

# AYTUN VOCATIONAL COLLEGE LONDON

## EQUALITY AND DIVERSITY POLICY & PROCEDURE

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# 1. PURPOSE

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**1.1** Aytun Vocational College London is committed to promoting equality and diversity and promoting a culture that actively values difference and recognises that people from different backgrounds and experiences can bring valuable insights to the workplace and enhance the way we work. Aytun College aims to be an inclusive organisation, where diversity is valued, respected and built upon, with ability to recruit and retain a diverse workforce that reflects the communities it serves. Within this framework Aytun College specifically refers to measures it has in place to provide equality of opportunity and the facilities that it can provide to its diverse workforce and job applicants.

**1.2** Aytun College is also committed to compliance with relevant equality legislation, the Equality Act 2010, Codes of Practice and relevant best practice guidance. This policy pursues and builds on the statutory position to ensure effective policies and practice of promoting equality.

**1.3** Aytun College aims to pro-actively tackle discrimination or disadvantage and aims to ensure that no individual or group is directly or indirectly discriminated against for any reason with regard to employment or accessing its services.

**1.4** However, Aytun College is also mindful of the provision in discrimination law for the rare circumstances when an organisation may need to justify discrimination rather than have a disproportionate effect. This could be, for instance, where there is a conflict with other legislation that Aytun College has to comply with or between service needs. In such circumstances Aytun College is committed to following the required proper assessment and objective justification of any decision in order to demonstrate that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

**1.5** Issues regarding harassment and bullying are covered in the Harassment, Bullying and Discrimination Policy. For issues regarding recruitment refer also to the Recruitment policy.

## 2. THE DEFINITION OF EQUALITY AND DIVERSITY

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**2.1** Equality can be described as breaking down barriers, eliminating discrimination and ensuring equal opportunity and access for all groups both in employment, and to goods and services; the basis of which is supported and protected by legislation.

**2.2** Diversity can be described as celebrating differences and valuing everyone. Each person is an individual with visible and non-visible differences and by respecting this everyone can feel valued for their contributions which is beneficial not only for the individual but for Aytun College.

**2.3** Equality and Diversity are not inter-changeable but inter-dependent. There can be no equality of opportunity if difference is not valued and harnessed and taken account of.

## 3. SCOPE

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**3.1** This policy applies to direct employees of Aytun Vocational College London, workers (engaged through, or by, an employment agency or bureau and supplied to Aytun College on a temporary basis), and all job applicants regarding recruitment

**3.2** Where Aytun College's services are provided by external contractors or third parties on the basis of a specification set by Aytun College, these contractors or third parties are responsible for adhering to Aytun College's Equality and Diversity Policy whilst providing services on behalf of Aytun College.

**3.3** This policy applies also to sub-contractors Aytun College will monitor the performance of contractors and/or third parties and take all necessary steps to ensure good performance and compliance with appropriate behaviours. However, if any issues become apparent with regards to diversity or equality in relation to any contractor or third party, these will be taken very seriously by Aytun College and raised in the strongest possible terms with the contractor or third party.



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## 4. POLICY STATEMENT

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4.1 Aytun Vocational College London is committed to ensuring:

- that existing members of staff, job applicants, or workers are treated fairly in an environment which is free from any form of discrimination
- with regard to nine of the protected characteristics as outlined by the Equality Act 2010 which are:
  - age;
  - disability;
  - gender reassignment;
  - marriage and civil partnership;
  - pregnancy and maternity;
  - race (includes colour, nationality and ethnic origins);
  - religion and or belief;
  - sex;
  - sexual orientation;

In addition, existing members of staff, job applicants, or workers are treated fairly in an environment which is free from any form of discrimination with regard to: caring responsibilities, part-time employment, membership or non-membership of a trade union or spent convictions.

- all employment-related policies, practices and procedures are applied impartially and objectively;
- equality of opportunity to all and to provide staff with the opportunity to develop and realise their full potential;
- that Aytun College works towards achieving a diverse workforce at all levels
- that employees of Aytun College can work in an atmosphere of dignity and respect.

4.2 The Equality and Diversity policy provides a clear framework for translating our policy into action. It outlines the responsibilities of the Board, CEO, Executive Team, managers and individuals to comply with the Equality Act 2010. Both management and Trade Union Side are strongly committed to its full and active implementation.

4.3 Aytun College will not tolerate processes, attitudes and behaviour that amounts to direct discrimination, associative discrimination, discrimination by perception indirect discrimination including harassment (harassment by a third party), victimisation and bullying through prejudice, ignorance, thoughtlessness and stereotyping. See Section 11 and Appendix I below for further explanation of these concepts.

4.4 Aytun College recognises the importance of monitoring, reviewing and reporting on its equality and diversity policy and practice and to measure progress in meeting our policy statement. (see Section 8).

## 5. PRACTICAL SUPPORT FOR A DIVERSE WORKFORCE

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5.1 As an employer committed to diversity and equality Aytun College recognises its success depends on creating a working environment which supports the diverse make-up of its staff with supporting policies and procedures to create a framework of assistance. (See Appendix II for sources of assistance for disabled employees).

5.2 Aytun College's Equality Impact Assessment policy also sets out the process for ensuring Aytun College takes account of equality considerations which affect its staff and try to minimise or remove disadvantage.

## 6. WORK/LIFE BALANCE

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6.1 Aytun College is committed to employees who have commitments outside work, irrespective of whether they have caring responsibilities. Aytun College are committed to helping its employees fulfil their potential at work whilst finding the right work/life balance by offering a Flexible Working Hours Scheme and opportunities to job share where appropriate.

6.2 Aytun College aims to improve the working lives of its employees by having a framework of policies such as the Statutory Right to Request Flexible Working, Special Leave to help with caring responsibilities and domestic emergencies and Career Breaks.

6.3 Aytun College is committed to supporting employees with family commitments such as offering a family-



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friendly initiatives as a flexible way to meet childcare costs. Aytun College's salary-sacrifice scheme allows parents to give-up some of their salary in place of childcare vouchers to be used to pay for childcare. The salary-sacrifice scheme enables employees to use their vouchers in a way which best suits their needs.

## 7. COLLEGE POLICIES

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**7.1** All College policies such as the Recruitment Policy, the Learning and Development policy, the Managing attendance and Guidance policy, Restructuring, Redeployment and Redundancy policy, the performance management process, remuneration opportunities, hours of work, are designed to promote equal opportunity and protection against discrimination for all employees.

## 8. REVIEW AND MONITORING

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**8.1** Aytun College undertakes monitoring that not only meets statutory requirements but also aims for best practice. This is used to inform and improve our employment practices. If through monitoring any discrimination is identified Aytun College will take corrective action to eliminate it.

**8.2** The monitoring of Aytun College's workforce is produced across all areas of employment practice and is discussed at the Equality and Diversity Working Group composed of management and the Trade Union Side, and by the various Action groups.

**8.3** Such monitoring will be carried out using appropriate statistical analysis, and would normally deal with areas such as race, disability, gender, and age and ensure compliance with legislation. Any resultant statistics and analysis will be kept by the Human Resources Directorate and shared with the trade unions.

**8.4** In addition, the Staff Survey is conducted regularly in order to gain the views of all employees and includes a section on diversity and the working environment. Aytun College will use the information from the Staff Survey to measure its record on meeting our equality and diversity policy aims.

