



Cóhesionia

**Equality and
Diversity
Key Legislation**

October 2007



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Equality and Diversity - Key Legislation

Future changes

The information detailed below was accurate at the time of writing this handout (October 2007), but may be subject to changes in legislation.

Government is now consulting on proposals for *A Single Equality Bill for Great Britain* which is intended to provide a simpler, more consistent legal framework for preventing discrimination. This is likely to lead to a Single Equality Act during the life of this parliament, merging all the existing discrimination legislation (see below).

The consultation, which has been developed from the results of the Discrimination Law Review, seeks views on areas such as:

- whether or not the requirement for a comparator in direct discrimination cases should be retained;
- the harmonisation of the definition of indirect discrimination across all areas of discrimination;
- the introduction of a single definition of disability discrimination;
- widening the use of the concept of “reasonable adjustments” beyond disability discrimination;
- the extension of the current duty on public sector bodies to promote race, gender and disability equality to other areas and its simplification into a single equality duty;

- the standardisation of current exceptions to prohibitions on discrimination, such as genuine occupational requirements; and
- whether or not equal pay provisions should be brought within a Single Equality Act and whether or not settled principles of equal pay law that have come out of judgments in legal cases should be incorporated into this legislation.

The consultation also sets out plans to give primary responsibility for issuing guidance and Codes of Practice on discrimination laws to the Commission for Equality and Human Rights.

The closing date for responses to the proposals was 4 September 2007.

The review could end as no more than a tidying-up exercise, ensuring that the same language is used for the same concepts across the different strands. Or it could lead to a substantial amount of "levelling up", for example by extending the right to claim age discrimination to access to goods, facilities, services and premises. Or the review could herald more radical change, such as by allowing positive discrimination (as opposed to positive action) in certain circumstances and by changing the focus of the legislation to group-wide remedies rather than individual claims.

The *Equalities Review*, the independent review commissioned by the Prime Minister, has argued that public sector bodies should be required to use procurement as a means of achieving greater equality.

Currently key legislation includes:

Race and Ethnicity

Race Relations Act 1976 and Race Relations (Amendment) Act 2000

Under the Race Relations Act 1976, it is unlawful to discriminate directly or indirectly because of someone's colour, race, nationality (including citizenship), ethnicity or national origin.

The Act includes discrimination by applying requirements or conditions that people of a particular racial group cannot meet and which cannot be justified. It is unlawful to try to make or help someone discriminate or to victimise an individual in connection with any claim of racial discrimination.

The Race Relations (Amendment) Act 2000 amended the Race Relations Act 1976. The amended Act applies to jobs, training, housing, education, the provision of goods, facilities and services.

Race Equality Schemes

Under the Race Relations (Amendment) Act 2000 all named public bodies were required to produce a Race Equality Scheme by the 31st May 2002. The Scheme should have set out a 3 year programme of actions to ensure that all organisational functions, policies and strategies are directed towards the following three related but distinct objectives, known collectively as the *General Duty*:

- the elimination of unlawful racial discrimination;
- the promotion of equal opportunities;
- the promotion of good relations between people of different racial groups.

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Named public bodies should now have revised their initial Race Equality Schemes.

Race Equality Impact Assessments

In order to guide councils in how they should approach the *General Duty* a Statutory Order subsequent to the (Amendment) Act sets out a series of *Specific Duties*:

- assess and consult on the likely impact of proposed policies on the promotion of race equality;
- monitor existing policies for any adverse impact on the promotion of race equality;
- publish the results of these assessments, consultations and monitoring;
- ensure public access to the services provided and access to information about those services;
- train staff in connection with the requirements of the general duty and the specific duty.

Employment duties

There is also an employment duty for named public sector bodies to racially monitor the numbers of staff in post, and applicants for employment, training and promotion.

Organisations with more than 150 full time or full time equivalent posts will also need to racially monitor staff who:

- receive training;

- benefit, or suffer detriment, as a result of performance assessment procedures;
- are involved in grievance procedures;
- are the subject of disciplinary procedures;
- cease employment.

Race Regulations 2003

The Race Regulations incorporate the EU Race Directive into UK law. The race directive focuses on equal treatment between people, regardless of their racial or ethnic origin, and sets standards of protection for all EU members of state.

The Regulations introduced a new definition of indirect discrimination on grounds of race or ethnic origin or national origin. There is also a new, statutory definition of harassment on grounds of race, ethnic or national origin.

The Regulations introduced an exception to the rule against discrimination in employment. This is where being of a particular race or ethnic or national origin is a genuine and determining requirement for the employment in question.

