consistent wording with it to ensure continuity. As a result, subsequent rulings under the Act in areas have not tended to raise any significant new difficulties about how the legislation should be interpreted.

4.3 It was also possible to benefit from the lessons learned from previous case law when introducing changes that would harmonise or simplify previous measures. For example, the new concept of discrimination arising from a disability introduced by the Act replaced the previous provision of disability related discrimination. This change was felt necessary because of the limiting effects of the House of Lords judgment in the *London Borough of Lewisham vs Malcolm* case in 2008 on how the previous legislation could be interpreted.

4.4 The case concerned proceedings to evict Mr Malcolm from his council home for sub-letting it, contrary to a term of his tenancy. The Disability Discrimination Act 1995 precluded a manager of premises from discriminating against a disabled person who occupies the premises, by evicting them or subjecting them to any other detriment for a reason related to their disability. Mr Malcolm claimed that he was a

disabled person under the Act and that his subletting was a consequence of his disability so the court could not grant a possession order in his case because this would be disability-related discrimination (i.e. without justification, subjecting him to less favourable treatment for a reason related to his disability).

4.5 In reaching a judgment the House of Lords declined to follow the established caselaw in *Clark v Novacold* regarding comparators. Instead they held that the correct approach meant the comparator should be someone who had sub-let their flat but who did not have a disability. Since Lewisham Council would have sought possession against anyone who had sub-let their council flat, the Law Lords found that the Council had not treated Mr Malcolm less favourably.

4.6 The effect of the House of Lords' judgment was that it shifted protection under the Disability Discrimination Act 1995 away from the Government's policy intention. The judgment had disturbed the balance between the rights of disabled people and the interests of duty holders by making it more difficult for a disabled person to establish a case of disability-related less favourable treatment. The Equality Act 2010 therefore presented an opportunity to redraw an area of the law which the Government considered was no longer working as originally intended.

4.7 Conscious efforts such as these to correct known inconsistencies or remove anomalies from previous legislation, arguably lead to legislation which is far easier to interpret and work with.

4.8 The protected characteristic of religion and belief is an area which has evolved considerably through case law. Domestic legal protection against discrimination because of religion or belief was first introduced through the Employment Equality (Religion or Belief) Regulations 2003. Those regulations covered '*any religion, religious belief, or similar philosophical belief*' (emphasis added). At that time it was made clear that the philosophical beliefs it was designed to capture were beliefs such as humanism and atheism.

4.9 The regulations were employment-related but it was later decided to include provisions in the Equality Act 2006 to extend legal protection to areas outside of the workplace. At that time it was considered that the word 'similar' was axiomatic and it

was omitted. The definition in the 2003 regulations was also amended for the sake of consistency.

4.10 While the formulation of the provisions had changed, the policy intention remained the same. During Parliamentary debate, the Government made clear that the change in definition was functional and was not intended to broaden the coverage of ‘philosophical’ beliefs beyond that initially established under the 2003 regulations.

“...it was felt that the word ‘similar’ added nothing and was... redundant”

Baroness Scotland (Attorney General) – House of Lords 13 July 2005

The revised formulation was replicated in the Equality Act 2010, again with the policy intention of protecting the same breadth of philosophical beliefs.

4.11 However, recent legal judgments have seen a much broader range of beliefs given protection by the courts. Many of these judgments have taken place at Employment Tribunal (ET) or Employment Appeal Tribunal (EAT) level. Any judgment reached by a particular ET is not binding in other ET cases, but an EAT judgment is binding on all subsequent ET hearings⁸.

4.12 This pattern means that contradictory judgments can be reached. For instance, in *Kelly v Unison (2010)* an ET found that Marxism is not capable of being considered to be a philosophical belief due protection under discrimination law, whereas the judgment in *Henderson v GMB (2013)* by a different ET concluded that ‘democratic socialism’ is.

4.13 Recent judgments from ETs and EATs have also suggested that a wider view is now being taken as to what constitutes a “philosophical belief”. For example the following have been found to be philosophical beliefs – a belief in climate change (*Grainger v Nicholson 2010*) and a belief in public sector broadcasting (*Maistry v*

⁸ [EAT judgments are not binding outside of the tribunal system, which means that they do not set a binding legal precedent in civil proceedings, although civil courts are obliged to consider their findings.]

BBC 2011). While both these cases were decided before the Equality Act 2010 came into force, they are likely to influence future decisions on what is meant by a philosophical belief under section 10 of the Equality Act 2010.

Case Summaries

4.14 This section provides summaries and overview commentary on the significant Court and Tribunal rulings which have been delivered under the Act. It is worth noting that many of the cases under the Act would have only started going through the judicial system a year or so after the Act had come into force as claims of discrimination up until October 2010 would have been heard under the previous legislation.

Victimisation (Section 108)

Rowstock v Jessemey [2014] EWCA Civ 185 - Court of Appeal

An Employment Tribunal found that the Claimant was subject to age discrimination and unfair dismissal when he was dismissed from his job at the respondent employer due to being over 65 years of age. The Claimant had approached an employment agency in an attempt to find another job but was given a very poor reference by the respondent. The Claimant believed that the reason for that reference was that he had brought proceedings against the company so he brought a further claim alleging victimisation. The Employment Tribunal (ET) and Employment Appeal Tribunal (EAT) had held that "post-employment victimisation" was not unlawful under the Act.

The Court of Appeal, however, held that the EAT had failed to appreciate the extent of the flexible interpretative obligation explained in *Ghaidan v Godin-Mendoza* [2004] 2 AC 557. The difference of opinion had resulted from the accidental omission of provision covering post-relationship victimisation in section 108 of the Act, but that there was no reason why the provisions of section 108 should not be read to give effect to the EU obligation to prohibit post-employment victimisation.

Victimisation (Section 39)

Gillingham Football Club Ltd v McCammon (UKEAT/0559/12) - Employment Appeal Tribunal

The Tribunal found that a football club had victimised its employee, a professional football player, when it dismissed him for reasons which included the fact he had made accusations of racism against the team manager and assistant manager.

Disability

Reasonable Adjustments – Disability (Section 20 and Schedule 8)

Croft Vets Ltd. v Butcher [2013] UKEAT/0562/12 - Employment Appeal Tribunal

The EAT ruled that the employer should have considered paying for private medical treatment to enable an employee to cope with work related stress as part of its duty to make reasonable adjustments. The EAT held that the law did not extend to a duty to pay for medical fees in general, only to the provision of specific treatment to enable the employee to do the work.

Reasonable adjustments - Disability (Section 20 and 21)

Secretary of State for Work and Pensions v MM [2012] EWCA Civ 1565 - Court of Appeal

The Court of Appeal held that the Secretary of State had failed to take reasonable steps to avoid the substantial disadvantage caused to claimants with mental health problems by the process for assessing eligibility for Employment and Support Allowance.

Reasonable Adjustments – Disability (Section 21)

Paulley v First Group [2014] EWCA Civ 1573- Court of Appeal

In this case, the Court of Appeal held that the duty to make reasonable adjustments did not require a bus company to force non-disabled passengers to vacate the wheelchair space on a bus in order to make room for a passenger in a wheelchair. Permission to appeal is being sought from the Supreme Court. Contrary to how this case was often reported by the media, the ruling did not however hold that the protected characteristic of gender trumps that of disability.

Natalie Black and others v Arriva North East Limited – [May 2013]

Middlesborough County Court

The claimants alleged that Arriva North East had failed to comply with its duty to make 'reasonable adjustments' under the Equality Act. They argued that they had been unable to board some Arriva North East buses because Arriva effectively operate a 'first come first served' policy in relation to the designated space for wheelchairs if it is occupied by a person who is not a wheelchair user. After consideration, the judge found in favour of Arriva North East and ruled that they had not breached the Equality Act 2010 as wheelchair spaces are "designated" for wheelchair users but not "dedicated" exclusively for wheelchairs. The Judge concluded that, within the current legislative framework, there was no obligation for a bus driver to insist that a passenger vacates the wheelchair space to allow a wheelchair user onto the bus.

Definition of Disability

Kaltoft v Billund Kommune, Case C-354/13, Court of Justice of the European Union (CJEU), 18 December 2014

The Court of Justice of the European Union (CJEU) considered this case involving a Danish childminder, Mr Kaltoft, who claimed that he had been dismissed from the role due to being obese and should be protected against discrimination as a disabled person.

The Court of Justice of the European Union (CJEU) delivered its judgment in December 2014 and agreed with the Advocate General (AG) Jääskinen that, although obesity is not a disability in itself, where obesity results in physical and/or mental impairments that are a hindrance to general professional life, the obese person could fall to be protected under EU law, as a disabled person.

The Kaltoft ruling did not change or extend the prior concept of disability discrimination in EU law and mirrored the domestic position in relation to how obesity had the potential, through its consequential health impacts, to become a disability for the purpose of discrimination protection.

Disability Discrimination

South Central Ambulance Service NHS Foundation Trust v Gunn, Employment Appeal Tribunal, 14 May 2015

Mrs Gunn was employed by Shropshire Doctors Co-Operative Limited who provided the 111 telephone service for the NHS. The contract for the telephone service was re-tendered, and in March 2013, the service transferred to NHS Direct NHS Trust (subsequently the South Central Ambulance Service NHS Foundation Trust, following a reorganisation) under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

Prior to transfer, NHS Direct informed Shropshire Doctors that one of its intended measures following the transfer, was to require all staff to work a minimum of 15 hours per week. Mrs Gunn asked to be allowed to work 10 hours per week after the transfer, by way of reasonable adjustment but this request was denied.

Mrs Gunn objected to the transfer and as a result, her employment did not transfer to NHS Direct. Mrs Gunn subsequently brought an Employment Tribunal claim against NHS Direct for disability discrimination. She alleged that the NHS's refusal to agree to reasonable adjustments prior to the transfer was unlawful. NHS Direct resisted this claim on the basis that the Employment Tribunal did not have jurisdiction to hear the claim, as Mrs Gunn had never been an employee of NHS Direct, and did not fall within any of the protected categories set out in section 39 of the Equality Act 2010.

Mr Justice Langstaff handed down his Judgment on 14 May 2015:

- An employee who is the subject of a TUPE transfer is not being made an offer of employment within s.39 of the Equality Act, and is therefore not an “applicant” for the purposes of s.39 of the Equality Act 2010.
- On the facts of this case, Mrs Gunn was in fact made an offer of a new employment contract, by virtue of the email sent by NHS Direct referring to a potential redundancy situation and offering her suitable alternative employment.

- Accordingly, whilst not for the reasons given by the Employment Judge, the appeal failed – since the email from NHS Direct amounted to an offer of employment which was independent from the TUPE transfer.

The Secretary of State for Education, in her capacity as Minister for Women and Equalities, intervened in this appeal, as it directly related to the interpretation of the Equality Act 2010 and TUPE. The Secretary of State took the view that the correct interpretation of the Equality Act 2010 is that an employee who is the subject of a TUPE transfer is not being made an 'offer' of employment by the transferee, and therefore is not a job applicant for the purposes of the Equality Act 2010.

***X v Mid-Sussex Citizens Advice Bureau & Another* on 12th December 2012
[2012] UKSC 59**

This case concerned a claimant (X) who volunteered in a local Citizens Advice Bureau (CAB) office. X was HIV+. The agreement between X and the CAB was labelled a "*volunteer agreement*" and was described as being "*binding in honour only ... and not a contract of employment or legally binding*". Due to a number of absent periods that were not in line with her '*volunteer agreement*', the CAB informed X that her volunteering services were no longer required. X commenced proceedings in the Employment Tribunal (ET) alleging disability discrimination. However, X was not an employee, the question for the ET therefore was whether the disability discrimination provisions in the then Disability Discrimination Act 1995 (now covered by the 2010 Act and Directive 2000/78) applied to volunteers.