**8.5** Aytun College will publish its progress and achievements on equality / diversity in annual reports for instance:

- Aytun Vocational College London Annual Report
- Statutory progress reports as required (which can be on areas of any equality schemes plans or action plans)
- Statutory progress report for the Northern Ireland Equality Scheme
- An annual equality employment monitoring report which will measure our performance against our employment practices such as recruitment, promotions, turnover, grievances, training and performance management

**8.6** Aytun College may also be required to report the progress on equality and human rights to the Equality and Human Rights Commission.

## 9. TRAINING

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**9.1** Aytun College is committed to ensuring its staff and managers are trained in equality and diversity and aims to ensure that adequate training is provided so that managers are able to operate this policy. Examples include specific training on race, gender, gender identity, disability, sexuality, age and religion or belief, in accordance with the requirements of the law and good practice.

**9.2** Diversity and equality forms an integral part of Aytun College's induction package. Managers are to ensure that all new entrants are made aware of our Equality and Diversity Policy and Harassment, Bullying and Discrimination policy.

## 10. COMMUNICATION

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**10.1** The Equality and Diversity policy is available on the intranet and Aytun College's external website. Please contact HR Administration if you require a copy in an alternative format.

**10.2** The details of this policy will be proactively communicated and promoted to all current staff and new starters.



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# 11. DISCRIMINATION (SEE APPENDIX 1 - GLOSSARY)

11.1 Discrimination may take seven main forms and is defined in law along with the protective characteristics associated with each provision as listed below:

- **Direct Discrimination** occurs when someone is treated less favourably than another person because of a protected characteristic. Relevant protected characteristics include age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage & civil partnership, pregnancy and maternity. For example, a manager does not select a pregnant woman for promotion even though they meet all of the competencies because they are pregnant. This is probably direct discrimination and cannot be justified.
- **Associative discrimination** occurs when someone discriminates against someone because they associate with another person who possesses a protected characteristic. Relevant protected characteristics include age, disability, gender reassignment, race, religion or belief, sex, sexual orientation. An example of this is when a manager does not give a job-applicant the role, even though they have met all of the competencies for the role, just because the applicant tells the employer they have a disabled partner. This is probably associative discrimination because of disability by association.
- **Discrimination by perception** occurs when someone discriminates against an individual because they think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic. Relevant protected characteristics include age, disability, gender reassignment, race, religion or belief, sex, sexual orientation. An example of this is when a manager selects a person for redundancy because they incorrectly think they have a progressive condition (i.e. that they are a disabled person). This is probably discrimination by perception because they believe the individual is disabled.
- **Indirect discrimination** occurs when a seemingly neutral provision, criterion or practice that applies to everyone places a group who share a characteristic e.g. type of disability at a particular disadvantage. Indirect discrimination may be justified if it can be shown that the provision, criterion or practice is a proportionate means of achieving a legitimate aim. An example of this is when an employer decides to apply a "no hats or headgear" rule to staff. If this rule is applied in exactly the same way to every member of staff, then staff who may cover their heads as part of their religion or cultural background (such as Sikhs, Jews, Muslims and Rastafarians) will not be able to meet this requirement of the dress code and may face disciplinary action as a result. Unless the employer can objectively justify using the rule, this will be indirect discrimination. Relevant protected characteristics include age, marriage and civil partnership, race, religion or belief, sex and sexual orientation. In addition, the Act extends protection against unjustified indirect discrimination to gender reassignment and disability.
- **Dual Discrimination** occurs when someone is treated less favourably because of a combination of two relevant protected characteristics. This means that it will be possible for an applicant to claim that they have been treated less favourably not just because of their race but also because of their gender. For example, because the individual is an Asian woman. Relevant protected characteristics include age, disability, gender reassignment, race, religion or belief, sex and sexual orientation. (At present this new concept has not been implemented).
- **Detriment arising from a disability arises when you treat a disabled person unfavourably because of something connected with their disability.** This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person had a disability. This type of discrimination is only lawful if the action can be justified and the employer can show that it is a proportionate means of achieving a legitimate aim. An example of this is when an employer imposes a "no beards" rule as a part of a dress code and tells staff they will be disciplined if they do not comply. The employee is a disabled person who has a skin condition which makes shaving very painful. They have been treated unfavourably (threat of disciplinary action) because of something arising from their disability (their inability to shave). Unless the employer can objectively justify the requirement, this may be a detriment arising from a disability. It may also be a failure to make a reasonable adjustment.
- **Victimisation** occurs when an employee is treated unfavourably, disadvantaged or subjected to a detriment because they have made or supported a complaint of discrimination or raised a grievance under the Equality Act, this policy or the Harassment, Bullying and Discrimination policy or because they are suspected of doing so. (However, an employee is not protected from victimisation if they have maliciously made or supported an untrue complaint). An example of this is when an employee requests to work flexibly and their manager refuses their request because they supported a colleague in a complaint of discrimination.
- **Third party harassment** occurs when an employee is harassed by someone who does not work for the employing organisation such as a customer, visitor, client, contractor or visitor from another organisation. The employer will become legally responsible if they know an employee has been harassed on two or more occasions by someone and it may also be different individuals each time and fails to take reasonable steps to protect the employee from further harassment.

11.2 For definitions of 'disability', 'harassment', 'bullying', 'positive action', and 'vicarious liability' see Appendix I.



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## 12. COMPLAINTS OF DISCRIMINATION

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**12.1** Aytun College takes all claims of discrimination very seriously and will take appropriate action against those concerned. Discrimination occurs when someone directly or indirectly treats a person or a group of people unfavourably because of a protected characteristic of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation. This covers all behaviour including remarks and insinuation, both verbal and non-verbal, which cause offence.

**12.2** Any member of staff who is subject to harassment, bullying or discrimination is encouraged to refer to Aytun College's policy on Harassment, Bullying and Discrimination. This provides details of the steps that can be taken to deal with such an issue. In addition, staff are reminded that they can obtain external, confidential help if they so wish by contacting Aytun College's Employee Assistance Programme, and/or their HR business partner or trade union representative.

**12.3** If a worker (engaged through, or by, an employment agency or bureau) considers they have been discriminated against they should raise their complaint directly with their employer.

## 13. PEOPLE STRATEGY AND CORPORATE SOCIAL RESPONSIBILITY

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**13.1** Aytun College aims to be an employer of choice and through its People Strategy aims to ensure its workforce are able to make a valuable contribution to the work of Aytun College whilst ensuring we support our workforce's health and well-being of the workforce.

**13.2** The HR strategy is linked to Aytun College's Corporate Social Responsibility (CSR) strategy which is to have a positive impact within the local, national and international communities. One of Aytun College's CSR aims is to improve the quality of life for our workforce, families and the local community

**13.3** Where appropriate, Aytun College actively encourages its employees to participate in local voluntary initiatives and may provide further support to initiatives, which encourage social inclusion in Aytun College's local communities. This may involve, for example, participation in literacy schemes or employees acting as mentors to local school children and volunteering opportunities. Aytun College's Corporate Social Responsibility intranet site can provide further details on these initiatives'.

## 14. RESPONSIBILITY

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**14.1** All staff have a responsibility to guard against any form of discrimination and avoid any action which goes against the spirit of this policy. Thus staff at all levels must ensure that there is no discrimination in any of their decisions or behaviour. This includes the provision that all staff must:

- report any suspected discriminatory acts or practices;
- not induce or attempt to induce others to practice unlawful discrimination;
- co-operate with any measures introduced to ensure equality of opportunity;
- not victimise anyone as a result of them having complained about, reported or provided evidence of discrimination;
- not harass, abuse or intimidate others.

**14.2** However, whilst all staff have a collective responsibility to ensure this policy is successfully implemented, there are also specific responsibilities within this.