Asylum and Immigration Act 2004

This was the fifth major piece of asylum legislation to be passed in 11 years. It covers issues such as:

- entering the UK without a passport and the credibility of applicants;

- the withdrawal of basic support for families;
- accommodation;
- benefits and loans;
- removal and monitoring.

Disability

The Disability Discrimination Act (DDA) 1995

The DDA 1995 provides for disabled people to get legal redress if they feel they have been discriminated against:

- in employment – at work, applying for jobs or being dismissed;
- in accessing goods, services and facilities;
- if their access to locations is restricted for example shops, restaurants or cinemas.

The DDA requires “reasonable adjustments” to be made by organisations supplying goods or services. Service providers should ensure, through making the reasonable adjustment that a person with a disability can gain access to the service or provision.

Similarly, the Act requires employers to make “reasonable adjustments” for a disabled person put at a substantial disadvantage by a provision, criterion or practice, or a physical feature of premises.

This requirement covers the complete range of employment functions such as recruitment, training, promotion, benefits, dismissal, etc.

Disability Discrimination Act 2005

The DDA 2005 extends the DDA 1995 and places a duty on public sector bodies to build disability equality into all aspects of their work.

The DDA 2005 amended the Act to insert the Disability Equality Duty (DED), known as the general duty, into the Act. The duty is aimed at tackling systemic discrimination, and ensuring that public authorities build disability equality into everything that they do.

This general duty came into force on 4 December 2006.

Section 49A of the Act says that public authorities must, when carrying out their functions, have due regard to the need to:

- promote equality of opportunity between disabled people and other people;
- eliminate discrimination that is unlawful under the Act;
- eliminate harassment of disabled people that is related to their disability;
- promote positive attitudes towards disabled people;
- encourage participation by disabled people in public life;
- take steps to meet disabled people's needs, even if this requires more favourable treatment.

The general duty applies to all public authorities, including:

- ministers;
- local authorities;

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- governing bodies of colleges, universities and schools;
 - NHS trusts and boards;
 - police and fire authorities;
 - the Crown Prosecution Service and the Crown Office;
 - inspection and audit bodies;
 - certain publicly funded museums;
 - and those private organisations which may carry out some public functions (but only in so far as those functions are concerned).

Disability Equality Schemes

The DDA 2005 also gives the Secretary of State the power to introduce regulations setting out more specific duties which may assist public authorities in meeting their general duty.

Most public authorities are also covered by the specific duties, which set out a framework to assist authorities in meeting their general duty. The organisations required to meet these duties are listed in appendix A of the Disability Rights' Commission document *The Duty to Promote Disability Equality: Statutory Code of Practice*.

All public authorities covered by the specific duties must:

- publish a Disability Equality Scheme (including within it an Action Plan)
- involve disabled people in producing the Scheme and Action Plan

- demonstrate they have taken actions in the Scheme and achieved appropriate outcomes
- report on progress.
- review and revise the Scheme.

Those public authorities that are subject to the specific duties must publish their Disability Equality Schemes by 4th December 2006.

Housing associations and other non public bodies delivering a public service

Housing associations are not listed as being covered under the Race Equality Duty and do not legally constitute public authorities for many purposes. However, it is the view of the Disability Rights Commission (DRC) and of the Housing Corporation that it is likely that housing associations will be public authorities for the purposes of the DED, and so covered by the general duty. This is because their structures or work may be closely linked with the delegating or contracting out of functions from a State or public body; housing associations receive public funding; there is a public interest in the functions being performed; and they are serving the public interest rather than one of profit.

A similar conclusion can be reached for other organisations serving the public interest such as supported housing providers.

In the housing sector, in order to meet the Disability Equality Duty, asset management strategies and policies should take active steps to improve accessibility standards and remove barriers for disabled people within homes and external environments.

This applies to existing as well as new developments.

From December 2006 landlords, both private and social, have also had new duties to make reasonable adjustments for disabled people, as will those who control or manage rented property.

The new duties will mean that landlords will have to, depending on the circumstances, make the following reasonable adjustments:

- change practices, policies and procedures;
- provide auxiliary aids and services;
- change a term of a letting when requested to by a disabled person (or by someone on their behalf), for example waiving a no pets policy for a disabled person with an assistance dog.

The law requires landlords to respond reasonably to the requests of disabled occupiers or would be tenants. In order to do this it will often be necessary for (especially larger) landlords to prepare in advance by making arrangements to respond to requests – whether for extra assistance or alternative formats – or simply providing training for staff so that they know that they should implement rules flexibly where there is a disability issue.