In reaching a determination, the ET asked itself whether a volunteer could constitute an "*employee*" for the purposes of the wider definition given to the concept of employment in the 1995 Act. The ET decided that it couldn't and therefore rejected X's claim of disability discrimination on the basis that she did not have a contract of employment with the CAB to which the 1995 Act provisions could be applied. X

appealed the ET's decision, but the Employment Appeal Tribunal, the Court of Appeal and then the Supreme Court, all rejected her appeals as well.

Since the CAB won the case, there were no implications for the 2010 Act. However, if X had won (i.e. had the courts ruled that volunteers should be protected under anti-discrimination law), the 2010 Act would have required significant amendments in order to bring volunteers into a category of people that are protected from discrimination.

Public Sector Equality Duty - (Section 149)

Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345 - Court of Appeal

The Court of Appeal quashed the decision of the Minister for Disabled People to close the Independent Living Fund ('ILF') from the end of March 2015.

The Court of Appeal held that the Minister reached the decision to close the ILF without due regard to the Public Sector Equality Duty. There was insufficient evidence to demonstrate that the Minister focussed upon the matters set out in the duty or that the Minister fully understood the adverse impact that closing the ILF would have on its users. This is despite the fact that DWP completed an equality impact assessment and that there was evidence that some references to the impact on ILF fund users were brought to the Minister's attention.

The Court of Appeal held that public bodies should consider whether it is appropriate to adopt a "structured" approach to complying with the PSED, focusing on the precise matters set out in the Public Sector Equality Duty. Otherwise it may prove to be difficult to demonstrate that there has been full compliance with the duty. The Court of Appeal also said that officials should avoid down-playing the adverse effects of a policy and exaggerating its benefits, as this could create doubt as to whether the true impact of the decision has been properly appreciated by the decision-maker.

The Secretary of State reconsidered the decision following the judgment and took the same decision again, but this time compatibly with the demands of the duty.

Hotak v London Borough of Southwark, Kanu v London Borough of Southwark and Johnson v Solihull Metropolitan Borough Council – Supreme Court, May 2015

These three appeals raised a number of issues concerning the duty of local housing authorities to consider the provision of priority housing accommodation for homeless or 'vulnerable' people, under Part VII of the Housing Act 1996. Some of the issues raised involved consideration of the Equality Act 2010 and the public sector Equality Duty.

The judgment confirmed the previous cases such as Bracking and makes clear that the extent of the regard to be had under the duty is what is "appropriate in all the circumstances", and it is "[not] possible to be more precise or prescriptive, given that the weight and extent of the duty are highly fact-sensitive and dependent on individual judgement".

Meaning of Sexual Orientation (Section 12) and Public Sector Equality Duty (Section 149)

Core Issues Trust v Transport for London (SoS intervened) [2014] EWCA Civ 34 - Court of Appeal

The Secretary of State intervened in this appeal by the Core Issues Trust against the decision of the High Court, on the basis that the High Court judgment wrongly construed the PSED and incorrectly stated that "ex-gays" were not protected under the EA 2010. The Court of Appeal held that ex-gay people were covered under the protected characteristic of sexual orientation under the Equality Act 2010. The judgment also clarified that the PSED was a due regard duty and did not require that a particular outcome needs to be achieved.

Religion or Belief (Section 10)

Olivier v Department for Work and Pensions [2013] ET/1701407/13 - Employment Tribunal

An employee at the Department for Work and Pensions who had been dismissed for failure to seek his employer's permission before standing for a position as a labour councillor brought a claim for discrimination on the grounds of religion or belief. The

court held that his particular set of political beliefs, amounting to a "democratic socialism", was held to qualify as a "philosophical belief" under the Equality Act 2010.

Henderson v GMB [March 2015] UKEAT/0073/14/DM, UKEAT/0075/14/DM, UKEAT/0314/14/DM – Employment Appeal Tribunal

Henderson was employed by the GMB trade union as a regional organising officer. He was dismissed on the grounds of gross misconduct. Henderson claimed unfair dismissal, and direct discrimination and harassment on the grounds of religion or belief.

The employment tribunal decided he had been dismissed fairly. However, Henderson succeeded in his claims of direct discrimination and harassment on grounds of religion or belief. The tribunal accepted that he was treated adversely because of his left-wing democratic socialist beliefs and that this constituted a belief for the purposes of the Equality Act 2010. The trade union argued against the discrimination claim that Henderson's beliefs were not the substantial reason for his dismissal, but this argument was not accepted. The tribunal did, however, accept that various incidents of unwanted conduct by the GMB towards Henderson had occurred and that they related to his protected beliefs.

Both parties appealed against the employment tribunal's findings at the Employment Appeal Tribunal, but the tribunal's ruling that left-wing democratic socialism is a protected belief for the purposes of the Equality Act was not challenged on appeal, which means it is persuasive only, as a finding of the Employment Tribunal. The EAT did, however, make clear that all qualifying philosophical and religious beliefs are protected equally in law.

Religion or Belief

Eweida and others v the United Kingdom, European Court of Human Rights, January 2013

- ***Eweida and Chaplin v the United Kingdom***
- ***Ladele and McFarlane v the United Kingdom***

The European Court of Human Rights heard the four combined cases of Eweida, Chaplin, Ladele and McFarlane about religious rights in the workplace. These cases had been heard in the domestic courts under UK legislation which predated the Act but led to specific guidance being issued by the Equality and Human Rights Commission on what the judgment means for the consideration of religion or belief matters in the field of employment.⁹

All four applicants in these cases were Christians who claimed that the domestic legislation (which predated the Act, but which was substantially replicated in it) did not adequately protect their right to practise their religious beliefs in the workplace. The employers for Eweida and Chaplin did not allow them to wear a visible crucifix due to their restrictions on uniforms. Ladele and McFarlane had both objected to carrying out certain duties due to their religious beliefs on same-sex couples.

In the case of Eweida, an airline check-in officer, they found that her Article 9 right to manifest her belief was unjustifiably breached. The European Court held that the domestic courts had given too much weight to the employer's policy on corporate image and not enough weight to the employee's right to wear a visible cross, which did not adversely affect that corporate image. In the case of Chaplin, a nurse, the Court unanimously concluded that the health and safety of staff and patients outweighed the right of the employee to wear a visible crucifix on a chain around her neck. The employer's decision interfered with her Article 9 rights, but it was justifiable on health and safety grounds.

After the judgment in the Eweida case, there has been developing case law on the accommodation of religious practices. In the case of *Mba v London Borough of Merton*¹⁰, the Court of Appeal ruled that employers were under an obligation to accommodate religious beliefs, such as the Christian belief that Sundays should be reserved for worship, unless they could 'show a proportionate means of achieving a legitimate aim'.

The European Court of Human Rights found against both Ladele and McFarlane. Ladele was a registrar who refused to perform civil partnerships and was

⁹ Religion or belief in the workplace: An explanation of recent European Court of Human Rights judgments,

¹⁰ *Mba v London Borough of Merton*, Court of Appeal, 5 December 2013

subsequently dismissed. The Court found in the employer's favour and held that they had taken permissible action in refusing to exempt an employee from particular duties. McFarlane was a counsellor who had refused to offer therapy to same-sex couples. The employer had argued that McFarlane's actions were in conflict with their policy of providing a service without discrimination. The Court unanimously decided in the employer's favour.

Equal Pay –Section 1(6)

North v Dumfries and Galloway Council [2013] UKSC 45 - Supreme Court

Female local authority employees who worked as support staff in schools and nurseries were "in the same employment" within the meaning of the Equal Pay Act 1970 (s.1(6) which was transposed into the Act) as male local authority employees occupying manual jobs such as groundsmen, roadworkers and refuse collectors, even though the two groups of employees worked at different establishments (but with common Terms and Conditions). The fact that necessity required jobs to be carried out in different places was no barrier to equalising the terms on which they were done. The Supreme Court found that despite the fact that jobs requiring physical strength have traditionally been better rewarded than those requiring dexterity, one of the aims of the equality legislation was to smooth out historic inequalities of reward where the work involved is of genuinely equal value.

Pregnancy/Maternity (Section 18)

Metropolitan Police v Keohane [2014] UKEAT 0463_12_0403 - Employment Appeal Tribunal

A police dog handler whose dog was removed from her, because she was no longer operational due to pregnancy, claimed indirect discrimination. The Employment Appeal Tribunal held that the removal of the dog, which was permanent, resulted in a risk of impact on the Claimant's career progression and loss of overtime on her return to work, and was therefore a detriment. The EAT found that the Claimant's pregnancy had been a factor in the police decision to remove the dog, rather than "merely the context within which the circumstances had arisen". The detriment did not need to be caused solely, or even mainly, by a discriminatory motive, it was enough that pregnancy was a significant and material influence on the decision.

Race/Caste Discrimination (Section 9)

Chandhok v Tirkey [2014] UKEAT 1090_14_1912 - Employment Appeal Tribunal

The Employment Appeal Tribunal found that although caste as an autonomous concept is not a protected characteristic under the Equality Act, some facts relevant in considering caste in many of its forms might be capable of coming within section 9(1)(c) of the Act “ethnic origins” as that has a wide and flexible ambit, including characteristics determined by “descent”.

SECTION 5: PRELIMINARY ASSESSMENT

Overview

5.1 The fundamental aim of the Act was to tackle the inadequacies of the existing legislative framework for discrimination and create a clearer, more streamlined legislative framework that encourages compliance with the law and produces better outcomes for those that experience inequality and disadvantage.

5.2 This section provides a preliminary assessment of how the legislation has been operating to date. As set out within the Cabinet Office's Guide to Making Legislation, the preliminary assessment will consider the available evidence and provide advice on whether the legislation has been meeting the stated objectives of the Act - to harmonise the framework for equalities legislation and to strengthen progress on equalities.

5.3 Apart from independent surveys commissioned by the Government in 2011, which examined how well a range of organisations understood and used equalities legislation, no new research has been commissioned specifically to inform this preliminary assessment. However, there has been a significant level of attention focussed on the effectiveness of the legislation through other channels. Over the last few years, the Government has sought views on the legislation through exercises such as the Red Tape Challenge on Equalities and the review of the public sector Equality Duty. This preliminary assessment summarises the different review activity which has been undertaken by the Government before drawing together the conclusions at the end.

5.4 This section also provides some figures on discrimination cases, including statistics from the Equality and Advisory Support Service (EASS) and employment tribunals.

Organisational Surveys

5.5 The Government Equalities Office commissioned an organisational survey in 2011 to assess how organisations were engaging with equality legislation. This independent research was conducted by the Centre for Research in Social Policy and the International Centre for Public and Social Policy. A total of 1,811 organisations were surveyed between November 2011 and January 2012,

representing a range of different organisations - 1,369 private sector, 272 public sector and 170 voluntary, community and enterprise sector. Following the survey, three topic reports were published in 2012 detailing the results of the telephone interviews¹¹.

5.6 Broadly speaking, the surveys indicate a marked difference, in terms of engagement with equalities legislation, between larger organisations and the smaller categories of businesses. Three-quarters of large organisations, compared to fewer than one in ten micro organisations, felt well informed about the Equality Act 2010. The surveys also found a higher level of awareness and engagement with equalities laws in public sector organisations in comparison to private sector organisations.

5.7 These general findings have been echoed in other evidence gathering activities undertaken by the Government, such as the review of the public sector Equality Duty and roadshows with SMEs to raise awareness of the Act.