**The Board, Chief Executive and the Executive Team are responsible for:**

- Providing leadership on the equality and diversity strategy and policy, acting as overall champions to ensure the policy is implemented;
- Communicating the strategy and policy, internally and externally;
- Strategic engagement with and accountable to the DCMS and the public.

**Managers at all levels are responsible for:**

- Implementing the policy as part of their day-to-day management of staff and in applying employment policies and practices in a fair and equitable way
- Ensuring equality and diversity issues are addressed in performance.
- Ensuring all staff act in accordance with the equality and diversity policy providing necessary support and direction;



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- Effectively manage and deal promptly when investigating issues relating to potential discrimination, including those matters concerning members of the general public who visit Aytun Vocational College London;
- Ensuring all policy or service decisions that will change provisions, practices or policies and affect the workforce are Equality Impact Assessed as required. For further information refer to the Equality Impact assessment policy.

**Each employee is responsible for:**

- Implementing the policy in their day-to-day work and their dealings with colleagues, readers and visitors;
- Ensuring their behaviour is appropriate to the policy and that they treat people with respect and dignity;
- Not discriminating against other employees or service users
- Notifying their line manager of any concerns with regard to the conduct of other employees, service users, the public or third parties.

**Human Resources are responsible for:**

- Developing employment policy and strategy on equality and diversity;
- Providing guidance to line managers and staff;
- Supporting managers in investigating issues relating to potential discrimination, including those matters concerning members of the general public who visit Aytun Vocational College London;
- Monitoring employment policies and practices;
- Championing the issues, internally and externally;
- Facilitating training and development initiatives on equality and diversity, both at corporate and directorate level.

**14.3 Non- Compliance with Policy** - Aytun Vocational College London will not tolerate any behaviour from staff which breaches our equality and diversity policy. Any such breaches will be regarded as misconduct except for serious offences such as discrimination on protected grounds; serious offences including harassment, bullying, or victimisation will be treated as gross misconduct and may lead to disciplinary action including dismissal from employment without notice.

## 15. POLICY RESPONSIBILITY

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**15.1** Human Resources has the responsibility for ensuring the maintenance, regular review and updating of this policy. Proposed changes to the policy will follow the process as described in Section A: Introduction: paragraph 1.1 of this Staff handbook



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# APPENDIX 1

## The Protected Characteristics

### *Effect*

This section lists the characteristics that are protected by subsequent provisions in the Equality Act 2010.

### *Background*

The protected characteristics listed are the same as those protected by previous discrimination legislation in Great Britain.

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## Age

### *Effect*

This section establishes that where the Act refers to the protected characteristic of age, it means a person belonging to a particular age group. An age group includes people of the same age and people of a particular range of ages. Where people fall in the same age group they share the protected characteristic of age.

### *Background*

This section replaces a provision in the Employment Equality (Age) Regulations 2006.

### *Examples*

- An age group would include "over fifties" or twenty-one year olds.
- A person aged twenty-one does not share the same characteristic of age with "people in their forties". However, a person aged twenty-one and people in their forties can share the characteristic of being in the "under fifty" age range.

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## Disability

### *Effect*

This section establishes who is to be considered as having the protected characteristic of disability and is a disabled person for the purposes of the Act. With Schedule 1 and regulations to be made under that Schedule, it will also establish what constitutes a disability. Where people have the same disability, they share the protected characteristic of disability.

It provides for Ministers to issue statutory guidance to help those who need to decide whether a person has a disability for the purposes of the Act.

### *Background*

This section, Schedule 1, and regulations to be made under Schedule 1 replace similar provisions in the Disability Discrimination Act 1995 and provisions in secondary legislation made under that Act.

### *Examples*

- A man works in a warehouse, loading and unloading heavy stock. He develops a long-term heart condition and no longer has the ability to lift or move heavy items of stock at work. Lifting and moving such heavy items is not a normal day-to-day activity. However, he is also unable to lift, carry or move moderately heavy everyday objects such as chairs, at work or around the home. This is an adverse effect on a normal day-to-day activity. He is likely to be considered a disabled person for the purposes of the Act.
- A young woman has developed colitis, an inflammatory bowel disease. The condition is a chronic one which is subject to periods of remissions and flare-ups. During a flare-up she experiences severe abdominal pain and bouts of diarrhoea. This makes it very difficult for her to travel or go to work. This has a substantial adverse effect on her ability to carry out normal day-to-day activities. She is likely to be considered a disabled person for the purposes of the Act.

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## Gender Reassignment

### *Effect*

This section defines the protected characteristic of gender reassignment for the purposes of the Act as where a person has proposed, started or completed a process to change his or her sex. A transsexual person has the protected characteristic of gender reassignment.

The section also explains that a reference to people who have or share the common characteristic of gender reassignment is a reference to all transsexual people. A woman making the transition to being a man and a man making the transition to being a woman both share the characteristic of gender reassignment, as does a person





who has only just started out on the process of changing his or her sex and a person who has completed the process.

### **Background**

This section replaces similar provisions in the Sex Discrimination Act 1975 but changes the definition by no longer requiring a person to be under medical supervision to come within it.

### **Examples**

- A person who was born physically male decides to spend the rest of his life living as a woman. He declares his intention to his manager at work, who makes appropriate arrangements, and she then starts life at work and home as a woman. After discussion with her doctor and a Gender Identity Clinic, she starts hormone treatment and after several years she goes through gender reassignment surgery. She would have the protected characteristic of gender reassignment for the purposes of the Act.
- A person who was born physically female decides to spend the rest of her life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully 'passes' as a man without the need for any medical intervention. He would have the protected characteristic of gender reassignment for the purposes of the Act.

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## **Marriage and Civil Partnership**

### **Effect**

This section defines the protected characteristic of marriage and civil partnership. People who are not married or civil partners do not have this characteristic.

The section also explains that people who have or share the common characteristics of being married or of being a civil partner can be described as being in a marriage or civil partnership. A married man and a woman in a civil partnership both share the protected characteristic of marriage and civil partnership.

### **Background**

This section replaces similar provisions in the Sex Discrimination Act 1975.

### **Examples**

- A person who is engaged to be married is not married and therefore does not have this protected characteristic.
- A divorcee or a person whose civil partnership has been dissolved is not married or in a civil partnership and therefore does not have this protected characteristic.

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## **Race**

### **Effect**

This section defines the protected characteristic of race. For the purposes of the Act, "race" includes colour, nationality and ethnic or national origins.

The section explains that people who have or share characteristics of colour, nationality or ethnic or national origins can be described as belonging to a particular racial group. A racial group can be made up of two or more different racial groups.

The section also enables a Minister of the Crown to amend the Act by order so as to add "caste" to the current definition of "race". When exercising this power, the Minister may amend the Act, for example by including exceptions for caste, or making particular provisions of the Act apply in relation to caste in some but not other circumstances. The term "caste" denotes a hereditary, endogamous (marrying within the group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity. It is generally (but not exclusively) associated with South Asia, particularly India, and its diaspora. It can encompass the four classes (varnas) of Hindu tradition (the Brahmin, Kshatriya, Vaishya and Shudra communities); the thousands of regional Hindu, Sikh, Christian, Muslim or other religious groups known as jatis; and groups amongst South Asian Muslims called biradaris. Some jatis regarded as below the varna hierarchy (once termed "untouchable") are known as Dalit.

### **Background**

This section replaces similar provisions in the Race Relations Act 1976. However, the power to add caste to the definition of race is a new provision.

### **Examples**

- Colour includes being black or white.
- Nationality includes being a British, Australian or Swiss citizen.
- Ethnic or national origins include being from a Roma background or of Chinese heritage.