Examples of the types of adjustments which could be made by landlords include:

- providing tenancy agreements in alternative formats, large print, Braille, audio tape, easy read;
- providing a British Sign Language interpreter during meeting with tenants who use British Sign Language;

- spending extra time with tenants who have learning difficulties to ensure that they understand their tenancy agreement and general rules, etc;
- a temporary ramp could be provided for a wheelchair user who has a small step up into their flat.

A landlord will only be expected to do what is reasonable.

Landlords and managers of rented premises will not have to take any steps which involve the removal or alteration of physical features.

However, regulations have determined those features which are not to count as “physical features” and so might need to be adjusted for a disabled tenant or occupant, as:

- the replacement or provision of any signs or notices;
- the replacement of any taps or door handles;
- the replacement, provision or adaptation of any door bell or door entry system;
- changes to the colour of any surface (such as, for example, a wall or door).

In addition, the new obligations contained in the DDA reinforce existing housing legislation which states that a landlord cannot unreasonably withhold consent from disabled tenants who need to make physical adjustments to their homes for disability-related reasons. The tenant must pay for the alterations and must ask permission. This right of individual tenants to make adjustments will not apply to the “common parts” of properties such as stairs or hallways to communal areas.

Housing associations and the specific duty

Whilst housing associations are not listed in the regulations that establish which authorities are subject to the specific duties (and therefore the requirement to produce a DES), the Housing Corporation is subject to the duty and the Corporation has made the following statement to the DRC:

“Following publication of its own DES and Action Plan by November 2006 the Corporation will expect associations to develop appropriate Disability Equality Schemes and Action Plans of their own during 2007, for publication from December 2007.”

Key housing case law - The London Borough of Lewisham vs Courtney Malcolm and Disability Rights Commission (2007)

This Court of Appeal ruling gives disabled tenants anti discrimination protection in eviction process.

The implications are that local authorities run the risk of unlawful discrimination when seeking to evict disabled tenants who breach their tenancy agreement for a disability-related reason.

The case demonstrates the extent to which the premises provisions of the DDA impact upon, and operate within, housing law.

Previous cases taken under the DDA have challenged possession orders where the courts have discretion to make an order. This is the first time a case has dealt with a possession order where it is mandatory for the court to make an order.

Mr Malcolm, who has schizophrenia, became a Lewisham Council tenant in January 2002 and had exercised his right to buy in March. The process of completion was delayed over two years. In April 2004 it was discovered that Mr Malcolm had stopped taking his medication and a month later he lost his job.

It was in these circumstances that Mr Malcolm, in May 2004, asked a lettings' agent to sub-let his flat, without having sufficient appreciation of what he was doing and the consequences of his actions. The flat was sub-let in June 2004, therefore breaching his secure tenancy and losing his security of tenure. In December 2004, Lewisham issued proceedings for possession.

However, evidence given in court, was that the housing enforcement team were unaware of his mental health problems, nor that his social worker was concerned about his well being.

Lady Justice Arden ruled that where it is mandatory for the courts to issue possession orders to evict tenants who breach the terms of a secure tenancy agreement, Lewisham Council were also under a duty, under the Disability Discrimination Act 1995 (DDA), to examine whether the breach could be related to Mr Malcolm's disability.

If the reason for the breach is disability related then, unless it can be justified under the DDA, it will be unlawful to evict.

This ruling gives disabled tenants anti discrimination protection if they breach their tenancy agreement because of an impact arising from their disability.

The Mental Capacity Act 2005

The Mental Capacity Act 2005 provides a comprehensive framework for decision making on behalf of adults aged 16 and over who lack capacity to make decisions on their own behalf.

The Act will be implemented in two stages during 2007. In April 2007, the new Independent Mental Capacity Advocate service (IMCAs) will become operational in England only.

The new criminal offence of ill treatment or wilful neglect will come into force in England and Wales.

The Act applies to all decisions taken on behalf of people who permanently or temporarily lack capacity, including decisions relating to medical treatment.

In general the Act confirms and reinforces best practice.

There are, however, a number of new features, including the ability to nominate substitute decision-makers under a Lasting Power of Attorney (LPA), the development of a new Court of Protection with extended powers, and specific provisions for enrolling incapacitated adults in certain forms of research.

What is capacity?

Decision-making capacity refers to the everyday ability that individuals possess to make decisions or to take actions that influence their life, from simple decisions about what to have for breakfast, to far-reaching decisions about serious medical treatment.

In a legal context it refers to a person's ability to do something, including making a decision, which may have legal consequences for the person themselves or for other people.

When does a person lack capacity?

Although the concept of capacity is inevitably complex, for the purpose of the Act a person lacks capacity if, at the time the decision needs to be made, he or she is unable to make or communicate the decision because of an 'impairment of, or a disturbance in the functioning of, the mind or brain'.