5.8 According to the survey, awareness of the Equality Act 2010 was not widespread within the different categories of organisations. Interviewees struggled to identify all the protected characteristics, with some only being able to name the older more established characteristics of race, sex and disability.

5.9 It is important to note that the findings are limited in that the surveys were conducted only about a year after the Act was introduced and therefore do not provide a current assessment in terms of awareness of the Act.

Key findings from Organisational Surveys

5.10 The survey revealed widespread engagement with equalities and with equality legislation. The overwhelming majority of establishments had either a written policy relating to equality or an approach to discrimination issues that was known by their employees.

- While a written policy was more prevalent in medium and large organisations, almost half of micro-enterprises (with between two and nine employees) also had one.

¹¹ The research is available at www.gov.uk/government/publications/evaluation-of-the-implementation-of-the-equality-act-2010

- Most organisations had a designated employee who was responsible for equality issues. Sometimes this was in addition to a written policy; sometimes not.
- Among organisations with an approach to equality issues, there were generally several motivating factors. In small, medium and large enterprises alike, most respondents felt the approach derived from a sense of moral obligation on the part of the owners or managers as well as a concern to be in compliance with workplace equality legislation. An additional driver was the concern that the organisation should be viewed favourably by communities, customers and suppliers.
- A large majority of written policies explicitly covered characteristics that had been protected by legislation prior to the Equality Act. They were less likely to refer to marriage and civil partnership or to gender reassignment; however, even in the small organisations, at least half of policies did so. In the largest establishments (with 250 or more employees) more than 80 per cent included these protected characteristics.
- In establishments with fewer than 50 employees, only a minority had become more aware of equality legislation over the previous two years whereas in medium and large enterprises this was the response of the majority.
- Among large organisations, three-quarters had become more aware of their responsibilities in this area.
- The proportion of respondents reporting that there is a moral reason for their organisation having an approach towards equality exceeded 90 per cent in every category of organisation.
- Most medium and small organisations, and most private enterprises, reported no change in awareness of equality in the workplace issues over the previous two years. On the other hand, three-quarters of large organisations and just over half of public organisations did report having become more aware. This suggests that the widening scope of equality legislation may have had most impact on those with the highest level of prior engagement.

Red Tape Challenge on Equalities

5.11 The Coalition Government's Red Tape Challenge programme placed equalities legislation under the 'spotlight' for a three week period in May 2011.

During this time, individuals and organisations were encouraged to submit their views on the Equality Act 2010 via crowd-sourcing through the Government's Red Tape Challenge website and through email submissions. Views were also invited on the Equality Act 2006, which is still in operation in terms of the functions of the Equality and Human Rights Commission.

5.12 Following this period, Ministers considered the comments received and looked at different options for removing, improving or simply maintaining elements of the legislation before finalising a package of measures. The following measures were announced, by way of a Written Ministerial Statement in May 2012, in respect of the Equality Act 2010:

- Repealing legislation on third party harassment, which will ensure employers are no longer liable for the harassment of an employee by a third party (for example, a customer).
- Reviewing the Public Sector Equality Duty (a legal obligation on public bodies to consider the potential impact of their decisions on different groups) – to establish whether it is 'operating as intended'.
- Repealing the Socio-Economic Duty – a legal obligation on public bodies to consider how their decisions might help to reduce the inequalities associated with socio-economic disadvantage.
- Tackling gold-plating and over-compliance by working with the British Chambers of Commerce to help small-and-medium-sized companies understand what they do and don't need to do in order to comply with the Equality Act.
- Repealing part of the employment tribunals' 'wider recommendations' powers, so as to remove the power of tribunals to recommend the introduction of, or changes to, policies that affect all of an employer's staff – not just the employee who brought a successful claim because of those policies or actions

5.13 Three repeals were taken forward relating to the Equality Act 2010, following the Red Tape Challenge:

- In October 2013, legislation that made employers liable for harassment of staff by a third party was repealed.

- In April 2014, the statutory process where people can seek information from an employer or service provider about alleged unlawful conduct was repealed. The Government published advice in January 2014 on the new voluntary approach which is being pursued instead.
- The repeal of the tribunals' power to impose recommendations for a business's wider workforce when they have lost a discrimination case was finalised in March when the Deregulation Act 2015 received Royal Assent.

5.14 Eighty responses were received to the public consultation proposing the repeal of third party harassment provisions, of which 16 (20 per cent) agreed with the proposal for repeal and 57 (71 per cent) opposed it. Responses which agreed with the proposals came mostly from individual public, private and not-for profit sector employers and business organisations. All business representative organisations supported repeal. Responses which disagreed with the proposal were mainly on behalf of public sector employers, unions and equality lobby groups.

5.15 A total of 157 responses were received to both of the other proposals, on obtaining information and repealing the power for tribunals to impose wider recommendations. Of those, 18 (12 per cent) were in favour of repealing the wider recommendations provisions, and 125 (79 per cent) were opposed. 24 (15 per cent) were in favour of repealing the obtaining information provisions and 130 (83 per cent) were opposed. All business representative organisations supported repeal. Responses which agreed to the proposed repeals came mostly from private and not-for-profit sector employers and business representative organisations. Responses which disagreed with the proposals were mainly on behalf of unions, equality lobby groups, staff associations, the judiciary and members of the public.

5.16 Very few of the responses to this consultation, whether opposed to or in favour of repeal, provided quantifiable evidence or specific evidence based on actual situations and outcomes to support their views.

5.17 Other measures taken forward following the announcement of the Red Tape Challenge package on equalities were categorised as being 'improved', including:

- Better guidance for employers asking disability related questions during recruitment
- A review of the public sector equality duty which led to a number of recommendations for improving the way public bodies and bodies carrying out public functions can comply with the legislation

Engagement with Business

5.18 The Government Equalities Office worked with the British Chambers of Commerce to deliver an engagement and awareness raising programme targeted at businesses. The programme, which ran from 2012-2013, was designed to increase awareness and understanding of equality legislation.

5.19 Key elements of the programme included:

- A road show of awareness raising events at ten different locations throughout England (from October 2012 to April 2013)
- The publication of a 'Business is Good for Equality' booklet setting out the key points which businesses need to be aware of within a handy, short guide.
- Engaging with the business community– in particular, reaching businesses that have traditionally not been involved in the equality policy debate

5.20 The roadshow events were organised by the British Chambers of Commerce and delivered by GEO officials. Ministerial attendance at certain events was intended to highlight the importance of equality legislation and engagement with businesses.

5.21 The total number of delegates for all ten roadshow events was just over 300. However, the overall marketing reach for these events and associated promotional activity was much higher when the programme drew to a close in April 2013 with an estimated reach of over 200,000 organisations.

5.22 This programme of work aimed to bridge the gaps where there tended to be less awareness and engagement with the Act by targeting the roadshow events for small and medium enterprises. As was demonstrated by the organisational surveys, the larger category of companies had reported a better understanding of the legislation and were able to keep more abreast of legal developments due to having dedicated resources e.g. Equality and Diversity, HR or legal staff. The feedback from

the events was very positive, with the majority reporting an increased understanding of the legislation. Delegates also picked out different bits of advice which they had found particularly beneficial e.g. specific advice on recruitment practices and clarifying that written equality policies are not a legal requirement.

Review of the Public Sector Equality Duty (PSED)

5.23 As noted above, the Government announced a review of the public sector Equality Duty in May 2012.

5.24 The review, which was overseen by an independent Steering Group, was tasked with examining whether the PSED and supporting duties were operating as intended. The review gathered a range of evidence, including:

- Independent qualitative research to gather evidence of experiences of working with the Duty
- Thematic desk-based research - evidence on the Duty from literature and case law.
- A series of roundtables to provide more detailed evidence, involving the voluntary and community sector, trade unions, lawyers from a range of public bodies, equality and diversity practitioners, inspectorates, senior decision-makers from public bodies and both private and voluntary sector organisations with experience of bidding for public sector contracts.
- Site visits to public bodies to provide further insight into how the duty is working on the ground and at different levels within organisations.
- A call for evidence

5.25 The review, which concluded in September 2013, found widespread support for the aims behind the duty but stated that it was too early to determine whether it was operating as intended and advised that it should be examined again after a further three years, in 2016.

5.26 The independent qualitative research¹² commissioned as part of the review examined the experiences of a range of local and national public sector bodies in

¹² Views and experiences of the Public Sector Equality Duty, NatCen, September 2013

working with the PSED. The research found that the general principles of the equality duty '*were simpler and easier to grasp than previous equality requirements, particularly the application of the same duty to the nine protected groups*', which made it '*easier to promote understanding across organisations*'. The research also found that the greater flexibility which the PSED offered, in comparison to the previous equality duties, led to three different approaches towards compliance:

- a proportionate response where organisations used the flexibility in the duty to determine the most relevant equalities work to carry out relative to resources available and their organisational goals;
- under-compliance, with reduced or limited consideration of equalities work, on the basis that there was no prescribed process and limited likelihood of enforcement; and
- a risk-averse or 'extended' response to the duty where organisations chose to carry out a full range of equalities work, either to be sure that they were legally compliant or because they had a strong ethical or political drive to 'gold plate' their equalities work.

5.27 The review identified a number of areas where implementation of the Duty and supporting specific duties could be improved. For example, the review found that public bodies often favoured a disproportionate or indiscriminate approach towards the collection and publication of diversity data. This could lead to strains on public sector resources and possible implications on the safety of personal data. There was also evidence that indiscriminate collection of data could cause a negative perception of 'intrusive' questionnaires, particularly where it was difficult to identify a link with equalities. In response to these findings, the review recommended that public bodies adopt a more proportionate approach and asked the Equality and Human Rights Commission to work with the Information Commissioner to deliver advice for public bodies to provide greater clarity on the role of data and its collection. This work has concluded and the guidance is available at <http://www.equalityhumanrights.com/publication/public-sector-equality-duty-and-data-protection>.

Employment Tribunals statistics

5.28 The total numbers of discrimination claims being received at employment tribunals (ET) can provide a general picture on whether people are using the legislation to raise challenges to dispute workplace discrimination. The information provided below provides a snapshot of the overall levels of discrimination related claims, prior to the Act being introduced and for the period after the Act was in force.

5.29 Table A and B provide the annual statistics for claims which included a complaint of discrimination for the financial years 2007/8 to 2014/15. The data has been extracted from the Employment Tribunal Statistics published by the Ministry of Justice in June 2015¹³. This data include complaints made in multiple claims: claims brought by two or more people against the same employer based on the same, or similar, complaints. The number of multiple claims is highly variable and can tend to skew the data, which should therefore be treated with some caution.

5.30 The statistics show a similar number of discrimination claims being submitted prior to the Act and directly after the Act was introduced. As the implementation of the Act preceded the introduction of changes such as tribunal fees and Early Conciliation (see paragraphs 5.32 – 5.36), they would not have affected the picture of the impact of the Act immediately after the Act's implementation. The similarity in volumes in that period pre and post implementation indicates that the Act did not lead either to a decline in the numbers of claims being raised, or to an increase. A significant drop in numbers for the financial years 2011/12 and 2012/13 could have signalled a lack of understanding of how the protections had been transposed into the new legislation, but this did not happen. A further table detailing the outcome of discrimination cases, shown in percentages, for the financial years 2007/8 to 2014/15 is attached at Annex E.