- A racial group could be “black Britons” which would encompass those people who are both black and who are British citizens.

## Religion or Belief

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### *Effect*

This section defines the protected characteristic of religion or religious or philosophical belief, which is stated to include for this purpose a lack of religion or belief. It is a broad definition in line with the freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention on Human Rights. The main limitation for the purposes of Article 9 is that the religion must have a clear structure and belief system.

Denominations or sects within a religion can be considered to be a religion or belief, such as Protestants and Catholics within Christianity.

The criteria for determining what is a “philosophical belief” are that it must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others. So, for example, any cult involved in illegal activities would not satisfy these criteria. The section provides that people who are of the same religion or belief share the protected characteristic of religion or belief. Depending on the context, this could mean people who, for example, share the characteristic of being Protestant or people who share the characteristic of being Christian.

### *Background*

This section replaces similar provisions in the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006.

### *Examples*

- The Baha'i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism are all religions for the purposes of this provision.
- Beliefs such as humanism and atheism would be beliefs for the purposes of this provision but adherence to a particular football team would not be.

## Sex

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### *Effect*

This section is a new provision which explains that references in the Act to people having the protected characteristic of sex are to mean being a man or a woman, and that men share this characteristic with other men, and women with other women.

## Sexual Orientation

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### *Effect*

This section defines the protected characteristic of sexual orientation as being a person's sexual orientation towards:

- people of the same sex as him or her (in other words the person is a gay man or a lesbian)
- people of the opposite sex from him or her (the person is heterosexual)
- people of both sexes (the person is bisexual).

It also explains that references to people sharing a sexual orientation mean that they are of the same sexual orientation.

### *Background*

The definition is designed to replicate the effect of similar provisions in the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2006.

### *Examples*

- A man who experiences sexual attraction towards both men and women is “bisexual” in terms of sexual orientation even if he has only had relationships with women.
- A man and a woman who are both attracted only to people of the opposite sex from them share a sexual orientation.
- A man who is attracted only to other men is a gay man. A woman who is attracted only to other women is a lesbian. So a gay man and a lesbian share a sexual orientation.

# APPENDIX 2

## Prohibited Conduct

### Direct Discrimination

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#### *Effect*

This section defines direct discrimination for the purposes of the Act.

Direct discrimination occurs where the reason for a person being treated less favourably than another is a protected characteristic listed in section 4. This definition is broad enough to cover cases where the less favourable treatment is because of the victim's association with someone who has that characteristic (for example, is disabled), or because the victim is wrongly thought to have it (for example, a particular religious belief).

However, a different approach applies where the reason for the treatment is marriage or civil partnership, in which case only less favourable treatment because of the victim's status amounts to discrimination. It must be the victim, rather than anybody else, who is married or a civil partner.

This section uses the words "because of" where the previous legislation contains various definitions using the words "on grounds of". This change in wording does not change the legal meaning of the definition, but rather is designed to make it more accessible to the ordinary user of the Act.

The section also provides that:

- for age, different treatment that is justified as a proportionate means of meeting a legitimate aim is not direct discrimination;
- in relation to disability it is not discrimination to treat a disabled person more favourably than a person who is not disabled;
- racial segregation is always discriminatory;
- in non-work cases, treating a woman less favourably because she is breast-feeding a baby who is more than six months old amounts to direct sex discrimination; and
- men cannot claim privileges for women connected with pregnancy or childbirth.

#### *Background*

The section replaces the definitions of direct discrimination in previous legislation and is designed to provide a more uniform approach by removing the former specific requirement for the victim of the discrimination to have one of the protected characteristics of age, disability, gender reassignment and sex. Accordingly, it brings the position in relation to these protected characteristics into line with that for race, sexual orientation and religion or belief in the previous legislation.

#### *Examples*

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

### Combined Discrimination: Dual Characteristics

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#### *Effect*

This section provides for the discrimination prohibited by the Act to include direct discrimination because of a combination of two protected characteristics ("dual discrimination"). The protected characteristics which may be combined are age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

For a claim to be successful, the claimant must show that the less favourable treatment was because of the combination alleged, as compared with how a person who does not share either of the characteristics in the combination is or would be treated. A dual discrimination claim will not succeed where an exception or justification applies to the treatment in respect of either of the relevant protected characteristics - for example,



where an occupational requirement in Schedule 9 (Work: exceptions) renders direct discrimination lawful.

The claimant does not have to show that a claim of direct discrimination in respect of each protected characteristic would have been successful if brought separately. A claimant is not prevented from bringing direct discrimination claims because of individual protected characteristics and a dual discrimination claim simultaneously (or more than one dual discrimination claim). Excluded from the scope of this section are circumstances involving disability discrimination in schools (claims in respect of which are heard by the Special Educational Needs and Disability Tribunals or equivalent specialist tribunals). This section enables a Minister of the Crown to make orders specifying further what a claimant does or does not need to show to prove dual discrimination or further restricting the circumstances in which dual discrimination is prohibited by the Act.

As with any other type of prohibited conduct under the Act, proceedings or allegations (among other activities) relating to dual discrimination will constitute a "protected act" for purposes of victimisation (section 27).

Moreover, public bodies must have due regard to the need to eliminate unlawful dual discrimination as part of the public sector equality duty (section 149).

### **Background**

Previous legislation only allowed for claims alleging discrimination because of a single protected characteristic. This section allows those who have experienced less favourable treatment because of a combination of two relevant protected characteristics to bring a direct discrimination claim, such as where the single-strand approach may not succeed.

### **Examples**

- A black woman has been passed over for promotion to work on reception because her employer thinks black women do not perform well in customer service roles. Because the employer can point to a white woman of equivalent qualifications and experience who has been appointed to the role in question, as well as a black man of equivalent qualifications and experience in a similar role, the woman may need to be able to compare her treatment because of race and sex combined to demonstrate that she has been subjected to less favourable treatment because of her employer's prejudice against black women.
- A bus driver does not allow a Muslim man onto her bus, claiming that he could be a "terrorist". While it might not be possible for the man to demonstrate less favourable treatment because of either protected characteristic if considered separately, a dual discrimination claim will succeed if the reason for his treatment was the specific combination of sex and religion or belief, which resulted in him being stereotyped as a potential terrorist.
- A black woman is charged £100 for insurance. As white men are only charged £50 for the same insurance, she alleges this is dual discrimination because of the combination of sex and race. By comparing the claimant's treatment with a white woman who also pays £100, or a black man who pays £50, the insurance company is able to demonstrate that the difference in premium is entirely due to sex, not race. The insurance exception in Schedule 3 means that insurance companies can lawfully set different premiums for women and men in certain circumstances so provided the exception applies in this case, the treatment does not constitute dual discrimination. The less favourable treatment is because of sex and an exception makes the sex discrimination lawful.

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## **Discrimination Arising From Disability**

### **Effect**

This section provides that it is discrimination to treat a disabled person unfavourably not because of the person's disability itself but because of something arising from, or in consequence of, his or her disability, such as the need to take a period of disability-related absence. It is, however, possible to justify such treatment if it can be shown to be a proportionate means of achieving a legitimate aim. For this type of discrimination to occur, the employer or other person must know, or reasonably be expected to know, that the disabled person has a disability.

### **Background**

This section is a new provision. The Disability Discrimination Act 1995 provided protection from disability-related discrimination but, following the judgment of the House of Lords in the case of *London Borough of Lewisham v Malcolm [2008] UKHL 43*, those provisions no longer provided the degree of protection from disability-related discrimination that is intended for disabled people. This section is aimed at re-establishing an appropriate balance between enabling a disabled person to make out a case of experiencing a detriment which arises because of his or her disability, and providing an opportunity for an employer or other person to defend the treatment.