The Act contains a two-stage test of capacity:

- Is there an impairment of or disturbance in the functioning of, the person's mind or brain? If so,
- Is the impairment or disturbance sufficient that the person lacks the capacity to make that particular decision?

The assessment of capacity is also "task-specific", that is to say focuses on the specific decision that needs to be made at the specific time the decision is required. It does not matter therefore if the incapacity is temporary, or the person retains the capacity to make other decisions, or if the person's capacity fluctuates. The inability to make a decision, however, must be a result of the impairment or disturbance already mentioned.

This could be the result of a variety of factors, including mental illness, learning disability, dementia, brain damage, or intoxication. The important point is that the impairment or disturbance renders the individual unable to make the decision in question. Clearly, however, if the impairment is

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temporary and the decision can realistically be put off until such a time as he or she is likely to regain capacity, then it should be deferred.

While it is clear that an unconscious patient will lack capacity, most other categories of patient will retain some decision-making capacity, however slight.

Everything practicable must be done to support individuals to make their own decisions, before it is decided that they lack capacity. The aim is to ensure that individuals who are capable of making decisions for themselves, but may need some support, are not inappropriately assessed as incapacitated.

The fact that an individual makes a rash, unwise or irrational decision, or begins to act out of character, is not itself proof of incapacity. Such actions may raise questions about capacity – where for example they follow a period of illness or an accident – but they are in no way determinative.

At the heart of the Act lies the principle that where it is determined that an individual lacks capacity, any decision or action taken on his or her behalf must be in his or her best interests. Practically speaking, what constitutes an individual's best interests will depend upon the circumstances of each individual case.

The least restrictive alternative

Whenever a person is making a decision on behalf of an adult who lacks capacity, he or she must ensure that the decision is the least restrictive of that individual's fundamental rights or freedoms. There are often several ways to achieve a desired outcome, and the choice must be the one that

interferes least with the individual's freedoms while still achieving the necessary goal.

Under the Act, a person is regarded as being unable to make a decision if, at the time the decision needs to be made, he or she fails:

- To understand the information relevant to the decision
- To retain the information relevant to the decision
- To use or weigh the information, or
- To communicate the decision (by any means)

Where an individual fails one or more parts of this test, then they do not have the relevant capacity and the entire test is failed.

A refusal to be assessed

Occasionally an individual whose capacity is in doubt may refuse to be assessed. In most cases, a sensitive explanation of the potential consequences of such a refusal, such as the possibility that any decision they may make will be challenged at a later date, will be sufficient for them to agree. However, if the individual flatly refuses, in most cases no one can be required to undergo an assessment.

The Government has used the Mental Health Act 1983 Amendment Bill to amend the Mental Capacity Act in relation to compliant incapacitated patients who are detained. Where a care home or hospital identifies that a person who lacks capacity is being, or risks being, deprived of their liberty, they must apply to a 'supervisory body' for authorisation of the deprivation of liberty. Where a person is in a care home the supervisory body will be the relevant local authority. Where the person is in a hospital it will be the

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relevant PCT, or, in Wales, the National Assembly for Wales. In an emergency, the care home or hospital can itself provide an urgent authorisation for a maximum of seven days.

Decisions by the Court of Protection and Court appointed deputies

The Act creates a new Court of Protection which is ultimately responsible for the proper functioning of the legislation. The Court is the final arbiter in relation to the legality of decisions made under the Act, including decisions in relation to an individual's capacity. In addition to adjudicating in relation to specific, one-off decisions, the Court will also have the power, where appropriate, to appoint deputies to assist with continued decision making.

Independent mental capacity advocates

Another of the Act's innovations is the development of an independent advocacy scheme to support particularly vulnerable incapacitated adults – most often those who lack any other forms of external support – in making certain decisions. Where it is clear that a decision needs to be made on behalf of an incapacitated adult in relation to either serious medical treatment or place of residence and there is no one close to the adult to provide advice or guidance, including an attorney or deputy, then the services of an independent advocate will be engaged. Serious medical treatment is defined as treatment which involves providing, withdrawing or withholding treatment in circumstances where:

- In the case of a single treatment being proposed, there is a fine balance between its benefits to the patient and the burdens and risks it is likely to entail for him or her. In a case where there is a choice of treatments, a decision as to which one to use is finely balanced, or

- What is proposed would be likely to involve serious consequences for the patient.

Work and Families Act 2006

The Act, in addition to extending paid maternity and adoption leave (see gender section below), extends the right to request flexible working to those who have caring responsibilities for adults, provides for statutory maternity pay to be extended, and introduces additional paternity leave.