¹³ www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-january-to-march-2015

Year	Type of Jurisdiction Complaint							
	Age	Disability	Equal pay	Race	Religion or belief	Sex	Sexual Orientation	Suffer a detriment / unfair dismissal - pregnancy ²
07/08	2,900	5,800	62,700	4,100	710	26,900	580	1,600
08/09	3,801	6,578	45,748	4,983	832	18,637	600	1,835
09/10	5,184	7,547	37,385	5,712	1,000	18,204	706	1,949
10/11	6,821	7,241	34,584	4,992	878	18,258	638	1,866
11/12	3,715	7,676	28,801	4,843	939	10,783	613	1,861
12/13	2,818	7,492	23,638	4,818	979	18,814	639	1,589
13/14	1,994	5,196	17,202	3,064	584	13,722	361	1,248
14/15	1,081	3,090	9,617	1,850	339	4,463	188	788

Table A. Number of discrimination complaints made in ET cases for the financial years 2007/8 to 2014/15

Year	Type of Jurisdiction Complaint							
	Age	Disability	Equal pay	Race	Religion or belief	Sex	Sexual orientation	Suffer a detriment / unfair dismissal - pregnancy
07/08	1,778	5,133	9,471	3,535	608	16,184	516	:
08/09	2,472	5,460	20,148	3,970	620	10,804	533	:
09/10	3,873	6,098	20,140	4,549	763	17,537	535	:
10/11	3,651	6,791	25,645	4,853	845	15,560	656	:
11/12	3,820	7,273	23,797	4,740	851	14,735	586	:
12/13	2,674	7,260	24,626	4,887	1,024	14,271	603	:
13/14	4,259	6,872	31,389	4,168	818	13,537	509	1,426
14/15	1,519	3,836	25,765	2,148	392	10,203	250	945

Table B. Number of Employment Tribunal Disposals by type of discrimination for the financial years 2007/8 to 2014/15

5.31 More recently there have been changes which have affected the total number of claims including discrimination claims. This includes the introduction of Employment Tribunal fees in July 2013 and the mandatory Early Conciliation scheme which took effect from May 2014. These changes are being reviewed separately, by the Ministry of Justice and Acas, in order to examine their impact on the tribunal system.

Early Conciliation Scheme

5.32 The Advisory, Conciliation and Arbitration Service (ACAS) launched the Early Conciliation scheme in April 2014, which provides free assistance to help those dealing with an employment dispute to resolve the issue before it proceeds to an employment tribunal. There are clear benefits for those involved since legal representation is not necessary and disputes can therefore be settled with less resource. From 6 May 2014, anyone wishing to make a claim to an Employment Tribunal must contact Acas in the first instance under the Early Conciliation scheme. Acas then offers a free, confidential and impartial conciliation service aimed at resolving the dispute without the need for an Employment Tribunal claim to be made. Contacting Acas prior to lodging an Employment Tribunal claim is mandatory, whilst engaging in the conciliation process is voluntary. Both parties need to agree to participate in conciliation.

5.33 Acas published its latest update on Early Conciliation in March 2015 which showed that the service dealt with 60,855 cases from 6 April until the end of December 2014. The statistics from April to September at end of January show that 16% of claims were formally conciliated through Acas and only 23% proceeded to a tribunal. The rest of the cases (60%) did not progress to a tribunal, which could have been due to a less formal type of conciliation being pursued or due to the claim being withdrawn. Acas has recently undertaken a survey exploring the effectiveness and impact of Early Conciliation, drawing on the experiences of individuals and employers who were contacted by Acas and offered Early Conciliation. The results of this independent evaluation survey are expected to be published in the summer.

Tribunal Fees

5.34 Claims are classified into two categories with different fees, with discrimination and equal pay cases falling at the higher rate. Fees are categorised

into either Type A for relatively simple cases such as wage claims or Type B for more complex claims such as unfair dismissal, discrimination and equal pay.

5.35 There has been a high level of public attention drawn to the reduction in the number of discrimination cases since the introduction of tribunal fees. The quarterly statistics released by the Ministry of Justice confirm the reduction in volumes of claims. Many newspapers have reported on the significant decline in claims, particularly sex discrimination cases.

5.36 There has undoubtedly been a decline in the number of cases, across all types of claims, since 2013 when the tribunal fees were introduced. It would be erroneous, however, to attribute this decline solely to the introduction of fees since there are other factors which will also have contributed to the reduction in volumes such as the Early Conciliation scheme. A clearer understanding of the impact of tribunal fees on the number of discrimination claims is likely to emerge from the recently announced review of Employment Tribunal fees, which is expected to be completed later this year. The terms of reference for the fees review was published by the Ministry of Justice on 11 June 2015¹⁴.

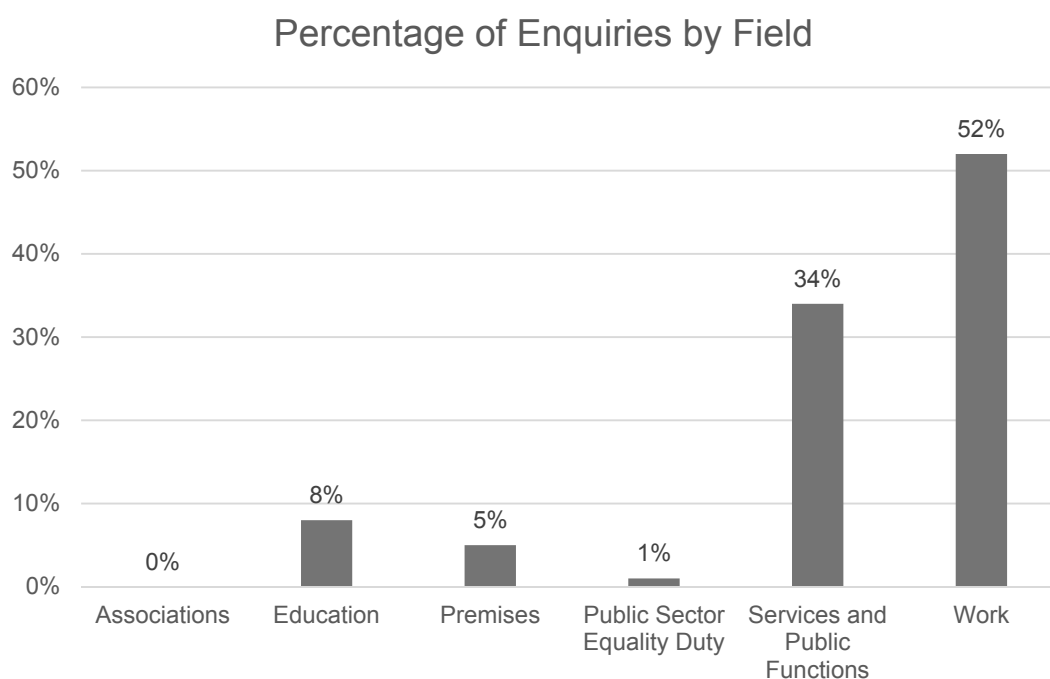
Equality Advisory Support Service (EASS)

5.37 The Equality Advisory Support Service (EASS), a helpline which provides information and advice on equality and human rights issues, was set up by the Government in October 2012 to replace the previous helpline run by the Equality and Human Rights Commission.

5.38 Calls to the helpline, which have referred to the Act, average out to approximately 2,200 calls a month for the period October 2012 to March 2015. Tables C-G below provide the proportions of queries according to the different elements of the Act i.e. field, protected characteristic, type of prohibited conduct and type of organisation.

¹⁴ www.gov.uk/government/publications/employment-tribunal-fees-post-implementation-review

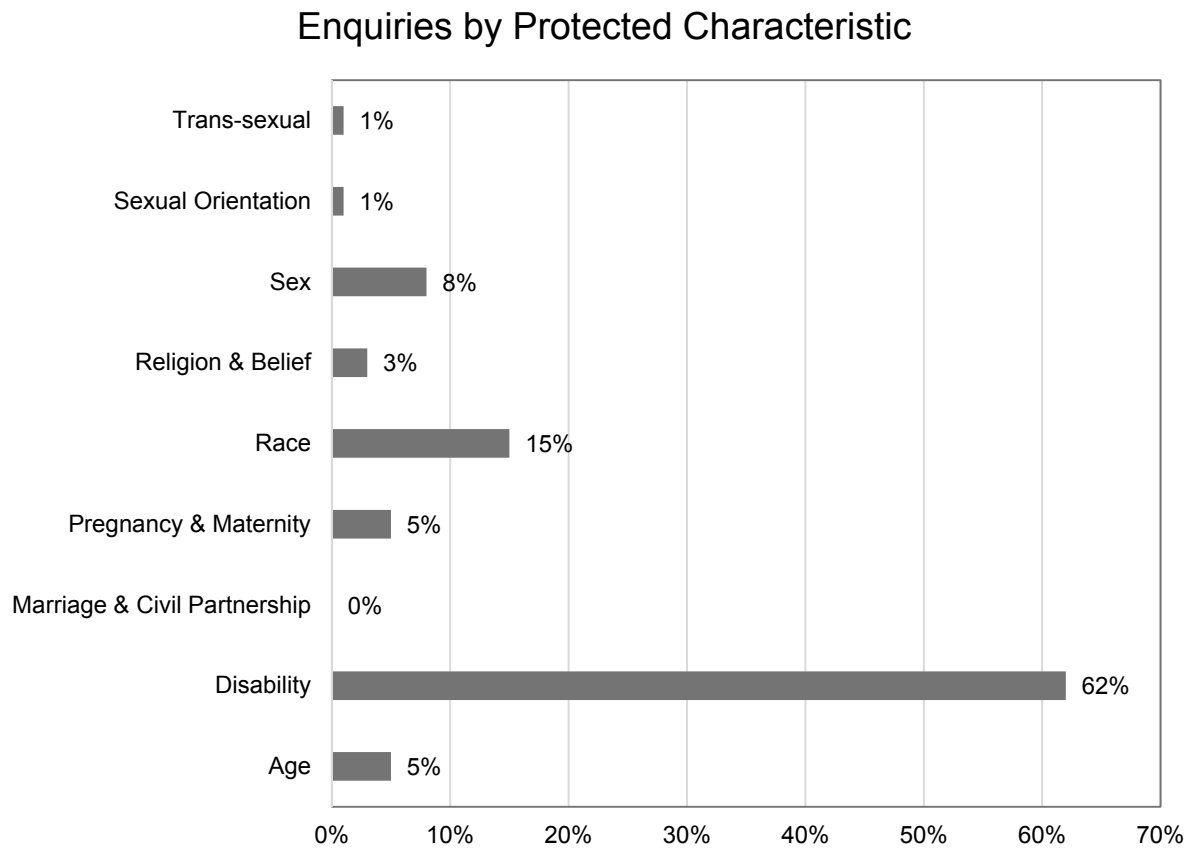
Table C. Percentage of enquiries received according to Part of the Act (Field)



5.39 Table C above shows that work-place discrimination attracted the most enquiries, with over 50% of all enquiries falling under this category from October 2012 to March 2015. This was followed by requests relating to services and public functions, which represented 34% of all enquiries for the same period. The proportion of the remainder of enquiries are as follows: education enquiries at 8%, enquiries relating to the field of premises at 5%, public sector Equality Duty enquiries at 1% and association related enquiries at 0%.

5.40 Table D below shows the number of enquiries received according to the relevant protected characteristic. Disability related enquiries represented the most frequent type of enquiry received by the EASS, representing 62% of all enquiries. Following this, race related enquiries is the next highest category, but at a significantly lower proportion of approximately 15%. The proportion of enquiries under the other protected characteristics were all under 10%.

Table D. Percentage of enquiries according to protected characteristic



5.41 Table E shows the number of enquiries according to the relevant type of organisation – public, private or voluntary sector. The category which attracted the highest number of enquiries was “private sector organisation”, representing 55% of all enquiries. This was followed by 45% in respect of public sector organisations and 1% for voluntary sector organisations.

ENQUIRIES - BY TYPE OF ORGANISATION

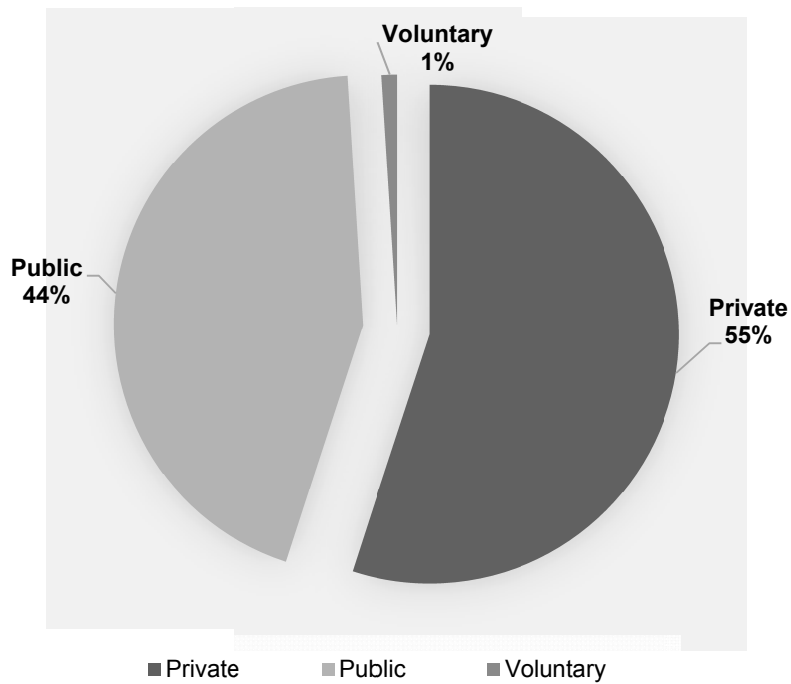
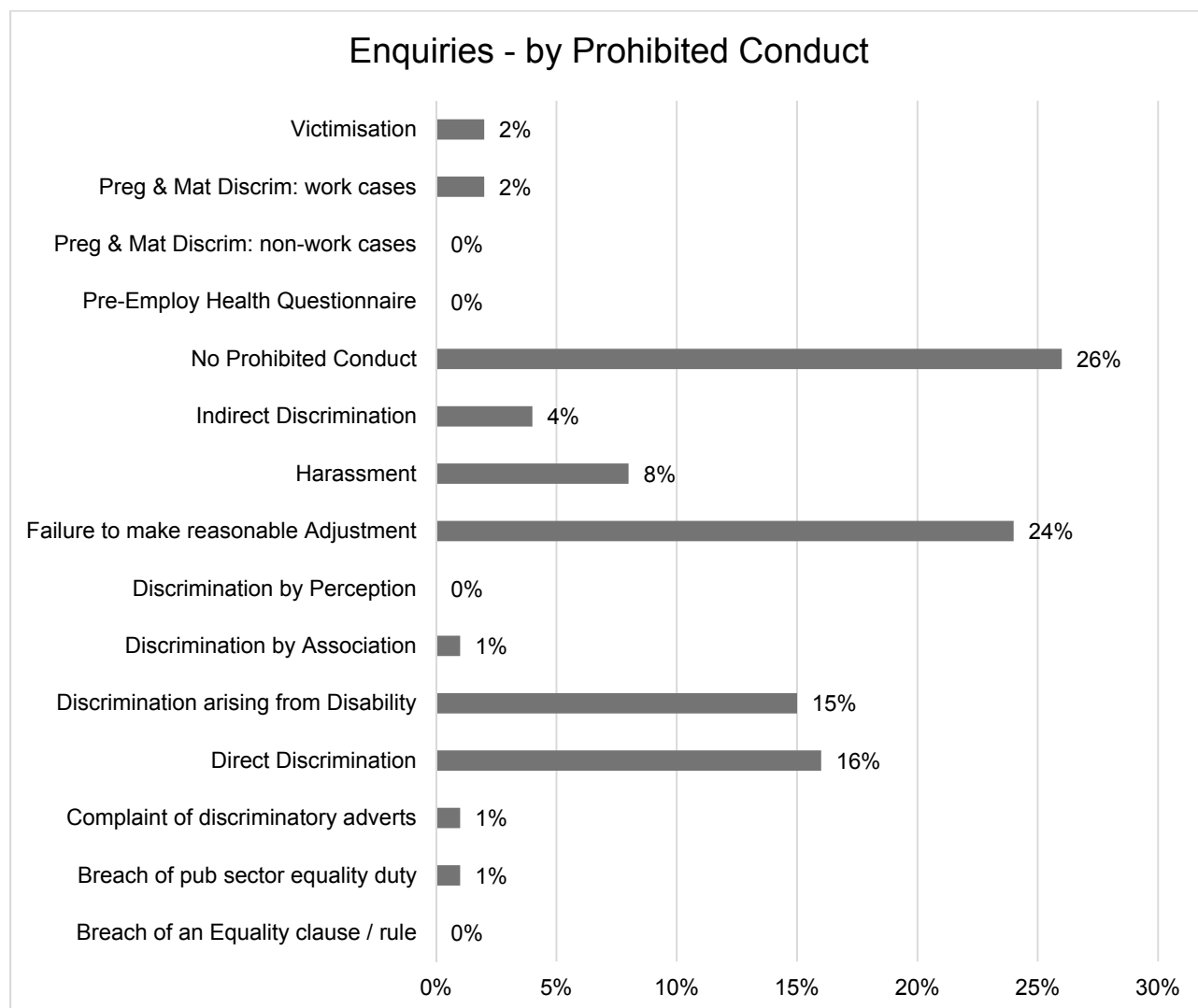


Table E. Proportion of enquiries according to the type of organisation

5.42 Table F shows the total number of enquiries received by the EASS according to the type of prohibited conduct in question. Roughly a quarter (24%) of all enquiries were classified as being about the failure to make a reasonable adjustment.

Table F. Percentage of enquiries according to the type of prohibited conduct



Harmonising the Equalities Legal Framework

5.43 The overarching aim for introducing the Act was clearly stated at the time; it would ‘declutter’ the law by bringing together nine major pieces of legislation and around 100 statutory instruments. There can be no doubt that this objective has been achieved with all key aspects of discrimination law now being covered by the Equality Act 2010.

5.44 Part 1 of the Equality Act 2006 is still in force, the rest having been repealed, and has not been consolidated into the Act. However, this does not pose any particular problems since this Part of the 2006 Act covers the functions of the Equality and Human Rights Commission.

5.45 There are a total of 85 statutory instruments underpinning the Act, 30 of which were regulations made under the previous repealed legislation which still have effect as if made under the Equality Act 2010. There has been a total of 52 new statutory instruments made under Equality Act 2010 which includes commencement orders. The list of 51 new statutory instruments is included at Annex D.

5.46 The work to bring together the previous, separate pieces of legislation was welcomed by a diverse range of individuals and organisations as it represented a simpler framework which achieved more consistent levels of protection for different groups. The scale of the task in consolidating these different pieces of legislation was considerable and widely acknowledged as a significant achievement.

5.47 As outlined previously, the Act established a clear structure for understanding core principles of prohibited conduct, protected characteristics and then applied these across the different fields e.g. work, education, private associations etc. Having a clear structure for the Act, and removing some of the anomalies which had evolved over time resulted in a much clearer, more harmonised framework for discrimination.

5.48 The Act is large, consisting of 218 sections within 16 parts, plus an additional 28 schedules. The size of the legislation, in itself, did not pose significant issues since the Act generally represented a continuity with core concepts that had been established for many years. Guidance for those needing to understand the law was available through the explanatory notes to the Act and a comprehensive suite of guidance by the Equality and Human Rights Commission including three statutory codes of practice on Employment, Equal Pay and Services, Public Functions and Associations. The Government Equalities Office also published a series of quick start guides on different parts of the Act which flagged those areas where the law had changed. This was further supplemented by guidance issued by organisations such as Acas and the Citizens Advice Bureau.

Strengthening Progress on Equalities

5.49 As outlined in Section 3, the Act introduced a number of new measures to advance progress on equalities, level out existing protections and correct anomalies which had developed over time. These new measures have built upon on the existing legislative framework to achieve stronger protection against discrimination

for all protected groups and provide extra mechanisms to facilitate greater progress in tackling inequalities.

5.50 Some of the new measures that have been implemented can be described as enablers which allow organisations to take a more proactive approach towards equalities e.g. enhanced positive action measures and a combined Equality Duty which applies across all the nine protected characteristics. Although the extent to which these new measures have advanced equality is not yet clear, further evidence of whether they are contributing towards better equality outcomes should become available as the legislation has more time to embed.

5.51 The Government has not implemented all of the new measures in the Act, but has instead actively pursued a voluntary approach in particular areas in order to gauge the need for regulatory intervention. The voluntary approach to encourage the reporting of gender pay differences has been an area which has not reaped the desired outcome and the Government has responded to this with a commitment to take further action to bring into force the relevant provision (section 78 of the Act).

5.52 Through deregulatory initiatives under the last Government such as the Red Tape Challenge, the Government has repealed or decided not to implement particular provisions of the Act which have been deemed to be overly burdensome on organisations.

Overview of Parts/Schedules of the Equality Act 2010

The Equality Act 2010 is divided into 16 parts, with 28 schedules:

Part of the Act	Summary
Part 1 <u>Socio-economic inequalities</u>	Imposes a duty on certain public bodies to have due regard to socio-economic considerations in making strategic decisions.
Part 2 including Schedule 1 <u>Equality: Key concepts</u>	<p>Establishes the key concepts on which the Act is based, which are then applied in the subsequent Parts of the Act:</p> <ul style="list-style-type: none"> • Protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation); • Definitions of direct discrimination (including because of a combination of two relevant protected characteristics), discrimination arising from disability, indirect discrimination, harassment and victimisation.
Part 3 including Schedules 2 and 3 <u>Services and public functions</u>	Makes it unlawful to discriminate against, harass or victimise a person when providing a service (which includes the provision of goods or facilities) or when exercising a public function.
Part 4 including Schedules 4 and 5 <u>Premises</u>	Makes it unlawful to discriminate against, harass or victimise a person when disposing of (for example, by selling or letting) or managing premises.
Part 5 including Schedules 6, 7, 8 and 9 <u>Work</u>	<p>Makes it unlawful to discriminate against, harass or victimise a person at work or in employment services.</p> <p>It also contains provisions relating to:</p> <ul style="list-style-type: none"> • equal pay between men and women; • pregnancy and maternity pay; • provisions making it unlawful for an employment

Part of the Act	Summary
	<p>contract to prevent an employee disclosing his or her pay;</p> <ul style="list-style-type: none"> • a power to require private sector employers to publish gender pay gap (the size of the difference between men and women’s pay expressed as a percentage) information about differences in pay between men and women • the restriction of circumstances in which potential employees can be asked questions about disability or health.
Part 6 including Schedules 10, 11, 12, 13 and 14 <u>Education</u>	Makes it unlawful for education bodies to discriminate against, harass or victimise a school pupil or student or applicant for a place.
Part 7 including Schedules 15 and 16 <u>Associations</u>	Makes it unlawful for associations (for example, private clubs and political organisations) to discriminate against, harass or victimise members, associates or guests and contains a power to require political parties to publish information about the diversity of their candidates.
Part 8 <u>Prohibited conduct:</u> <u>ancillary</u>	Prohibits other forms of conduct, including discriminating against or harassing of an ex-employee or ex-pupil, for example: instructing a third party to discriminate against another; or helping someone discriminate against another. Also determines the liability of employers and principals in relation to the conduct of their employees or agents.
Part 9 including Schedule 17 <u>Enforcement</u>	Deals with enforcement of the Act’s provisions, through the civil courts (in relation to services and public functions; premises; education; and associations) and the employment tribunals (in relation to work and related areas, and equal pay).
Part 10	Makes terms in contracts, collective agreements or rules