### **Examples**

- An employee with a visual impairment is dismissed because he cannot do as much work as a non-disabled colleague. If the employer sought to justify the dismissal, he would need to show that it was a proportionate means of achieving a legitimate aim.
- The licensee of a pub refuses to serve a person who has cerebral palsy because she believes that he is drunk as he has slurred speech. However, the slurred speech is a consequence of his impairment. If the licensee is able to show that she did not know, and could not reasonably have been expected to know, that the customer was disabled, she has not subjected him to discrimination arising from his



disability.

- However, in the example above, if a reasonable person would have known that the behaviour was due to a disability, the licensee would have subjected the customer to discrimination arising from his disability, unless she could show that ejecting him was a proportionate means of achieving a legitimate aim.

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## Gender Reassignment Discrimination: Cases of Absence From Work

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### **Effect**

This section provides that it is discrimination against transsexual people to treat them less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured. Transsexual people are also discriminated against in relation to absences relating to their gender reassignment if they are treated less favourably than they would be treated for absence for reasons other than sickness or injury and it is unreasonable to treat them less favourably.

### **Background**

This section is designed to replicate the effect of a similar provision in the Sex Discrimination Act 1975.

### **Example**

- A female to male transsexual person takes time off work to receive hormone treatment as part of his gender reassignment. His employer cannot discriminate against him because of his absence from work for this purpose.

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## Pregnancy and Maternity Discrimination: Non-Work Cases

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### **Effect**

This section defines what it means to discriminate because of a woman's pregnancy or maternity, as distinct from her sex, in specified situations outside work. It protects a woman from discrimination because of her current or a previous pregnancy. It also protects her from maternity discrimination, which includes treating her unfavourably because she is breast-feeding, for 26 weeks after giving birth and provides that pregnancy or maternity discrimination as defined cannot be treated as sex discrimination.

### **Background**

74. This section is designed to replicate the effect of similar provisions in the Sex Discrimination Act 1975 and extends the protection to cover discrimination in relation to public functions, education, and to associations, where no such protection previously existed.

### **Examples**

- A café owner must not ask a woman to leave his café because she is breast-feeding her baby.
- A shopkeeper must not refuse to sell cigarettes to a woman because she is pregnant.
- A school must not prevent a pupil taking an exam because she is pregnant.

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## Pregnancy and Maternity Discrimination: Work Cases

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### **Effect**

This section defines what it means to discriminate in the workplace because of a woman's pregnancy or pregnancy-related illness, or because she takes or tries to take maternity leave. The period during which protection from these types of discrimination is provided is the period of the pregnancy and any statutory maternity leave to which she is entitled. During this period, these types of discrimination cannot be treated as sex discrimination.

### **Background**

This section is designed to replicate the effect of similar provisions in the Sex Discrimination Act 1975.

### **Examples**

- An employer must not demote or dismiss an employee, or deny her training or promotion opportunities, because she is pregnant or on maternity leave.
- An employer must not take into account an employee's period of absence due to pregnancy-related illness when making a decision about her employment.

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## Indirect Discrimination

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### **Effect**

This section defines indirect discrimination for the purposes of the Act.

Indirect discrimination occurs when a policy which applies in the same way for everybody has an effect which particularly disadvantages people with a protected characteristic. Where a particular group is disadvantaged in this way, a person in that group is indirectly discriminated against if he or she is put at that disadvantage, unless the person applying the policy can justify it.

79. Indirect discrimination can also occur when a policy would put a person at a disadvantage if it were applied. This means, for example, that where a person is deterred from doing something, such as applying for a job or taking up an offer of service, because a policy which would be applied would result in his or her disadvantage, this may also be indirect discrimination.

Indirect discrimination applies to all the protected characteristics, apart from pregnancy and maternity.

### **Background**

This section largely replaces similar provisions in previous legislation. It applies the EU definition of indirect discrimination, replacing pre-existing domestic definitions in the Sex Discrimination Act 1975 and the Race Relations Act 1976, to ensure uniformity of protection across all the protected characteristics in all areas where it applies. However, the extension of indirect discrimination to disability is new, coming after consultation following the judgment of the House of Lords in the case of *London Borough of Lewisham v Malcolm* [2008] UKHL 43, which concerned the interpretation of the provision on disability-related discrimination in the Disability Discrimination Act 1995.

### **Examples**

- A woman is forced to leave her job because her employer operates a practice that staff must work in a shift pattern which she is unable to comply with because she needs to look after her children at particular times of day, and no allowances are made because of those needs. This would put women (who are shown to be more likely to be responsible for childcare) at a disadvantage, and the employer will have indirectly discriminated against the woman unless the practice can be justified.
- An observant Jewish engineer who is seeking an advanced diploma decides (even though he is sufficiently qualified to do so) not to apply to a specialist training company because it invariably undertakes the selection exercises for the relevant course on Saturdays. The company will have indirectly discriminated against the engineer unless the practice can be justified.

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## **Duty to Make Adjustments**

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### **Effect**

82. This section defines what is meant by the duty to make reasonable adjustments for the purposes of the Act and lists the Parts of the Act which impose the duty and the related Schedules which stipulate how the duty will apply in relation to each Part. The duty comprises three requirements which apply where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people. The first requirement covers changing the way things are done (such as changing a practice), the second covers making changes to the built environment (such as providing access to a building), and the third covers providing auxiliary aids and services (such as providing special computer software or providing a different service).

83. The section makes clear that where the first or third requirements involves the way in which information is provided, a reasonable step includes providing that information in an accessible format.

84. It sets out that under the second requirement, taking steps to avoid the disadvantage will include removing, altering or providing a reasonable means of avoiding the physical feature, where it would be reasonable to do so.

85. It also makes clear that, except where the Act states otherwise, it would never be reasonable for a person bound by the duty to pass on the costs of complying with it to an individual disabled person.

### **Background**

86. This section replaces similar provisions in the Disability Discrimination Act 1995. However, the Act makes some changes to provide consistency across the reasonable adjustment provisions. It contains only one threshold for the reasonable adjustment duty – “substantial disadvantage” – in place of the two thresholds in the Disability Discrimination Act 1995. It also reflects current practice by applying the third requirement explicitly to employment. And it introduces consistency of language by referring to “provision, criterion or practice” rather than “practice, policy or procedure” used in some provisions in the Disability Discrimination Act 1995. It also introduces greater transparency with the express references to providing information in accessible formats and to not passing on the costs of an adjustment which are explained above.

### **Examples**

- A utility company knows that significant numbers of its customers have a sight impairment and will have difficulty reading invoices and other customer communications in standard print, so must consider how to make its communications more accessible. As a result, it might provide communications in large print to customers who require this.



- A bank is obliged to consider reasonable adjustments for a newly recruited financial adviser who is a wheelchair user and who would have difficulty negotiating her way around the customer area. In consultation with the new adviser, the bank rearranges the layout of furniture in the customer area and installs a new desk. These changes result in the new adviser being able to work alongside her colleagues.
- The organiser of a large public conference knows that hearing-impaired delegates are likely to attend. She must therefore consider how to make the conference accessible to them. Having asked delegates what adjustments they need, she decides to engage BSL/English interpreters, have a palantypist and an induction loop to make sure that the hearing-impaired delegates are not substantially disadvantaged.

## Failure to Comply With Duty

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### *Effect*

This section has the effect that a failure to comply with any one of the reasonable adjustment requirements amounts to discrimination against a disabled person to whom the duty is owed. It also provides that, apart from under this Act, no other action can be taken for failure to comply with the duty.

### *Background*

This section replaces similar provisions in the Disability Discrimination Act 1995.

### *Examples*

- An employee develops carpal tunnel syndrome which makes it difficult for him to use a standard keyboard. The employer refuses to provide a modified keyboard or voice-activated software which would overcome the disadvantage. This could be an unlawful failure to make a reasonable adjustment which would constitute discrimination.
- A private club has a policy of refusing entry to male members not wearing a collar and tie for evening events. A member with psoriasis (a severe skin condition which can make the wearing of a collar and tie extremely painful) could bring a discrimination claim if the club refused to consider waiving this policy for him.
- A visually-impaired prospective tenant asks a letting agent to provide a copy of a tenancy agreement in large print. The agent refuses even though the document is held on computer and could easily be printed in a larger font. This is likely to be an unlawful failure to make a reasonable adjustment which would constitute discrimination.

## Regulations

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### *Effect*

This section provides a power for a Minister of the Crown to make regulations about a range of issues relating to the reasonable adjustment duty, such as the circumstances in which a particular step will be regarded as reasonable. This power also allows amendment of the Schedules referred to in section 20(13).

### *Background*

This section replaces similar provisions in the Disability Discrimination Act 1995.

### *Example*

- Regulations could be made about what is and what is not included within the meaning of a "provision, criterion or practice" if, for example, research indicated that despite statutory codes of practice there was quite a high level of uncertainty among employers and service providers about the extent of the duty and how it applied.

## Comparison by Reference to Circumstances

---

### *Effect*

This section provides that like must be compared with like in cases of direct, dual or indirect discrimination. The treatment of the claimant must be compared with that of an actual or a hypothetical person – the comparator – who does not share the same protected characteristic as the claimant (or, in the case of dual discrimination, either of the protected characteristics in the combination) but who is (or is assumed to be) in not materially different circumstances from the claimant. In cases of direct or dual discrimination, those circumstances can include their respective abilities where the claimant is a disabled person.

The section also enables a civil partner who is treated less favourably than a married person in similar circumstances to bring a claim for sexual orientation discrimination.



### **Background**

93. The section replicates similar provisions in previous legislation but also accommodates the new concept of dual discrimination.

### **Examples**

- A blind woman claims she was not shortlisted for a job involving computers because the employer wrongly assumed that blind people cannot use them. An appropriate comparator is a person who is not blind – it could be a non-disabled person or someone with a different disability – but who has the same ability to do the job as the claimant.
- A Muslim employee is put at a disadvantage by his employer's practice of not allowing requests for time off work on Fridays. The comparison that must be made is in terms of the impact of that practice on non-Muslim employees in similar circumstances to whom it is (or might be) applied.

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## **Irrelevance of Alleged Discriminator's Characteristics**

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### **Effect**

This section provides that it is no defence to a claim of direct or dual discrimination that the alleged discriminator shares the protected characteristic (or one or both of the protected characteristics in a dual discrimination claim) with the victim. The discriminator will still be liable for any unlawful discrimination. The wording of the section is broad enough to cover cases of discrimination based on association or perception.

### **Background**

Previous legislation only expressly provided that it was no defence to a claim of direct discrimination that the alleged discriminator shared the same religion or belief as the victim. This section makes clear that the same principle applies, as at present, for other protected characteristics and makes similar provision in relation to the new concept of dual discrimination.

### **Example**

- An employer cannot argue that because he is a gay man he is not liable for unlawful discrimination for rejecting a job application from another gay man because of the applicant's sexual orientation.

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## **References to Particular Strands of Discrimination**

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### **Effect**

This section sets out what is meant by references to the types of discrimination referred to in the Act, so that references elsewhere in the Act to age, marriage and civil partnership, race, religious or belief-related, sex or sexual orientation discrimination, include references to both direct and indirect discrimination because of each of those characteristics respectively.

As well as direct and indirect discrimination, references to disability discrimination also include references to discrimination arising from disability and to a failure to comply with a duty to make reasonable adjustments; and references to gender reassignment discrimination also include discrimination within section 16 (gender reassignment discrimination: cases of absence from work). Finally, references to pregnancy and maternity discrimination have the meanings derived from sections 17 and 18.

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## **Harassment**

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### **Effect**

This section defines what is meant by harassment for the purposes of the Act. There are three types of harassment. The first type, which applies to all the protected characteristics apart from pregnancy and maternity, and marriage and civil partnership, involves 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 of violating the complainant's dignity. The second type is sexual harassment which is unwanted conduct of a sexual nature where this has the same purpose or effect as the first type of harassment. The third type is treating someone less favourably because he or she has either submitted to or rejected sexual harassment, or harassment related to sex or gender reassignment.

### **Background**

Previous legislation provided freestanding protection against harassment, but the first type of harassment described above was not defined in the same way for all the different protected characteristics to which it applied. In determining the effect of the unwanted conduct, courts and tribunals will continue to be required to balance competing rights on the facts of a particular case. For example, this could include balancing the rights of freedom of expression (as set out in Article 10 of the European Convention on Human Rights) and of academic freedom against the right not to be offended in deciding whether a person has been harassed.





### **Examples**

- A white worker who sees a black colleague being subjected to racially abusive language could have a case of harassment if the language also causes an offensive environment for her.
- An employer who displays any material of a sexual nature, such as a topless calendar, may be harassing her employees where this makes the workplace an offensive place to work for any employee, female or male.
- A shopkeeper propositions one of his shop assistants. She rejects his advances and then is turned down for promotion which she believes she would have got if she had accepted her boss's advances. The shop assistant would have a claim of harassment.

## **Victimisation**

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### **Effect**

This section defines what conduct amounts to victimisation under the Act. It provides that victimisation takes place where one person treats another badly because he or she in good faith has done a "protected act", for example taken or supported any action taken for the purpose of the Act, including in relation to any alleged breach of its provisions. It also provides that victimisation takes place where one person treats another badly because he or she is suspected of having done this or of intending to do this.

A person is not protected from victimisation where he or she maliciously makes or supports an untrue complaint. Only an individual can bring a claim for victimisation.

### **Background**

This section replaces similar provisions in previous legislation. However, under the Act victimisation is technically no longer treated as a form of discrimination, so there is no longer a need to compare treatment of an alleged victim with that of a person who has not made or supported a complaint under the Act.

### **Examples**

- A woman makes a complaint of sex discrimination against her employer. As a result, she is denied promotion. The denial of promotion would amount to victimisation.
- A gay man sues a publican for persistently treating him less well than heterosexual customers. Because of this, the publican bars him from the pub altogether. This would be victimisation.
- An employer threatens to dismiss a staff member because he thinks she intends to support a colleague's sexual harassment claim. This threat could amount to victimisation.
- A man with a grudge against his employer knowingly gives false evidence in a colleague's discrimination claim against the employer. He is subsequently dismissed for supporting the claim. His dismissal would not amount to victimisation because of his untrue and malicious evidence.

## Appendix 3

### Education - Schools & Colleges

#### **Effect**

This section provides that this Chapter of the Act, which prohibits discrimination, harassment and victimisation in the field of education in schools, does not apply to discrimination or harassment of people in those circumstances because of age or marriage and civil partnership.

#### **Background**

This replicates the position in previous legislation and in, addition, extends protection because of gender reassignment and pregnancy and maternity to pupils in schools.

#### **Examples**

- It is not unlawful discrimination for a school to organise a trip for pupils in one year group, but not for pupils in other years.
- It is not unlawful discrimination for a school to allow older pupils to have privileges for which younger pupils are not eligible, such as more choice of uniform or the right to leave school during the lunch period.

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### **Pupils: Admission and Treatment, etc.**

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#### **Effect**

This section makes it unlawful for the responsible body of a school to discriminate against, harass or victimise a pupil or prospective pupil in relation to the terms on which it offers him or her admission, by not admitting him or her, or in the way it treats the pupil once admitted. The responsible body for a maintained school is the local authority or the governing body, and for an independent educational institution or a non-maintained special school is the proprietor.

It also imposes on the responsible body of a school the duty to make reasonable adjustments for disabled pupils and prospective disabled pupils.

294. However, the prohibition on harassment of pupils or prospective pupils does not cover gender reassignment, sexual orientation or religion or belief.

#### **Background**

This section is primarily designed to replicate the effect of provisions in current legislation applying to schools. In addition, it extends protection from discrimination to transsexual pupils and pupils who become pregnant.

#### **Examples**

- A school refuses to let a gay pupil become a prefect because of his sexual orientation. This would be direct discrimination.
- A selective school imposes a higher standard for admission to applicants from an ethnic minority background, or to girls. This would be direct discrimination.
- A pupil alleges, in good faith, that his school has discriminated against him because of his religion (for example claiming that he is given worse marks than other pupils because he is Jewish), so the school punishes him by making him do a detention. This would be victimisation.
- A teacher ridicules a particular pupil in class because of his disability, or makes comments which have the result of making the girls in the class feel embarrassed and humiliated. This would be harassment.

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### **Victimisation of Pupils, etc. For Conduct of Parents, etc.**

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#### **Effect**

This section protects children in schools from being victimised as a result of a protected act (such as making or supporting a complaint of discrimination) done by their parent or sibling. The aim is to prevent parents being discouraged from raising an issue of discrimination with a school because of worry that their child may suffer retaliation as a result.

Where a parent or sibling maliciously makes or supports an untrue complaint, the child is still protected from victimisation, as long as the child has acted in good faith. But, in common with the general approach to victimisation, where a child has acted in bad faith, he or she is not protected, even where a parent or sibling

makes or supports an untrue complaint in good faith.

### **Background**

This section is designed to replicate the effect of provisions in the Disability Discrimination Act 1995 and extend the protection to cover all characteristics protected under this Chapter.

### **Examples**

- The parent of a pupil complains to the school that her daughter is suffering sex discrimination by not being allowed to participate in a metalwork class. The daughter is protected from being treated less favourably by the school in any way because of this complaint.
- A pupil brings a case against his school claiming that he has suffered discrimination by a member of staff because of his sexual orientation. The pupil's younger brother, at the same school, is protected against any less favourable treatment by the school because of this case, even if it is later found that the older brother was not acting in good faith.

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## **Application of Certain Powers under Education Act 1996**

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### **Effect**

This section enables the Secretary of State to give directions, using powers under the Education Act 1996, to require a maintained school or a non-maintained special school to comply with its duties under section 85. It enables the Secretary of State to require a school to stop a discriminatory practice or policy even if no complaint has been brought by an individual pupil or prospective pupil.

### **Background**

Sections 496 and 497 of the Education Act 1996 empower the Secretary of State to give directions to local education authorities and to governing bodies of maintained schools to prevent them exercising their functions under the Education Acts unreasonably, or to require them to perform statutory duties where they are not doing so. This power has already been extended to require compliance with the law on sex discrimination, and this section extends those powers to all the protected characteristics covered by section 85.

### **Example**

- The governing body of a school refuses as a matter of policy to let disabled pupils participate in school trips because of the extra risk management required. The Secretary of State could direct the governing body to change its policy so as to make reasonable adjustments to enable disabled pupils to participate.

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## **Disabled Pupils: Accessibility**

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### **Effect**

This section introduces Schedule 10 which requires local authorities and schools to prepare and implement accessibility strategies and plans. These will increase disabled pupils' access to the curriculum and improve the physical environment and the provision of information. They are explained in more detail in the notes to that Schedule.

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## **Interpretation and exceptions**

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### **Effect**

This section explains what is meant by terms used in this Chapter, such as "school" and "pupil". It also makes it clear that the prohibitions in the Chapter do not apply to anything done in relation to the content of the school curriculum. This ensures that the Act does not inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to expose pupils to thoughts and ideas of all kinds. The way in which the curriculum is taught is, however, covered by the reference to education in section 85(2)(a), so as to ensure issues are taught in a way which does not subject pupils to discrimination. This section also gives effect to Schedule 11 which provides some exceptions to the provisions in this Chapter.

### **Background**

This section is designed to replicate the effect of an exception relating to discrimination because of religion or belief in the Equality Act 2006, and extends it to other protected characteristics.

### **Examples**

- A school curriculum includes teaching of evolution in science lessons. This would not be religious discrimination against a pupil whose religious beliefs include creationism.
- A school curriculum includes The Taming of the Shrew on the syllabus. This would not be discrimination against a girl.



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## Further and Higher Education

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### **Effect**

This section provides that this Chapter of the Act, which prohibits discrimination, harassment and victimisation in the field of education in institutions providing further and higher education, does not make it unlawful to discriminate against or harass people in those circumstances because of marriage or civil partnership status.

### **Background**

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

## Students: admission and treatment, etc.

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### **Effect**

This section makes it unlawful for universities, colleges and other institutions in the higher and further education sectors to discriminate against, harass or victimise a student or someone who wants to become a student in relation to the arrangements it makes in deciding who to admit, the terms on which a person is admitted and the way a person is treated when admitted. Subsection (3) of section 91 specifically makes it unlawful to discriminate when considering conferring qualifications to disabled people who are not enrolled at the institution.

It also imposes on the responsible body of such an institution the duty to make reasonable adjustments for disabled students and prospective students.

### **Background**

This replicates the position in previous legislation.

### **Examples**

- A college refuses admission to a man who applies to be a student, because he is gay. This would be direct discrimination.
- A university refuses to provide residential accommodation to Jewish or Muslim students. This would be direct discrimination.
- A college puts an age limit on access to a particular course. This would be direct discrimination, unless the college could show that the age limit was objectively justified.

## Further and Higher Education Courses

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### **Effect**

This section makes it unlawful for local authorities securing further and higher education, and maintained schools providing further education, to discriminate against, harass or victimise a person in relation to deciding who to enrol, or in the way it provides any services when the person has been enrolled. It also imposes on them the duty to make reasonable adjustments when offering such facilities and services to disabled people.

### **Background**

This section is designed to replicate the effect of provisions in the Disability Discrimination Act 1995, and to extend protection to all the protected characteristics covered by this Chapter.

### **Example**

- A school puts on a 10-week evening educational course for local adults but prevents applicants from enrolling who are disabled or gay. This would be direct discrimination.

## Recreational or Training Facilities

---

### **Effect**

This section makes it unlawful for local authorities providing any recreational or training facilities to discriminate against, harass or victimise a person in terms of deciding who should be provided with any facilities and the terms on which the facilities are provided. It also imposes on them the duty to make reasonable adjustments when offering such facilities and services to disabled people.

The recreational and training facilities concerned are those provided in England under sections 507A or 507B of the Education Act 1996 and include things like centres, parks and sports facilities.

### **Background**

These provisions are designed to replicate the effect of provisions in the Disability Discrimination Act 1995 and to extend protection to all the protected characteristics covered by this Chapter.



### **Example**

- A local authority which puts on a summer camp for children from local schools refuses an application from a child simply because that child is disabled or a Muslim. This would be direct discrimination.