The right to request flexible working will be extended to carers of adults with effect from April 2007. The right to request flexible working currently applies to parents of children under the age of six and of disabled children under 18. According to the June 2006 regulatory impact assessment, research undertaken since the law was introduced in April 2003 "shows that the law has had a positive impact. Over a fifth (22%) of parents with children under six requested to work flexibly over the last two years. The majority of employees (81%) who had made a request had their request either fully or partly accepted." This compares with 77% of requests that were said to be accepted before the right to request was introduced (so it is scarcely a seachange).

The Work and Families Act extends the right to request flexible working by allowing applications to be made by employees who have caring responsibilities for adults.

Gender

The Equal Pay Act 1970 (EPA)

Under the EPA a person has a right to the same contractual pay and benefits as a person of the opposite sex in the same employment providing:

- the man and woman are doing like work
- the work is rated as equivalent
- the work is proved to be of equal value.

The employer is not required, however, to provide the same pay and benefits if they can prove that the difference in pay and benefits is for reasons other than gender.

The Sex Discrimination Act 1975 (SDA)

The SDA applies to women and men of any age, including children. It prohibits sex discrimination in:

- employment
- education
- the provision of goods, services and facilities.

In addition it prohibits victimisation of a person who has exercised their rights under the SDA or EPA.

The Sex Discrimination (Gender Reassignment) Regulations 1999

These Regulations address discrimination on the grounds of gender reassignment (better known as changing sex). The Regulations aim to stop people being treated less favourably in employment or vocational training because they intend to undergo, are undergoing or have undergone gender reassignment.

The Gender Recognition Act 2004

This legislation came into force on 4 April 2005, although there are special rules about who can be granted gender recognition until 4 October 2005.

The Act also amends the SDA 1975 and the Sex Discrimination (Gender Reassignment) Regulations 1999.

These Acts already make it unlawful to discriminate against a person in relation to employment or vocational training on the grounds that they intend to undergo or are undergoing gender reassignment.

The new Act allows for the legal recognition of transsexual people's true gender (acquired gender). This recognition is called gender recognition and has to be applied for from the Gender Recognition Panel.

The panel will grant gender recognition if it is satisfied that the applicant:

- has, or has had in the past, gender dysphoria
- has lived in the acquired gender for at least two years when the application is made
- intends to continue to live in the acquired gender for the rest of their life.

The definition of gender reassignment in the SDA includes any part of a process undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of gender.

Sex discrimination changes due on 1 October 2007

On 1 October 2005, the Employment Equality (Sex Discrimination) Regulations 2005 amended the Sex Discrimination Act 1975 to implement the amended Equal Treatment Directive, which prohibits both sex-based harassment and sexual harassment. The Regulations also amended the definition of indirect sex discrimination to make it clear that less favourable treatment on the grounds of pregnancy or maternity leave amounts to unlawful sex discrimination.

The High Court, in judicial review proceedings, agreed with the Equal Opportunities Commission that it is necessary to further amend various aspects of the legislation, as they still do not comply with the Directive.

The Government confirmed that the further changes would be introduced on 1 October 2007. This has, however, been postponed, as more work on the regulations is required.

Work and Families Act 2006

Extends paid maternity and adoption leave, extends the right to request flexible working to those who have caring responsibilities for adults (see above in the disability section), provides for statutory maternity pay to be extended, and introduces additional paternity leave.. The Regulations came into effect on April 6 2007.

The key changes are:

- All pregnant employees will be entitled to take up to 52 weeks' maternity leave.
- Statutory maternity pay and maternity allowance is to be extended from six months to nine months from April 2007.
- Power has been taken to extend the maximum period of paid maternity leave to one year. The government's intention is to introduce this during this parliament.
- A woman on maternity leave will be able to go into work for up to 10 days, in order to keep in touch, without losing her right to statutory maternity leave or pay.
- It is made clear that an employer can contact an employee who is on maternity leave to help plan her return to work.
- The notice required for women on maternity leave to return earlier than planned will be increased from 28 days to eight weeks.
- A right to additional paternity leave will enable fathers to benefit from leave and statutory pay if the mother returns to work after six months but before the end of her maternity leave period, and the father takes over the childcare duties. Consultation has closed and draft regulations are expected to be published shortly.

The Equality Act 2006

The Equality Act 2006 amends the SDA to place a statutory duty on all public authorities, when carrying out their functions, to have due regard to the need:

- to eliminate unlawful discrimination and harassment
- to promote equality of opportunity between men and women.

This is known as the “general duty” and came into effect on 6 April 2007.

The duty applies to all public authorities in respect of all of their functions (with limited exceptions). This means it applies to policy-making, service provision, employment matters, and in relation to enforcement or any statutory discretion and decision-making.