Part of the Act	Summary
<u>Contracts, etc.</u>	of undertakings unenforceable or void if they result in unlawful discrimination, harassment or victimisation.
Part 11 including Schedules 18 and 19 <u>Advancement of equality</u>	Establishes a general duty on public authorities to have due regard, when carrying out their functions, to the need: to eliminate unlawful discrimination, harassment or victimisation; to advance equality of opportunity; and to foster good relations. Also contains provisions which enable an employer or service provider or other organisation to take positive action to overcome or minimise a disadvantage arising from people possessing particular protected characteristics.
Part 12 including Schedule 20 <u>Disabled persons: transport</u>	Requires taxis, other private hire vehicles, public service vehicles (such as buses) and rail vehicles to be accessible to disabled people and to allow them to travel in reasonable comfort.
Part 13 including Schedule 21 <u>Disability: miscellaneous</u>	Deals with consent to make reasonable adjustments to premises and improvements to let dwelling houses.
Part 14 including Schedules 22 and 23 <u>General exceptions</u>	Establishes exceptions to the prohibitions in the earlier parts of the Act in relation to a range of conduct, including action required by an enactment; protection of women; educational appointments; national security; the provision of benefits by charities and sporting competitions.
Part 15 <u>Family property</u>	Repeals or replaces rules of family property law which discriminated between husbands and wives.
Part 16 including Schedules 24, 25, 26, 27 and 28 <u>General and</u>	Contains a power for a Minister of the Crown to harmonise certain provisions in the Act with changes required to comply with EU obligations. It contains general provisions on application to the Crown,

Part of the Act	Summary
<u>miscellaneous</u>	subordinate legislation, interpretation, commencement and extent. It also contains amendments to the Civil Partnership Act 2004 to allow civil partnership registrations to take place on religious premises that are approved for that purpose.

Equality Act 2010 – the principal forms of unlawful conduct, the duty to make reasonable adjustments, and their application – a simplified table.

The table displays the Parts of the Act in which the forms of protection are available – in some cases there are specific limitations to application not set out in this table:

Parts of the Act	3	Services and Public Functions
	4	Premises
	5	Work
	6	Education
	7	Associations

	Direct Discrimination	Indirect Discrimination	Harassment	Victimisation ¹⁵	Reasonable adjustment, and Discrimination arising from disability
Age	3 (other than under 18s), 5, 6 (other than in chapter 1, schools), 7	3 (other than under 18s), 5, 6 (other than in chapter 1, schools), 7	3 (other than under 18s), 5, 6 (other than in chapter 1, schools), 7	3 (other than under 18s), 5, 6 (other than in chapter 1, schools), 7	None
Disability	3, 4, 5, 6, 7	3, 4, 5, 6, 7	3, 4, 5, 6, 7	3, 4, 5, 6, 7	3, 4, 5, 6, 7
Gender Reassignment	3, 4, 5, 6, 7	3, 4, 5, 6, 7	3, 4, 5, 6 (other than in chapter 1, schools), 7	3, 4, 5, 6, 7	None
Marriage and Civil Partnership	5	5	None	5	None
Race	3, 4, 5, 6, 7	3, 4, 5, 6, 7	3, 4, 5, 6, 7	3, 4, 5, 6, 7	None
Religion or Belief	3, 4, 5, 6, 7	3, 4, 5, 6, 7	5, 6 (other than in chapter 1, schools),	3, 4, 5, 6, 7	None
Sex	3, 4, 5, 6, 7	3, 4, 5, 6, 7	3, 4, 5, 6, 7	3, 4, 5, 6, 7	None
Sexual Orientation	3, 4, 5, 6, 7	3, 4, 5, 6, 7	5, 6 (other than in chapter 1, schools)	3, 4, 5, 6, 7	None
Pregnancy and Maternity	3, 4, 5, 6, 7	None	None	3, 4, 5, 6, 7	None

¹⁵ Victimisation can be claimed when action is taken against someone for doing a protected act as defined in s 27 of the Act.

Annex C

UNCOMMENCED PROVISIONS OF THE EQUALITY ACT 2010

Provision	Title and/or Part/Subject	Extent to which uncommenced	Responsible Department
Part 1	Socio-economic inequalities	Not in force	GEO
Part 2, Section 14	Equality: Key Concepts. Dual Discrimination	Not in force	GEO
Part 4, Section 36	Premises, Leasehold and Commonhold Premises and common parts	Commenced other than S.36(1)(d), 36(5) and 36(6)	DWP
Part 5, Section 78	Gender pay gap information	Not in force	GEO
Part 7, Section 106	Political parties: information about diversity in range of candidates, etc.	Not in force	GEO
Part 12, Section 160	Taxi accessibility regulations	Not in force	DfT
Part 12, Section 161	Control of numbers of licenced taxis: exception	Not in force other than the power to make regulations	DfT
Part 12, Section 162	Designated transport facilities	Not in force	DfT
Part 12, Section 163	Taxi licence conditional on compliance with taxi accessibility regulations	Not in force	DfT
Part 12, Section 164	Exemption from taxi accessibility regulations	Not in force	DfT
Part 12, Section 165	Taxis, passengers in wheelchairs	Not in force other than by SI 2010 no.2317 art.2(12)(b) in relation to the issue of exemption certificates under s.166	DfT
Part 12, Section 167	List of wheelchair accessible vehicles	Not in force other than by SI 2010 no.2317 art.2(12)(d) re s.167(1)-(5) and (7) in relation to the issue of exemption certificates under s.166; and art.2(12)(e) re s.167(6)	DfT
Part 15, Section 198	Abolition of husband's duty to maintain wife	Not in force	MoJ
Part 15, Section 199	Abolition of presumption of advancement	Not in force	MoJ

Part 15, Section 200	Amendment of Married Women's Property Act 1964	Not in force	MoJ
Part 15, Section 201	Civil partners: housekeeping allowance	Not in force	MoJ
Part 16, Section 211	Amendments, repeals and revocations (Schedules 26 and 27)	Partially in force -see schedules 26 and 27	GEO
Schedule 4, para 5	Premises, reasonable adjustment duty in relation to common parts	Not in force	DWP
Schedule 4, para 6	Consultation on adjustments relating to common parts	Not in force	DWP
Schedule 4, para 7	Agreements on adjustments relating to common parts	Not in force	DWP
Schedule 4, para 8	Premises, reasonable adjustments: victimisation	Not in force	DWP
Schedule 20, paras 1-15	Rail vehicle accessibility compliance	Not in force	DfT
Schedule 24	Harmonisation exceptions	Not in force	GEO
Schedule 26, para 21	Amendments to Equality Act 2006	Not in force so far as it relates to s.34(2)(a) of the 2006 Act as substituted	GEO
Schedule 27	Repeals and revocations	Not in force so far as it repeals ss.55-56 of the Local Transport Act 2008	DfT

	Secondary Legislation made under the Equality Act 2010¹⁶
1.	<p>Equality Act 2010 (Qualifications Body Regulator and Relevant Qualifications) (Scotland) Regulations 2010 (SSI 2010/315)</p> <p>Made provision in relation to section 96 (6)(c) and 97(3)(c) of the Act. The Regulations provided that the Scottish Qualifications Authority is the appropriate regulator and that “National Qualifications in Scotland” are relevant qualifications.</p>
2.	<p>Act of Sederunt (Sheriff Court Rules) (Equality Act 2010) 2010 (SSI 2010/340)</p> <p>This Act of Sederunt amended the Ordinary Cause Rules, the Summary Application Rules, the Summary Cause Rules and the Small Claim Rules in consequence of the Act.</p>
3.	<p>Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011 (SSI 2011/104)</p> <p>The Act extended the jurisdiction of the Additional Support Needs Tribunals for Scotland (“the ASNTS”) to include claims made under Chapter 1 of Part 6 of the Act. The ASNTS was created under section 17 of, and Schedule 1 to, the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”). These Rules prescribed the practice and procedure to be followed as regards such claims. The Rules are similar to the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 which govern practice and procedure before the ASNTS in proceedings under the 2004 Act but contain amendments appropriate for the new jurisdiction.</p>
4.	<p>Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2011 (SSI 2011/105)</p> <p>The Additional Support Needs Tribunals for Scotland (“the ASNTS”) were created under section 17 of, and Schedule 1 to, the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) to deal with referrals to it under that Act. The Act extended the jurisdiction of the ASNTS to include claims made under Chapter 6 of Part 1 of the Act. The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 (“the principal rules”) make provision for the procedure to be followed for referrals under the 2004 Act. The Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011 make provision for the procedure to be followed for claims under the Act.</p>

¹⁶ Following the repeal of predecessor legislation a number of regulations that were made under that legislation now has effect as if made under the Equality Act 2010. These regulations have not been listed here.

	These rules correct a grammatical error in the principle rules and make further amendments to the principal rules.
5.	<p>Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2011 (SSI 2011/233)</p> <p>This Order amends the list of public authorities in Part 3 of Schedule 19 to the Act which are subject to the public sector equality duty in section 149 of the Act.</p>
6.	<p>Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2012 (SSI 2012/55)</p> <p>This Order amends the list of public authorities in Part 3 of Schedule 19 to the Act by adding Children’s Hearings Scotland and the National Convener of Children’s Hearings Scotland to that list. The public authorities listed in Part 3 are subject to the public sector equality duty in section 149 of that Act.</p>
7.	<p>Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (SSI 2012/162)</p> <p>These Regulations imposed duties on a public authority listed in the Schedule to the Regulations (“listed authority”) for the purpose of enabling the better performance by the listed authority of the duty imposed by section 149(1) of the Act.</p>
8.	<p>Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2013 (SSI 2013/170)</p> <p>This Order amends the list of public authorities in Part 3 of Schedule 19 to the Act in consequence of the National Library of Scotland Act 2012. Amongst other things, the National Library of Scotland Act 2012 changes the name of the body corporate known as “The Trustees of the National Library of Scotland” to the “National Library of Scotland” (or “Leabharlann Nàiseanta na h-Alba”).</p> <p>The public authorities listed in that Part are subject to the public sector equality duty in section 149 of that Act.</p>
9.	<p>Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2015 (SSI 2015/83)</p> <p>This Order adds certain bodies to the list of Scottish public authorities in Part 3 of Schedule 19 to the Act. The public authorities listed in that Part are subject to the public sector equality duty in section 149 of that Act.</p>
10.	<p>Equality Act 2010 (Commencement No 1) Order 2010 (SI 2010/1736)</p> <p>This order brought into force certain provisions of the Act for the purpose of making subordinate legislation or guidance. It also commenced provisions which amended the Equality Act 2006, allowing the</p>

	Commission for Equality and Human Rights (Equality and Human Rights Commission) to issue Codes of Practice in connection with any matter addressed in the Act.
11.	<p>Equality Act 2010 (Offshore Work) Order 2010 (SI 2010/1835)</p> <p>This Order in Council applied Part 5 (work) of the Act to offshore work. It replaced previous orders extending anti-discrimination law to offshore work but has no application in respect of ships in navigation or engaged in fishing or dredging.</p>
12.	<p>Equality Act 2010 (Designation of Institutions with a Religious Ethos) (England and Wales) Order 2010 (SI 2010/1915)</p> <p>This Order designates sixth-form colleges in England and Wales as institutions with a religious ethos to which paragraph 5 (1) of Schedule 12 to the Act applies. Section 91 of the Equality Act 2010 provides that it is unlawful for an institution to discriminate in relation to the admission of students to further and higher education. The effect of the designation is that an institution will be permitted, in relation to the admission of students, to give preference to persons of a particular religion or belief in order to preserve the institution's religious ethos. This exception does not apply to admissions to courses of vocational training.</p>
13.	<p>Equality Act 2010 (Commencement No 2) Order 2010 (SI 2010/1966)</p> <p>This is the second Commencement Order made under the Act. It commenced further provisions of the Act to supplement provisions previously commenced by the Equality Act (Commencement No 1) Order 2010 SI No 2010/1736 so far as necessary for making subordinate legislation and guidance and it also commenced a further provision in relation to making Codes of Practice under the previously commenced provisions.</p>
14.	<p>Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128)</p> <p>These Regulations re-enacted, with amendments, provisions which were previously made under the Disability Discrimination Act 1995 and which were revoked by these Regulations.</p>
15.	<p>Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010 (SI 2010/2132)</p> <p>These Regulations contain permitted exceptions to a sex equality rule provided for by sections 67–71 of the Act. Sections 67–71 of the Act supersede an equal treatment rule provided for by sections 62–66 of the now repealed Pensions Act 1995. Exceptions to that equal treatment rule were contained in regulations 13–15 of the Occupational Pension Schemes (Equal Treatment) Regulations 1995 (SI 1995/3183) (“the Equal Treatment Regulations”), now repealed. The exceptions contained in the Equal Treatment Regulations were replaced by the provisions in these</p>

	Regulations.
16.	<p>Equality Act (Age Exceptions for Pension Schemes) Order 2010 (SI 2010/2133)</p> <p>This Order contains permitted exceptions for occupational pension schemes to the non-discrimination rule contained in section 61 of Part 5 of the Act (work) as it applies to age. This Order also contains permitted exceptions, relating to employer contributions to personal pension schemes, to the other non-discrimination provisions of Part 5 of the Act as they apply to age.</p>
17.	<p>Equality Act 2010 (Commencement No 3) Order 2010 (SI 2010/2191)</p> <p>This Order brought into force section 96(9)(b) of the Act for the purpose of making regulations prescribing the manner in which the appropriate regulator must publish specific matters which are not subject to the duty to make reasonable adjustments</p>
18.	<p>Equality Act 2010 (Qualifying Compromise Contract Specified Person) Order 2010 (SI 2010/2192)</p> <p>This Order extended the category of person capable of acting as an independent adviser whose advice is necessary to establish a qualifying compromise contract under Part 10 of the Act to a Fellow of the Institute of Legal Executives practising in a solicitor's practice including an incorporated practice recognised by the Law Society under section 9(1) of the Administration of Justice Act 1985.</p>
19.	<p>Equality Act 2010 (Obtaining Information) Order 2010 (SI 2010/2194)</p> <p>This Order prescribed the forms on which a person who thinks that he or she may have been the subject of a contravention of the Act including the breach of an equality clause or rule, may ask questions of a person who he or she thinks was responsible for the contravention or breach and also prescribed forms for response to such question.</p> <p>The primary legislation under which these forms were prescribed, Section 138 of the Act (Obtaining Information, etc), has now been repealed.</p>
20.	<p>Equality Act 2010 (General Qualifications Bodies Regulator and Relevant Qualifications) (Wales) Regulations 2010 (SI 2010/2217)</p> <p>These Regulations prescribed the Welsh Ministers as the appropriate regulator for the purposes of section 96 (Qualifications Bodies) of the Act. The appropriate regulator may specify matters which are not caught by the duty on qualifications bodies under that section to make reasonable adjustments for disabled people. These Regulations also prescribe that relevant qualifications, for the purposes of sections 96 and 97 of the Act, are those listed in the Schedule to the Regulations.</p>
21.	<p>Equality Act 2010 (General Qualifications Bodies) (Appropriate</p>

	<p>Regulator and Relevant Qualifications) Regulations 2010 (SI 2010/2245)</p> <p>These Regulations made provision for the purposes of section 96 of the Act. Section 96 of the Act imposes a duty on qualifications bodies not to discriminate in the conferment of relevant qualifications and also imposes a duty on them to make reasonable adjustments for disabled people.</p>
22.	<p>Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (SI 2010/2279)</p> <p>This Order amended the Act. It also amended section 76A of the Sex Discrimination Act 1975, section 71 of the Race Relations Act 1976 and section 49D of the Disability Discrimination Act 1995 and made a number of savings to those Acts. The Equality Act 2010 (Commencement Order No 1) 2010 SI 2010/1736 (C 91) brought into force a number of provisions of the Act for the purpose of making subordinate legislation, Codes of Practice and guidance. The amendments in this Order were consequential on and, in a small number of cases, supplemental to, the commencement of the provisions brought into force by the second Commencement Order.</p>
23.	<p>Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2010 (SI 2010/2285)</p> <p>This Order amended the Equality Act 2010 (Age Exceptions for Pension Schemes) Order 2010 (SI 2010/2133) on the coming into force of that instrument, to correct errors.</p>
24.	<p>Equality Act 2010 (Commencement No 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (SI 2010/2317)</p> <p>This was the fourth Commencement Order made under the Act. This Order brought various provisions of the Act into force on 1st October 2010 and set out savings, consequential, transitional, transitory and incidental provisions and a revocation in relation to existing legislation. These savings, consequential, transitional, transitory and incidental provisions and the revocation were made as a result of the repeal and revocation of previous discrimination legislation and its replacement by the Act, and of the lapse of previous subordinate legislation because of the repeal of previous discrimination legislation by that Act.</p>
25.	<p>Equality Act 2010 (Commencement No 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (Amendment) Order 2010 (SI 2010/2337)</p> <p>This Order amended the Equality Act 2010 (Commencement No 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions</p>

	and Revocation) Order 2010 (SI 2010/2317).
26.	<p>Equality Act 2010 (Commencement No 5) Order 2011 (SI 2011/96)</p> <p>This Order brought various provisions of the Act into force which were not brought into force by the earlier Commencement Orders. These provisions include enabling powers relating to the public sector equality duty and a provision concerning positive action in relation to recruitment and promotion in Part 11 of the Act</p>
27.	<p>Equality Act 2010 Codes of Practice (Services, Public Functions and Associations, Employment, and Equal Pay) Order 2011 (SI 2011/857)</p> <p>This Order brought into force on 6th April 2011 the Act's Code of Practice on Services, Public Functions and Associations; Employment and the Code of Practice on Equal Pay (together "the codes"). The codes were issued by the Commission for Equality and Human Rights on 26th January 2011 under section 14(1) of the Equality Act 2006 as amended.</p>
28.	<p>Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (SI 2011/1060)</p> <p>The Order amended the Act by adding to the list in Schedule 19 of public authorities which are subject to the public sector equality duty under section 149 of the Act. The Order also made amendments to the Act which are consequential on or supplementary to the commencement of the amended provisions, which were brought into force by the Equality Act 2010 (Commencement Order No 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (SI 2010/2317). In addition, the Order made amendments which were consequential to the commencement of section 149 of the Act on 5th April 2011.</p>
29.	<p>Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (SI 2011/1063)</p> <p>This Order amended the list of authorities specified in Part 2 of Schedule 19 to the Act which are subject to the public sector equality duty under section 149 of the Act.</p>
30.	<p>Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (SI 2011/1064)</p> <p>For the purpose of enabling the better performance of the duty under section 149(1) of the Act, the Welsh Ministers made these Regulations under the power given to them by section 153(2) of the Act. These Regulations imposed duties on relevant Welsh authorities who were specified in Part 2 of Schedule 19 to the Act.</p>
31.	<p>Equality Act 2010 (Commencement No 6) Order 2011 (SI 2011/1066)</p> <p>This Order brought into force various provisions of the Act that were not</p>

	<p>brought into force by the earlier Commencement Orders and a provision (paragraph 106A of Schedule 26) inserted into the Equality Act by the Equalities Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011. These provisions relate to the public sector equality duty and repeals and amendments consequential on the commencement of that duty.</p>
32.	<p>Equality Act 2010 (Guidance on the Definition of Disability) Appointed Day Order 2011 (SI 2011/1159)</p> <p>This Order appointed 1st May 2011 as the day for the coming into force of the Guidance on matters to be taken into account in determining questions relating to the definition of disability issued by the Secretary of State on 7th April 2011 under paragraph 14(3) of Schedule 1 to the Act. The Guidance provides practical guidance on matters to be taken into account when considering whether a person is a disabled person for the purposes of the Act and replaced guidance on the same matters which was issued by the Secretary of State under the now repealed Disability Discrimination Act 1995 on 29th March 2006</p>
33.	<p>Equality Act 2010 (Commencement No 7) Order 2011 (SI 2011/1636)</p> <p>This Order brought section 37 of the Act into force on 11th July 2011. This confers a power on Scottish Ministers to make regulations entitling disabled people to make disability-related alterations or additions to some common parts of residential property in Scotland; it also sets out what matters the regulations may provide for and that the Scottish Ministers must consult a Minister of the Crown before exercising the power. This Order also brought section 202(3) of the Act into force on 11th July 2011, as well as section 202(1) and (4) in part. This amends the power conferred on the Secretary of State by section 6A of the Civil Partnership Act 2004 to make regulations for approving premises for the registration of civil partnerships.</p>
34.	<p>Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 (SI 2011/1771)</p> <p>These Regulations prescribed the circumstances in which Part 5 of the Act (Work) applies to seafarers working on United Kingdom ships and hovercraft, or on ships and hovercraft from other EEA States. It also makes provision in relation to pay and review by the Secretary of State.</p>
35.	<p>Equality Act 2010 (Specific Duties) Regulations 2011 (SI 2011/2260)</p> <p>These Regulations imposed duties on public authorities listed in the Schedules to the Regulations. The purpose of the duties is to ensure better performance by the public authorities concerned of their duty to have due regard to the matters set out in section 149(1) of the Act.</p>
36.	<p>Equality Act 2010 (Commencement No 8) Order 2011 (SI 2011/2646)</p>

	<p>This Order commenced section 202 of the Act for remaining purposes on 5th December 2011. The effect of this Order was to bring into force the provisions of section 202 which were not brought into force by the seventh Commencement Order, including section 202(2) and what remains of section 202(4). Section 202(2) removed from the Civil Partnership Act 2004 (“the CPA”) the prohibition which prevented civil partnerships from being registered on religious premises. The remainder of section 202(4) inserted a new provision into the CPA to make it explicit that nothing in the CPA obliges religious organisations to host civil partnerships if they do not wish to do so.</p>
37.	<p>Rail Vehicle Accessibility (Middleton Railway Drewry Car) and (Cairngorm Funicular Railway) Exemption (Amendment) Order 2011 (SI 2011/2705)</p> <p>This Order amends the Rail Vehicle Accessibility (Middleton Railway Drewry Car) Exemption Order 2002 and the Rail Vehicle Accessibility (Cairngorm Funicular Railway) Exemption Order 2002.</p>
38.	<p>Rail Vehicle Accessibility (Non-Interoperable Rail System) (London Underground Circle, District and Hammersmith & City Lines S7 Vehicles) Exemption Order 2012 (SI 2012/105)</p> <p>This Order exempts certain rail vehicles of the type S7 from the specified requirements of the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 where the vehicles are used on the Circle, District and Hammersmith & City Lines or at specified station platforms on these Lines.</p>
39.	<p>Special Educational Needs Tribunal for Wales Regulations 2012 (SI 2012/322)</p> <p>These Regulations set out the procedure to be followed in proceedings before the Special Educational Needs Tribunal for Wales.</p>
40.	<p>Equality Act 2010 (Commencement No 9) Order 2012 (SI 2012/1569)</p> <p>This Order brought section 197 of the Act into force. This provides power for the Secretary of State to make an Order that provides for exceptions from the provisions of the Act in respect of the protected characteristic of age. It also brings into force on 1st October 2012 sections 28 to 31 (services and public functions) and sections 100 to 105 and section 107 (associations) of the Act in relation to the protected characteristic of age together with relevant elements in Schedules 3 and 16, Schedule 22 (statutory provisions) and Schedule 23 (general exceptions) in so far as they relate to the protected characteristic of age.</p>
41.	<p>Equality Act 2010 (Commencement No 10) Order 2012 (SI 2012/2184)</p> <p>This Order commenced section 31(9) and Schedule 2 to the Act, and also section 98 and Schedule 13 to the Act, in so far as they were not already</p>

	<p>in force, on 1st September 2012. The effect of this Order was to bring into force provisions regarding the third requirement which were not brought into force by previous commencement orders. The third requirement, as defined in section 20(5) of the Act, is a requirement imposed on a person to take reasonable steps to provide an auxiliary aid, where a disabled person would, but for the provision of that auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with non-disabled people</p>
42.	<p>Equality Act 2010 (Age Exceptions) Order 2012 (SI 2012/2466)</p> <p>This Order was made under section 197 of the Act. The Order provided exceptions to the application of the prohibition in Part 3 in relation to discrimination because of age in respect of a number of areas. Part 3 provides for the prohibition of discrimination, harassment and victimisation in respect of the provision of services (including for these purposes the provision of goods and facilities). The order also provided exceptions in relation to discrimination because of age in respect of associations (sections 101 and 102 of the Act) and age-banded sporting activity (section 195 of the Act).</p>
43.	<p>Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013 (SI 2013/1669)</p> <p>These Regulations amended the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996.</p>
44.	<p>Employment Tribunals (Interest) Order (Amendment) Order 2013 (SI 2013/1671)</p> <p>This Order amended the Employment Tribunals (Interest) Order 1990 so that interest on an unpaid award accrues from the day after the relevant decision day, but no interest shall be payable if the full amount of the award is paid within 14 days after the relevant decision day.</p>
45.	<p>Rail Vehicle Accessibility (Non-Interoperable Rail System) (London Underground Metropolitan Line S8 Vehicles) (Boarding Devices) Exemption Order 2013 (SI 2013/1931)</p> <p>This Order exempted certain rail vehicles of the type S8 from the requirement under the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 for boarding devices to be fitted between wheelchair compatible doorways and the platform where the vehicles are used at specified platforms and at specified stations on the Metropolitan Line. The Order made consequential amendments to the Rail Vehicle Accessibility (London Underground Metropolitan Line S8 Vehicles) Exemption Order 2010 and revokes the Rail Vehicle Accessibility (Non-Interoperable Rail System) (London Underground Metropolitan Line S8 Vehicles) Exemption Order 2011.</p>

46.	<p>Rail Vehicle Accessibility (Non-Interoperable Rail System) (London Underground Victoria Line 09TS Vehicles) Exemption Order 2013 (SI 2013/3031)</p> <p>This Order exempted certain rail vehicles of the type 09TS from the specified requirements of the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 where used on the Victoria Line. The exemptions are subject to condition. The Order revoked the Rail Vehicle Accessibility (London Underground Victoria Line 09TS Vehicles) Exemption Order 2008.</p>
47.	<p>Rail Vehicle Accessibility (Non-Interoperable Rail System) (London Underground Victoria Line 09TS Vehicles) Exemption Order 2013 (SI 2013/3318)</p> <p>This Order exempted certain rail vehicles of the type 09TS from the specified requirements of the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 where used on the Victoria Line. The Order revoked the Rail Vehicle Accessibility (London Underground Victoria Line 09TS Vehicles) Exemption Order 2008.</p>
48.	<p>Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (SI 2014/1711)</p> <p>Part 16 of these Regulations made transitional modifications and consequential and supplementary amendments to the Equality Act (Sex Equality Rule) (Exceptions) Regulations 2010 (SI 2010/2132) in relation to affected benefits.</p>
49.	<p>Equality Act 2010 (Equal Pay Audits) Regulations 2014 (SI 2014/2559)</p> <p>These Regulations require an employment tribunal to order a respondent to carry out an equal pay audit after a finding that there has been an equal pay breach. An equal pay breach is defined in section 139A of the Act as a breach of an equality clause or a contravention of sections 39(2), 49(6) or 50(6) of the Act so far as they relate to sex discrimination in relation to pay.</p>
50.	<p>Rail Vehicle Accessibility (Non-Interoperable Rail System) (Blackpool Tramway) Exemption Order 2014 (SI 2014/2660)</p> <p>This Order exempts certain tramcars from specified requirements of the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 where the vehicles are used on the Blackpool Tramway.</p>
51.	<p>Railways and Rail Vehicles (Revocations and Consequential Amendments) Order 2014 (SI 2014/3244)</p> <p>This Order revoked six instruments relating to rail transport and made consequential amendments arising from one of the revocations.</p>

52.	<p>Rail Vehicle Accessibility (Non-Interoperable Rail System) (London Underground Northern Line 95TS Vehicles) Exemption Order 2015 (SI 2015/393)</p> <p>This Order exempts certain rail vehicles of the type 95TS from the specified requirements of the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 where the vehicles are used on the Northern Line or at specified station platforms on that Line.</p>
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Annex E

Outcomes of discrimination cases at Employment Tribunals – 2007/8 to 2014/15

Year	Outcome	Type of Jurisdiction							
		Age	Disability	Equal pay	Race	Religion or belief	Sex	Sexual orientation	Suffer a detriment / unfair dismissal - pregnancy
07/08	ACAS Conciliated Settlements	45%	44%	16%	37%	38%	19%	45%	~
	Withdrawn	35%	34%	52%	31%	33%	42%	31%	~
	Successful at hearing	3%	3%	7%	3%	2%	3%	6%	~
	Unsuccessful at hearing	8%	9%	1%	15%	14%	4%	10%	~
	Struck Out (not at a hearing)	4%	6%	23%	8%	6%	30%	5%	~
	Default judgement	1%	0%	0%	0%	0%	0%	0%	~
	Dismissed at a preliminary hearing	5%	3%	1%	6%	7%	1%	3%	~
08/09	ACAS Conciliated Settlements	40%	44%	10%	38%	34%	34%	40%	~
	Withdrawn	32%	33%	81%	28%	30%	42%	31%	~
	Successful at hearing	2%	3%	0%	3%	3%	3%	2%	~
	Unsuccessful at hearing	10%	10%	0%	17%	18%	6%	12%	~
	Struck Out (not at a hearing)	10%	6%	8%	7%	8%	13%	6%	~
	Default judgement	1%	0%	0%	0%	1%	0%	0%	~
	Dismissed at a preliminary hearing	5%	3%	0%	6%	7%	2%	8%	~
09/10	ACAS Conciliated Settlements	39%	45%	11%	38%	33%	20%	40%	~
	Withdrawn	39%	32%	71%	30%	32%	57%	30%	~
	Successful at hearing	2%	3%	1%	3%	2%	2%	5%	~

Year	Outcome	Type of Jurisdiction							
		Age	Disability	Equal pay	Race	Religion or belief	Sex	Sexual orientation	Suffer a detriment / unfair dismissal - pregnancy
	Unsuccessful at hearing	9%	9%	0%	15%	12%	3%	9%	~
	Struck Out (not at a hearing)	7%	7%	16%	7%	11%	15%	9%	~
	Default judgement	1%	1%	0%	1%	1%	1%	2%	~
	Dismissed at a preliminary hearing	3%	3%	1%	5%	8%	1%	5%	~
10/11	ACAS Conciliated Settlements	35%	46%	12%	36%	34%	28%	41%	~
	Withdrawn	40%	31%	60%	28%	29%	49%	31%	~
	Successful at hearing	2%	3%	1%	3%	3%	2%	3%	~
	Unsuccessful at hearing	8%	9%	7%	16%	14%	4%	9%	~
	Struck Out (not at a hearing)	10%	7%	21%	10%	11%	16%	11%	~
	Default judgement	1%	1%	0%	1%	1%	1%	1%	~
	Dismissed at a preliminary hearing	3%	3%	0%	5%	6%	1%	3%	~
11/12	ACAS Conciliated Settlements	33%	45%	37%	36%	34%	30%	42%	~
	Withdrawn	42%	31%	43%	30%	31%	33%	29%	~
	Successful at hearing	1%	3%	0%	3%	3%	2%	3%	~
	Unsuccessful at hearing	8%	10%	0%	17%	17%	4%	10%	~
	Struck Out (not at a hearing)	13%	7%	19%	9%	10%	29%	10%	~
	Default judgement	1%	0%	0%	1%	0%	0%	0%	~
	Dismissed at a preliminary hearing	3%	3%	0%	5%	5%	1%	5%	~
12/13	ACAS Conciliated Settlements	43%	45%	27%	34%	29%	29%	39%	~

Year	Outcome	Type of Jurisdiction							
		Age	Disability	Equal pay	Race	Religion or belief	Sex	Sexual orientation	Suffer a detriment / unfair dismissal - pregnancy
	Withdrawn	32%	31%	50%	29%	27%	40%	33%	~
	Successful at hearing	4%	3%	0%	3%	3%	2%	3%	~
	Unsuccessful at hearing	11%	10%	0%	16%	14%	4%	8%	~
	Struck Out (not at a hearing)	6%	7%	23%	12%	17%	23%	11%	~
	Default judgement	1%	0%	0%	1%	0%	0%	1%	~
	Dismissed at a preliminary hearing	4%	3%	0%	6%	10%	1%	4%	~
13/14	ACAS Conciliated Settlements	19%	42%	16%	33%	31%	23%	39%	50%
	Withdrawn	63%	25%	41%	26%	27%	52%	27%	21%
	Successful at hearing	2%	3%	0%	3%	3%	2%	3%	8%
	Unsuccessful at hearing	7%	11%	0%	17%	15%	4%	12%	8%
	Dismissed at a preliminary hearing	2%	4%	0%	5%	6%	1%	4%	2%
	Struck Out (not at a hearing)	4%	7%	26%	9%	12%	11%	9%	5%
	Default judgement	0%	0%	0%	0%	0%	0%	0%	1%
	Dismissed Rule 27	0%	1%	0%	0%	0%	1%	0%	0%
	Dismissed Upon Withdrawal	4%	6%	17%	4%	5%	7%	5%	5%
	Case Discontinued	0%	0%	0%	0%	0%	0%	0%	0%
14/15	ACAS Conciliated Settlements	28%	44%	14%	32%	32%	20%	43%	49%
	Withdrawn	43%	21%	42%	21%	19%	60%	22%	18%
	Successful at hearing	2%	5%	0%	4%	3%	1%	6%	8%
	Unsuccessful at hearing	12%	13%	0%	21%	20%	3%	8%	10%

Year	Outcome	Type of Jurisdiction							
		Age	Disability	Equal pay	Race	Religion or belief	Sex	Sexual orientation	Suffer a detriment / unfair dismissal - pregnancy
	Dismissed at a preliminary hearing	3%	2%	0%	4%	5%	1%	2%	2%
	Struck Out (not at a hearing)	6%	6%	17%	10%	12%	10%	11%	6%
	Default judgement	0%	0%	0%	0%	0%	0%	0%	0%
	Dismissed Rule 27	0%	0%	0%	0%	0%	0%	0%	0%
	Dismissed Upon Withdrawal	8%	8%	27%	7%	8%	6%	6%	7%
	Case Discontinued	0%	0%	0%	0%	1%	0%	0%	0%

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