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## **Interpretation and Exceptions**

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### **Effect**

This section explains what is meant by terms used in this Chapter, such as “student” and “university”. It also makes it clear that the prohibitions in the Chapter do not apply to anything done in relation to the content of the curriculum. This ensures that the Act does not inhibit the ability of institutions in the higher and further education sectors to include a full range of issues, ideas and materials in their syllabus and to expose students to thoughts and ideas of all kinds. The way in which the curriculum is taught is, however, covered by the reference to education in section 91 (2) (a), so as to ensure issues are taught in a way which does not subject students to discrimination or harassment.

It also gives effect to Schedule 12 which provides exceptions to the provisions in this Chapter.

### **Background**

These provisions are new, but are based on an exception relating to discrimination because of religion or belief in education in schools in the Equality Act 2006, and explicitly extend it to education in higher and further education institutions across all the protected characteristics covered by this Chapter.

### **Examples**

- A college course includes a module on feminism. This would not be discrimination against a male student.
- A university requires students to use a computer for projects or essays. This would not be indirect discrimination against a member of a sect which rejects the use of modern technology.

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## **Miscellaneous**

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## **Reasonable adjustments**

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### **Effect**

This section introduces the provisions of Schedule 13, concerning the making of reasonable adjustments to ensure that disabled pupils are not placed at a substantial disadvantage in comparison with non-disabled pupils. These provisions are explained in more detail in the notes to that Schedule.

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## **Educational charities and endowments**

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### **Effect**

This section introduces the provisions of Schedule 14, concerning educational charities which restrict benefits to a single sex and providing for such restrictions to be modified.



# Appendix 4

## Glossary of Terms

### Definition of Disability

The Disability Discrimination Act 1995 defines a disabled person as someone with "a physical or mental impairment, which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities"

### Harassment and Bullying

#### Harassment

**Harassment is defined as someone who harasses a person**

(1) A person (A) harasses another (B) if—

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(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to

the conduct. Harassment is unlawful under the grounds of race, ethnic or national origins, sex, marital status, disability, sexual orientation, gender reassignment status, religion or belief and age. This is behaviour of an intimidating or hostile nature. It can be directed at women and men, service users and staff. It is uninvited, unwelcome behaviour, which causes a degree of distress to the recipient. Particular actions or behaviour could be seen as harassment even if not aimed directly at the recipient and not intentionally offensive. It should be remembered that **the impact** of the behaviour determines harassment and not **the intent**.

### Bullying

There is no legal definition but Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient. This is behaviour which is not necessarily based on a difference of race or gender or any other equality strand. Bullying involves belittling or intimidation of an individual and may arise from the misuse of managerial status or as a result of certain physical and mental characteristics. Bullying may also constitute harassment under this policy and be unlawful under employment equality regulations. Please refer to the Harassment and Bullying and Discrimination policy for further details.

### Positive action

Positive action describes measures targeted at a particular group that are intended to redress past discrimination or to offset the disadvantages arising from existing attitudes, behaviours and structures. e.g. the provision of training/ targeted advertising and recruitment literature for people of a particular racial group, or either sex, who have been under-represented in certain occupations or grades Positive action should not be confused with positive discrimination (i.e. choosing people solely on the grounds of their gender or racial origin, regardless of their capabilities), which is illegal in the UK.

### Vicarious Liability

This occurs when one person is liable for the negligent actions of another person, even though the first person was not directly responsible for the injury. For instance, an employer can be vicariously liable for the acts of a worker.



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# Appendix 5

## Sources of Assistance for Disabled Employees

### Access to Work

Access to Work is an Employment Service programme for disabled people that is managed by the Disability Employment Team in local Jobcentres plus offices. Access to Work provides practical help and advice, and financial assistance to enable employers to make the most of the talents and potential of disabled recruits and employees. Financial assistance may vary, but can be up to 80% of costs above, 300 for existing employees and up to 100% for recruits. Managers and disabled employees should liaise with their HR Business Partner or Advisor. This programme can provide a range of assistance to disabled people:

- a communicator for people who are deaf or have impaired hearing;
- a part-time reader or assistant at work for people who are blind or have a visual impairment;
- a support worker to help the disabled person either at work or in getting to/from work;
- alterations to premises or a working environment;
- adaptations to a car, or help towards taxi fares or other transport costs if the person cannot use public transport;
- supply of equipment or alterations to existing equipment dependant on specific needs e.g.
- for people who are blind or partially sighted - special computer equipment, closed circuit TV, large print output devices, tape recorders, pocket memos, talking calculators, braille measuring devices;
- for people who are deaf or hard of hearing - amplifiers, loud-speaking telephone amplifiers, text terminals;
- for people with walking, standing or sitting problems - electrically powered wheelchairs with riser seats, stand-up and kerb mounting facilities;
- for people with other physical disabilities or communication difficulties - electronic writing systems, special computer equipment or software, page turners, special chairs.



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## Appendix 6

### Practical Support for a Diverse Workforce

#### Provisions for disabled employees during employment

Where an employee becomes disabled, whether through accident, illness or injury, every reasonable and practicable consideration will be given to ensuring that he/she may remain in employment.

Examples of steps the College should take are:

- making reasonable adjustments to premises;
- allocating some of the disabled employee's duties to another person;
- transfer to an appropriate alternative position;
- alteration of working hours;
- transfer to a different location/place of work;
- time off during working hours for rehabilitation, assessment or treatment;
- training and/or re-skilling;
- modification or purchase of appropriate equipment;
- modification to instruction and/or reference manuals and literature;
- modification to testing and/or assessment procedures;
- provision of a reader or interpreter;
- provision of supervision and assistance.

If, after a full exploration of reasonable adjustments to the individual's current role, the adjustments have been unsuccessful, then consideration should be given to finding an alternative post. The redeployment process detailed in sections 3 to 8 only of Appendix 6 of the Restructuring, Redeployment & Redundancy Policy will be followed.

The individual for whom redeployment is being sought will be required to complete a Biographical Questionnaire.

These staff will be considered alongside displaced staff for job matching. Provided, after any reasonable adjustments have been made, the individual has the required skills and is a suitable match for the role following paper matching and redeployment interview they will be offered a trial period in preference to other matched non disabled staff.

Advice should be provided for the member of staff concerned. In addition, line managers should obtain guidance from the Human Resources Directorate and/or the Health and Safety Office. Advice may also be sought from Occupational Health Advisors or other external specialist organisations as appropriate. Appendix I gives guidance relating to the provisions that may be made. Further guidance on dealing with disability issues can be found on the Internet, for example on the government's website <http://odi.dwp.gov.uk/>.



## Appendix 7

# Performance Management and Staff with a Disability

### Setting objectives

Line managers should take into account the effects of an individual's disability when agreeing objectives. For example, it might be a reasonable adjustment to allow someone slightly longer to complete a task than might otherwise be the case.

### Interim reviews

Line managers should be aware that if the condition of a person with a disability is not stable, there may be a need for frequent review and revision of objectives. There are a variety of reasons why performance standards may not have been achieved. Line managers should be aware that a change in performance may be due to an existing or newly developed disability and ascertain whether this is the case through sensitive questions during the review meeting. (Advice may be sought from Human Resources) When staff return from a period of extended absence, objectives should be adjusted to allow them to readjust to their working environment.

### Overall assessments

Line managers need to exercise judgement in taking account of external factors which are outside the individual's control. These would include making a reasonable adjustment to take account of the impact of a disability in terms of the individual meeting the objectives and demonstrating the competencies required for a particular post.



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