It also applies to a public authority in relation to services and functions which are contracted out. In addition, it applies to private and voluntary bodies which are carrying out public functions, but only in respect of those functions.

Public authorities are expected to have “due regard” to the need to eliminate unlawful discrimination and harassment and promote equality of opportunity between men and women in all of their functions. Due regard comprises two linked elements: proportionality and relevance.

The weight that public authorities give to gender equality should therefore be proportionate to its relevance to a particular function. The greater the relevance of a function to gender equality, the greater regard which should be paid to it.

As part of the duty, public authorities are required to have due regard to the need to eliminate unlawful discrimination and harassment in employment and vocational training (including further and higher education), for people who intend to undergo, are undergoing or have undergone gender reassignment.

To support progress in delivering the general duty, there is also a series of 'specific duties' which apply to listed public authorities. The Order sets out steps those authorities must take to help them meet the general duty.

Those specific duties, in brief, are:

- To prepare and publish a gender equality scheme, showing how it will meet its general and specific duties and setting out its gender equality objectives
- In formulating its overall objectives, to consider the need to include objectives to address the causes of any gender pay gap
- To gather and use information on how the public authority's policies and practices affect gender equality in the workforce and in the delivery of services
- To consult stakeholders (i.e. employees, service users and others, including trade unions) and take account of relevant information in order to determine its gender equality objectives
- To assess the impact of its current and proposed policies and practices on gender equality
- To implement the actions set out in its scheme within three years, unless it is unreasonable or impracticable to do so

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- To report against the scheme every year and review the scheme at least every three years.

The first scheme had to be published by 30 April 2007.

The general duty applies to all functions of every public authority.

The definition of a public authority is “any person who has functions of a public nature”. Despite a slight difference in the wording, this is the same approach as the definition of public authorities covered by the Disability Discrimination Act 2005 and the Human Rights Act 1998.

Because the duty is based on this definition, public authorities covered by the general gender duty are not individually listed. The duty would apply to all of the authorities listed in Schedule 1A to the amended Race Relations Act 1976.

The gender duty can also apply directly to certain private or voluntary sector bodies when they are carrying out public functions (the private functions of such bodies being excluded).

Religion and Belief

The Employment Equality (Religion or Belief) Regulations 2003

These Regulations came into force in December 2003 and made discrimination on the grounds of religion and belief unlawful in employment and vocational training for the first time in Britain. The Regulations:

- make unlawful discrimination, harassment and victimisation on the grounds of religion or belief, in the workplace
- cover all aspects of the employment relationship, including recruitment, pay, working conditions, training, promotion, dismissal and references
- mean people should have access to equal opportunities in employment, training and promotion and can take action to tackle harassment or religious discrimination
- define “religion” or “belief” as being any religion, religious belief or similar philosophical belief.

The Regulations make it unlawful to use:

- direct discrimination (treating people less favourably than others)
- indirect discrimination (applying a provision, criterion or practice that disadvantages a particular group)
- harassment or victimisation.

The Regulations also protect people who are (correctly or incorrectly) assumed to have a particular religion or belief, or those who might be discriminated against because of whom they mix with socially.

Racial and Religious Hatred Act 2006

The final version of the law contains specific freedom of speech safeguards aimed at ensuring people can only be found guilty if they intend to stir up hatred. And they would ban only "threatening" words and behaviour, not things which were merely critical, abusive or insulting.

Equality Act 2006

Part 2 of the Equality Act 2006 makes it illegal to discriminate on the grounds of religion or belief in the following areas:

- education
- the provision of goods, facilities or services
- the management of premises
- the exercising of public functions.

There are a number of common-sense exceptions to the law, where some forms of discrimination are allowed, for example, for organisations that have a purpose related to a religion or belief.

The new proposals ban both direct and indirect discrimination and victimisation on grounds of religion.

The religion or belief provisions of Part 2 of the Equality Act not only prohibit discrimination on the basis of a person's actual religion or belief, but also:

- a religion or belief they are thought to have; or
- the religion or belief of someone else with whom they are associated (for instance, someone such as a friend or member of their family)
- against a person because they do not hold a religion.

The religion or belief provisions of Part 2 apply to all forms of goods, facilities and services. The Act gives as examples the following goods, facilities and services in the provision of which discrimination on grounds of religion or belief would be unlawful:

- access to and use of a place that the public is permitted to enter;
- accommodation in establishments such as hotels and boarding houses;
- facilities for banking/insurance, or for grants, loans, credit or finance;
- facilities for entertainment, recreation or refreshment;
- facilities for transport or travel;
- professional or trade services.

Some businesses design their services and products in a way which is likely to appeal to particular customers/users on the basis of their religion or belief. Providing commercial goods and services likely to be of more interest to a certain group is not unlawful under the new regulations.

However, it would be unlawful for the business to turn away customers on

the grounds of their religion, or to advertise in a way which implies that clients of a certain religion or belief are unwelcome.

The religion or belief provisions of Part 2 do not require businesses to start providing goods, facilities or services that they do not usually provide.

For example, a company that targets its services at people of a particular religious belief would not be obliged to provide services of particular interest to people of all religious beliefs.

Premises

The religion or belief provisions of Part 2 prohibit discrimination on grounds of religion or belief when disposing of premises, i.e. when selling or renting property.

This would include:

- refusing to sell or rent premises to a particular person;
- offering less generous terms; or
- discriminating against people on a list of those requiring housing: for example by giving priority to people of a certain religion or belief or deliberately overlooking those of a certain religion or belief.

The Act does not apply where a landlord, or his near relative, shares small premises, as described below, with the tenant.

This applies if:

- the landlord or a near relative lives in another part of the same premises (and intends to continue to do so); and

- the premises include parts that he or a near relative would share with the tenant such as a bathroom or kitchen; and
- the premises are of a size where no more than two households, or six individuals, can live in the premises in addition to the landlord or a near relative.

The Act also provides an exception from the prohibition on discrimination in the disposal of premises for people who own and occupy the whole of the premises, and when selling them do not use an estate agent or advertise for a buyer. So, for example, a person giving or selling their home privately to someone they know would not breach the Act.

Working with religious organisations

Public authorities should not stop working with religious organisations because of a fear that working with religious organisations may be perceived as discriminatory under the religion or belief provisions of Part 2. Nothing in Part 2 has such an effect.

For example, if a local authority considers that it cannot provide meals on wheels to meet particular religious dietary requirements through its own direct provision, there is nothing to prevent it funding a separate provider or providers to do so.

Even where there is no strict religious requirement for it, there is nothing to prevent an authority funding one provider which offers a service restricted on religious grounds, and others that are not restricted, provided that decisions are made in a non-discriminatory way and that their provisions overall meet the needs of other users.

For example, there is nothing to prevent a local authority from funding a religious group to run care homes to care for people of their own religion, so long as there are care homes available to people who are not of that religion.

The separate provision by the care home is made possible by specific exception in Part 2 which allows bodies whose purpose is related to a religion or belief to restrict access to their activities: this is described below.

Promoting community cohesion

Public authorities should ensure that in complying with the religion or belief provisions of Part 2 due regard is given to the need to promote and maintain community cohesion.

This needs to be based on an understanding of the local cultural, ethnic and religious demography; and should aim to avoid any group feeling that its traditions and interests are being unfairly neglected by comparison with another.

There are a number of exceptions to Part 2 which may be relevant to public authorities: these are described below.

Religious festivals

Public authorities, and particularly local authorities, are rightly often involved in activities to celebrate major religious festivals. It would be very difficult however, for any authority to recognise equally the festivals of all religions. This does not mean that an authority cannot be involved in any.

Where action is taken specifically to give recognition to a minority community through celebration of its festivals, care may be needed to

ensure that the festivals of the predominant religion of the local community, which is usually Christianity, are not overlooked.

Bodies or groups with a religious or belief-related purpose

The Government recognises that some bodies or groups have a religious or belief-related purpose, and that such bodies may have a legitimate need to limit membership, or access to their activities, to people who wholly or partly share their religion or belief. The religion or belief provisions of Part 2 contain exceptions to make this possible.

The exceptions apply to an organisation and to persons acting on behalf of or under the auspices of an organisation which has any of the following purposes:

- to practice a religion or belief;
- to advance a religion or belief;
- to teach the practice or principles of a religion or belief;
- to enable persons of a religion or belief to receive any benefit, or to engage in any activity within the framework of a religion or belief;
- to improve relations, or maintain good relations, between persons of different religions or beliefs.

This will cover a range of formal and informal groups.

Those wanting to take advantage of the exceptions will need to demonstrate that:

i) their purpose is not mainly or wholly commercial;

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ii) the restrictions are imposed by reason of, or on the grounds of, the purpose of the organisation, or in order to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.

Where the exceptions apply, part 2 of the Act allows organisations lawfully to

- restrict on the grounds of religion or belief:
- their membership;
- participation in their activities, or activities undertaken on their behalf or under their auspices;
- the provision of goods, facilities or services in the course of their activities/activities undertaken on their behalf or under their auspices;
- the use or disposal of premises owned or controlled by them.

A minister of religion or other person with a similar function in such an organisation may for the same reasons restrict:

- participation in activities carried on in the performance of his or her functions in relation to that organisation;
- the provision of goods, facilities or services in the course of those activities in the performance of his or her functions.

The religion or belief provisions under Part 2 of the Equality Act allow for separate/targeted provision for different groups on the basis of religion or belief, where this meets special needs for education, training or welfare, or to provide ancillary services in connection with meeting such a need. This

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is in cases where this is the best way to meet a specific need facing people of a particular religion or belief, or to overcome discrimination or disadvantage.

For example, some services (whether delivered by the public, voluntary or private sector) may target provision towards particular groups, on the grounds that this will lead to greater take up of/more effective services.

This might include targeted:

- advice services;
- direct service provision.

Under Part 2 these targeted services, where meeting a justified need, will continue to be lawful.

Sexual Orientation

The Employment Equality (Sexual Orientation) Regulations 2003

These Regulations make it unlawful to discriminate in employment or training on the grounds of sexual orientation. This means employees have a range of rights concerning their treatment in the workplace or while undergoing training. Legal action can be taken by a person if they:

- have been treated less favourably than others – for example in recruitment, promotion, training or dismissal – because they are gay or someone has assumed they are gay, or because they associate with gay people
- have been disadvantaged as a group by workplace practices and policies because of their sexual orientation
- have been offended – either intentionally or unwittingly – by homophobic actions or comments.

Employers can also be liable for the actions of their employees, if they are in a position to control the situation or take action against any discrimination – and do not take such action.

The Equality Act (Sexual Orientation) Regulations 2007 and discrimination in the provision of goods, services and facilities

Part 3 of the Equality Act 2006 enabled the Government to prohibit discrimination on the grounds of sexual orientation in the provision of

goods, facilities and services, in education and in the exercise of public functions.

The Equality Act (Sexual Orientation) Regulations 2007 came into effect on 30th April 2007.

A consultation paper published by the Government in March 2006 described the approach proposed for these regulations. They are intended to bring protection from sexual orientation discrimination into line with existing legislation that prohibits discrimination on the grounds of race, sex and for reasons related to disability.

This consultation paper sought views on specific points about the range of activities that should be covered by the Regulations, and on whether any exceptions should be made to ensure that the protection provided is effective and appropriately targeted.

It is now becoming usual for anti-discrimination legislation to apply to the exercise of public functions, meaning the activities carried out by public bodies that are not otherwise caught by general goods, facilities and services provisions.

In line with this, the exercise of public functions is included in the Regulations, so that it will be unlawful for a public authority exercising a function to do anything that constitutes discrimination. In practice, this means that the scope of the prohibition on anti-discrimination will extend to most activities in the public sector, including the work of local authorities.

The prohibition will apply to anyone exercising a public function, including where the function is being undertaken by a private or voluntary body on a public authority's behalf.

The Regulations will make it unlawful to:

- refuse to provide goods, facilities and services on grounds of sexual orientation
- provide goods, facilities and services of a different *quality* on grounds of sexual orientation
- provide goods, facilities and services in a different *manner* on grounds of sexual orientation
- provide goods, facilities and services on different *terms* on grounds of sexual orientation.

For local education authorities the Regulations will apply to pupil admissions, access to education services and exclusions.

However, the Regulations will not make it unlawful to meet people's needs in relation to 'education, training or welfare' to people on grounds of their sexual orientation, or provide 'ancillary benefits' in relation to those needs.

The majority of responses to the consultation exercise by unions' professional associations and local authorities were in favour of allowing separate services to continue where this meets a specific and justified need. So local authorities will be able to provide specific services for lesbian, gay and bisexual people where they have identifiable needs for example because of low-take up of mainstream services or because they have needs which result from discrimination and disadvantage.

An example might be example targeted youth services for young lesbian, gay and bisexual people at risk of discrimination and bullying.

Age

Employment Equality (Age) Regulations 2006

In late 2000 the Government committed to establishing age legislation by 2006. The Government consulted on proposals to legislate on age discrimination in “Coming of Age”.

The consultation ended on 17 October. The legislation came into force on 1 October 2006.

The regulations:

- prohibit unjustified age discrimination in employment and vocational training
- require employers who set their retirement age below the default age of 65 to justify or change it
- introduce a new duty on employers to consider an employee’s request to continue working beyond retirement
- require employers to inform employees in writing, and at least 6 months in advance, of their intended retirement date. This will allow people to plan for their retirement
- remove the upper age limit for unfair dismissal and redundancy rights, giving older workers the same rights to claim unfair dismissal or receive a redundancy payment as younger workers, unless there is a genuine retirement

-
- include provisions relating to service related benefits and occupational pensions.

The regulations also remove the age limits for Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay.