

GUIDANCE

# What equality law means for you as an education provider: schools

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# Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain what you must do to meet the requirements of equality law. These guides support the implementation of the Equality Act 2010. This Act brings together lots of different equality laws, many of which we have had for a long time. By doing this, the Act makes equality law simpler and easier to understand.

There are two guides giving advice on your responsibilities under equality law as someone who has pupils, students and parents who access the education services you provide. The guides look at the following:

1. Schools
2. Further and Higher Education

## Other guides and alternative formats

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We have also produced:

Four separate series of guides which:

- explain what equality law means for you if you are providing services, carrying out public functions or running an association;
- explain what equality law means for you if you are an employer;
- explain what equality law means for individual people who are using services, and who want to know their rights to equality; and
- explain what equality law means for individual people who are working and who want to know their rights to equality.

If you require this guide in an alternative format and/or language please contact us to discuss your needs. Contact details are available at the end of the publication.

## The legal status of this guidance

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- This guidance applies to England, Scotland and Wales. Although this guidance is non-statutory, following it may help you meet your duties under the Equality Act 2010.
- This guide is based on equality law as it is at March 2014. Any future changes in the law will be reflected in further editions.
- This guide was last updated on March 2014. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.

# Section 1: Introduction

## 1.1 The schools provisions of the Act

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This guidance deals with the schools provisions of the Equality Act 2010 which prohibit schools from discriminating against, harassing or victimising:

- prospective pupils
- pupils at the school
- in some limited circumstances, former pupils (this is explained in more detail in [Section 2](#)).

Schools also have obligations under the Equality Act 2010 as employers, bodies which carry out public functions and service providers. These obligations are not covered in this guidance as this guidance is concerned with their obligations to pupils (and prospective pupils). Schools had obligations not to discriminate against people with a protected characteristic under previous equality legislation. The Equality Act 2010 provides a modern, single legal framework, and a clearer, more streamlined law that will be more effective at tackling disadvantage and discrimination.

Avoiding discrimination and promoting equality supports the agenda of improving attainment and progression for all pupils. Good education and skills are crucial for opening up opportunities and increasing the chance of a successful life. In addition, in England, equality and diversity are specified factors that must be taken into account in Ofsted inspections. This means that if equality measures are not implemented effectively this may restrict the overall inspection grade.

## 1.2 Maintained schools providing further education

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Where a maintained school in England or Wales provides:

- part-time education for people (other than pupils) over compulsory school age, or
- full-time education for people who are 19 or over

they will also have obligations under the Equality Act as further education providers.

These obligations are explained in more detail in [Section 7](#).

### 1.3 Who has legal obligations under the schools provisions?

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All schools in England, Wales and Scotland, irrespective of how they are funded or managed, have obligations under the Equality Act 2010.

Local authorities (in England and Wales) and education authorities (in Scotland) have obligations under the schools provisions where they are the responsible body for the school, for example if they are the admissions authority for the school.

Local authorities and education authorities also have obligations as service providers and bodies carrying out public functions and there is separate guidance available on these obligations at: <http://www.equalityhumanrights.com/advice-and-guidance/information-for-service-providers/>

Further and higher education providers have obligations under the Act which are explained in separate guidance, *What equality law means for you as an education provider- further and higher education* at: <http://www.equalityhumanrights.com/advice-and-guidance/guidance-equality-act-2010/equality-act-2010-guidance/>

Private early years providers (such as private day nurseries, childminders, accredited childminder networks, pre-schools, playgroups and Sure Start Children's Centres) which provide childcare to pre-school children do not have obligations under the schools provisions but have obligations under the service provider provisions which are explained in separate guidance at: <http://www.equalityhumanrights.com/advice-and-guidance/information-for-service-providers/>

### 1.4 Who is responsible for ensuring that a school does not breach the Equality Act 2010?

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It is the responsible body of a school that is liable for any breaches of the Equality Act. The table in [Annex B](#) sets out the responsible body for each type of school.

The responsible body for a school is liable for the actions of its employees and agents of the school unless it can show that it took 'all reasonable steps' to prevent the discrimination, harassment or victimisation from taking place. This responsibility does not extend to cover the actions of pupils beyond the responsibility a school already has for the actions of its pupils. In some circumstances an employee or agent of the school may be personally liable for acts of discrimination, harassment or victimisation. This is explained in more detail in [Section 2](#).



## 1.5 Who is protected?

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The Act protects pupils from discrimination and harassment based on ‘protected characteristics’.

The protected characteristics for the schools provisions are:

- Disability.
- Gender reassignment.
- Pregnancy and maternity.
- Race.
- Religion or belief.
- Sex.
- Sexual orientation.

Age and being married or in a civil partnership are NOT protected characteristics for the schools provisions.

Protected characteristics are explained in more detail in [Annex A](#).

The categories of people covered by the schools provisions are:

- Prospective pupils (in relation to admissions arrangements).
- Pupils at the school (including those absent or temporarily excluded).
- Former pupils (in respect of conduct closely associated with their former relationship with the school).

## 1.6 What is discrimination?

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Unlawful discrimination is defined in the Act as:

- Direct discrimination (including discrimination based on perception or association).
- Indirect discrimination.
- Discrimination arising from disability.
- Failure to make reasonable adjustments (for disabled people).

Discrimination is explained in more detail in [Section 2](#).

## 1.7 What else is unlawful under the Act?

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### Harassment

The Equality Act 2010 also prohibits schools from harassing:

- prospective pupils
- pupils at the school
- in some limited circumstances, former pupils

in relation to the following protected characteristics:

- disability
- race
- sex.

### Victimisation

The Equality Act 2010 also prohibits schools from victimising:

- prospective pupils
- pupils at the school
- in some limited circumstances, former pupils.

Schools must also not victimise parents who make complaints, although this is under Part 3, not Part 6.

Victimisation is defined in the Act as:

Treating someone badly because they have done a 'protected act'  
(or because the school believes that a person has done or  
is going to do a protected act).

A 'protected act' is:

- Making a claim or complaint of discrimination (under the Act).
- Helping someone else to make a claim by giving evidence or information.
- Making an allegation that the school or someone else has breached the Act.
- Doing anything else in connection with the Act.

There is also protection for pupils who are victimised because their parent or sibling has carried out a protected act.

Harassment and victimisation are explained in more detail in [Section 2](#).

## 1.8 Positive action

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Pupils with protected characteristics may be disadvantaged for social or economic reasons or for reasons to do with past or present discrimination. The Act contains provisions which enable schools to take action to tackle the particular disadvantage, different needs or disproportionately low participation of a particular pupil group, provided certain conditions are met.

These are known as the positive action provisions and allow (but do not require) schools to take proportionate action to address the disadvantage faced by particular groups of pupils. Such action could include targeted provision, resources or putting in place additional or bespoke provision to benefit a particular disadvantaged pupil group.

Positive action is intended to be a measure that will allow schools to provide additional benefits to some pupils to address disadvantage and is not the same as positive discrimination. Positive discrimination would be providing preferential treatment for a particular disadvantaged pupil group that exceeded the positive action conditions.

It is never unlawful to treat disabled pupils (or applicants) more favourably than non-disabled pupils (or applicants). That is, a school is permitted to positively discriminate in favour of disabled pupils (applicants).

## 1.9 Public sector duties

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Maintained schools, including Pupil Referral Units (in England) and Academies, are public authorities and will be subject to the public sector equality duties. Education Authorities and grant-aided schools in Scotland are also subject to the duties.

This means that they must have 'due regard' to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between people who have particular protected characteristics and those who do not. Where schools are concerned, age is only a relevant protected characteristic in considering their duties as an employer but not in relation to providing education to pupils.

In England, most schools (and, in the case of Pupil Referral Units, the local authority which establishes and maintains it) must also comply with specific equality duties, as must education authorities and grant-aided schools in Scotland. These duties require specific steps to be taken that are designed to enable better compliance with the

public sector equality duty and are different in Scotland, England and Wales. See the links below for more detailed guidance on the different duties in each of the three countries.

Further information on the public sector equality duty can be found in Annex C and in detailed guidance appropriate for each nation at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

The Scottish essential guide on the Public Sector Equality Duty can be found at:

<http://www.equalityhumanrights.com/publication/essential-guide-public-sector-equality-duty-guide-public-authorities-scotland>

The guidance for schools in Wales on equality law, including the PSED and Specific Duties, is contained in the following publication:

[http://www.equalityhumanrights.com/sites/default/files/uploads/Wales/PDFs/education\\_nsg\\_wales\\_-\\_final.pdf](http://www.equalityhumanrights.com/sites/default/files/uploads/Wales/PDFs/education_nsg_wales_-_final.pdf)

## **1.10 Are there any exceptions to the schools provisions?**

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There are exceptions to enable single-sex schools to admit only pupils of one sex and for schools with a religious character to enable them to have admissions criteria which give preference to members of their own religion. This is explained in more detail in [Section 3](#).

## **1.11 What happens if a pupil thinks a school has acted unlawfully?**

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A pupil who believes that they have been discriminated against, harassed or victimised by a school can make a claim under the Equality Act.

For all protected characteristics other than disability this would be a claim to a county court (in England and Wales) or the sheriff court (in Scotland).

If the claim is one of disability discrimination then where it is made varies depending on the type of claim. For a claim of disability discrimination in England and Wales, it is usually the parent of the pupil rather than the pupil themselves who can make the claim.

This is all explained in detail in [Section 6](#).

## Section 2: Key concepts

### 2.1 What is discrimination?

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The Act consolidates existing law into a single legal framework and, while many of the concepts of discrimination remain the same as in previous equality legislation, there are some areas that were not previously covered. This section describes the various types of discrimination and how they apply to the schools provisions.

#### Direct discrimination

Direct discrimination occurs when you treat a pupil less favourably than you treat (or would treat) another pupil because of a protected characteristic. A very basic example would be refusing to admit a child to a school as a pupil because of their race, for example because they are Roma.

It is not possible to justify direct discrimination, so it will always be unlawful. There are however exceptions to the schools provisions that allow, for example, single-sex schools to only admit pupils of one sex without this being unlawful direct discrimination.

In order for someone to show that they have been directly discriminated against, they must compare what has happened to them to the treatment a person without their protected characteristic is receiving or would receive. Therefore, a gay pupil cannot claim that excluding them for fighting is direct discrimination on grounds of sexual orientation unless they can show that a heterosexual or bisexual pupil would not be excluded for fighting. A pupil does not need to find an actual person to compare their treatment with but can rely on a hypothetical person if they can show there is evidence that such a person would be treated differently.

There is no need for someone claiming direct discrimination because of racial segregation or pregnancy or maternity to find a person to compare themselves to:

- Racial segregation is deliberately separating people by race or colour or ethnic or national origin and will always be unlawful direct discrimination.
- To claim pregnancy or maternity discrimination, a female pupil must show that she has been treated unfavourably because of her pregnancy or maternity and

does not have to compare her treatment to the treatment of someone who was not pregnant or a new mother.

It is not direct discrimination against a male pupil to offer a female pupil special treatment in connection with her pregnancy or childbirth.

It is not direct discrimination against a non-disabled pupil to treat a disabled pupil more favourably.

**For example:**

- A female pupil is actively discouraged from undertaking a course in engineering by a teacher who tells her this is an unsuitable area of study for a female. This would be direct discrimination on the grounds of sex.
- A pupil with Asperger's Syndrome can sometimes act in a disruptive manner in class. The school does not take disciplinary action, but uses agreed strategies to manage his behaviour. A non-disabled pupil who is also disruptive in class is punished for his behaviour. This difference in treatment would not be direct discrimination against the non-disabled pupil.

**Discrimination based on association**

Direct discrimination also occurs when you treat a pupil less favourably because of their association with another person who has a protected characteristic (other than pregnancy and maternity).

This might occur when you treat a pupil less favourably because their sibling, parent, carer or friend has a protected characteristic.

**Discrimination based on perception**

Direct discrimination also occurs when you treat a pupil less favourably because you mistakenly think that they have a protected characteristic.

**Discrimination because of pregnancy and maternity**

It is discrimination to treat a woman (including a female pupil of any age) less favourably because she is or has been pregnant, has given birth in the last 26 weeks or is breastfeeding a baby who is 26 weeks or younger.

It is direct sex discrimination to treat a woman (including a female pupil of any age) less favourably because she is breastfeeding a child who is more than 26 weeks old.

## Indirect discrimination

Indirect discrimination occurs when you apply a provision, criterion or practice in the same way for all pupils or a particular pupil group, such as A-level physics students, but this has the effect of putting pupils sharing a protected characteristic within the general student group at a particular disadvantage. It doesn't matter that you did not intend to disadvantage the pupils with a particular protected characteristic in this way. What does matter is whether your action does or would disadvantage such pupils compared with pupils who do not share that characteristic.

'Disadvantage' is not defined in the Act but a rule of thumb is that a reasonable person would consider that disadvantage has occurred. It can take many different forms, such as denial of an opportunity or choice, deterrence, rejection or exclusion.

'Provision', 'criterion' or 'practice' are not defined in the Act but can be interpreted widely and include:

- arrangements (for example, for deciding who to admit)
- the way that education, or access to any benefit, service or facility is offered or provided
- one-off decisions
- proposals or directions to do something in a particular way.

They may be written out formally or they may just have developed as the school worked out the best way of achieving what it wanted to do.

Indirect discrimination will occur if the following four conditions are met:

1. You apply (or would apply) the provision, criterion or practice equally to all relevant pupils, including a particular pupil with a protected characteristic, and
2. The provision, criterion or practice puts or would put pupils sharing a protected characteristic at a particular disadvantage compared to relevant pupils who do not share that characteristic, and
3. The provision, criteria, practice or rule puts or would put the particular pupil at that disadvantage, and
4. You cannot show that the provision, criteria or practice is justified as a 'proportionate means of achieving a legitimate aim'.

**For example:** A school requires male pupils to wear a cap as part of the school uniform. Although this requirement is applied equally to all pupils, it has the effect of excluding Sikh boys whose religion requires them to wear a turban. This would be indirect discrimination based on religion and belief as it is unlikely that the school would be able to justify this action.

### **What is a 'proportionate means of achieving a legitimate aim'?**

To be legitimate the aim of the provision, criterion or practice must be legal and non-discriminatory and represent a real objective consideration. In the context of school education, examples of legitimate aims might include:

- Maintaining academic and other standards.
- Ensuring the health and safety and welfare of pupils.

Even if the aim is legitimate, the means of achieving it must be proportionate. Proportionate means 'appropriate and necessary', but 'necessary' does not mean that the provision, criterion or practice is the only possible way of achieving the legitimate aim.

Although the financial cost of using a less discriminatory approach cannot, by itself, provide a justification, cost can be taken into account as part of the school's justification, if there are other good reasons for adopting the chosen practice.

The more serious the disadvantage caused by the discriminatory provision, criterion or practice, the more convincing the justification must be.

In a case involving disability, if you have not complied with your duty to make relevant reasonable adjustments it will be difficult for you to show that the treatment was proportionate.

### **Discrimination arising from disability**

Discrimination arising from disability occurs when you treat a disabled pupil unfavourably because of something connected with their disability and cannot justify such treatment.

Discrimination arising from disability is different from direct discrimination. Direct discrimination occurs where a person treats another person less favourably because of the protected characteristic of disability. For discrimination arising from disability, the question is the wider one of whether the disabled pupil has been treated unfavourably because of something connected with (arising in consequence of) their disability.



Discrimination arising from disability is also different from indirect discrimination. There is no need to show that other people have been affected alongside the individual disabled pupil or for the disabled pupil to compare themselves with anyone else.

Discrimination arising from disability will occur if the following three conditions are met:

- you treat a disabled pupil unfavourably, that is putting them at a disadvantage, even if this was not your intention, and
- this treatment is because of something connected with (arising in consequence of) the disabled pupil's disability (which could be the result, effect or outcome of that disability) such as an inability to walk unaided or disability-related behaviour, and
- you cannot justify the treatment by showing that it is 'a proportionate means of achieving a legitimate aim'. This is explained above.

**For example:** A pupil with cerebral palsy who is a wheelchair user is told she will be unable to attend a school trip to a local theatre putting on a production of a play she is currently studying in English, because the building is not wheelchair accessible. The pupil and her parents are aware that the play is also on at a theatre in a neighbouring city, which is accessible but the school does not investigate this option. This is likely to be discrimination arising from a disability.

### Knowledge of disability

If you can show that you

- did not know that the disabled pupil had the disability in question, and
- could not reasonably have been expected to know that the disabled pupil had the disability

then the unfavourable treatment would not amount to unlawful discrimination arising from disability. You do not need to **know** that the pupil meets the legal definition of 'a disabled person', *just that he or she has an impairment which is likely to meet the definition.*

If your agent (someone who undertakes tasks on your behalf) or employee knows of a pupil's disability, you will not usually be able to claim that you do not know of the disability.

**For example:** A pupil tells the school secretary that she has diabetes and that she needs to carry biscuits to eat when her blood sugar levels fall. A teacher has no information about her disability and refuses to allow pupils to bring food into the classroom. The pupil has a hypoglycaemic attack. In this case, the school is unlikely to be able to argue that it did not know about her condition.

## Relevance of reasonable adjustments

By acting quickly to identify and put in place reasonable adjustments for disabled pupils, you can often avoid discrimination arising from disability, although there may be cases where an adjustment is unrelated to the unfavourable treatment in question.

If you fail to make an appropriate reasonable adjustment, it is likely to be very difficult for you to argue that unfavourable treatment is justified.

## Reasonable adjustments

You should be familiar with the reasonable adjustments duty as this was first introduced under the Disability Discrimination Act 1995. The reasonable adjustments duty under the Equality Act operates slightly differently and has been extended to cover the provision by a school of auxiliary aids and services. The object of the duty is the same: to avoid as far as possible by reasonable means, the disadvantage which a disabled pupil experiences because of their disability.

In England and Wales, this duty sits alongside your duties and those of local authorities towards pupils with special educational needs under Part 4 of the Education Act 1996. In Scotland, the duty sits alongside an education authority's or grant-aided schools' duties towards disabled pupils with additional support needs under the Education (Additional Support for Learning) (Scotland) Act 2004. In some cases, the support a disabled pupil may receive under the special educational needs or additional support needs framework may mean that they do not suffer a substantial disadvantage (see below) and so there is no need for additional reasonable adjustments to be made for them. In other cases, disabled pupils may require reasonable adjustments in addition to the special educational or additional support needs provision they are receiving. There are also disabled pupils who do not have special educational needs or additional support needs but still require reasonable adjustments to be made for them. The level of support a pupil is receiving under Part 4 of the Education Act 1996 or under the Education (Additional Support for Learning) (Scotland) Act 2004 is one of the factors to be taken into account when you consider what it would be reasonable for you to have to do.

## What is the reasonable adjustments duty?

You are required to take reasonable steps to avoid substantial disadvantage where a provision, criterion or practice puts disabled pupils at a substantial disadvantage.

You owe this duty to existing pupils, applicants and, in limited circumstances, to disabled former pupils in relation to the following areas:

- deciding who is offered admission as a pupil
- the provision of education
- access to any benefit, service or facility.

The duty does not require you to make reasonable adjustments to avoid the disadvantage caused by physical features as this is covered by the planning duties.

You cannot justify a failure to make a reasonable adjustment; where the duty arises, the issue will be whether or not to make the adjustment is 'reasonable' and this is an objective question for the tribunals to ultimately determine.

The duty is an anticipatory and continuing one that you owe to disabled pupils generally, regardless of whether you know that a particular pupil is disabled or whether you currently have any disabled pupils. You should not wait until an individual disabled pupil approaches you before you consider how to meet the duty. Instead you should plan ahead for the reasonable adjustments you may need to make, regardless of whether you currently have any disabled pupils. By anticipating the need for an adjustment you will be best placed to help disabled pupils who come to your school. You are not expected to anticipate the needs of every prospective pupil but you are required to think about and take reasonable and proportionate steps to overcome barriers that may impede pupils with different kinds of disabilities. For example, while it may be appropriate for you to provide large print for a pupil with a visual impairment, you would not be expected to have Braille devices standing ready.

## What is a substantial disadvantage?

A disadvantage that is more than minor or trivial is called a 'substantial disadvantage'. The level of disadvantage created by a lack of reasonable adjustments is measured in comparison with what the position would be if the disabled pupil in question did not have a disability.

You will need to take into account a number of factors when considering whether or not the disadvantage is substantial such as:

- the time and effort that might need to be expended by a disabled child
- the inconvenience, indignity or discomfort a disabled child might suffer

- the loss of opportunity, or the diminished progress a disabled child might make in comparison with his or her peers who are not disabled.

**For example:** A deaf pupil is advised by the work experience coordinator that it would be better for her to remain at school rather than go on work experience as it might be 'too difficult' for her to manage. The school does not take any steps to help her find a placement and she misses the opportunity taken by the rest of her classmates. This would be a substantial disadvantage.

### The duty to change a provision, criterion or practice

These terms are not defined, but in general they relate to how the education and other benefits, facilities and services are provided and cover all of your arrangements, policies, procedures and activities.

Where a provision, criterion or practice places disabled pupils at a substantial disadvantage in accessing education and any benefit, facility or service, you must take such steps as it is reasonable to take in all the circumstances to ensure the provision, criterion or practice no longer has such an effect. This might mean waiving a criterion or abandoning a practice altogether, but often will involve just an extension of the flexibility and individual approach that most schools already show to their pupils.

**For example:** A school has been allocated three places for students to represent the school at a national youth conference on the environment. The school decides to hold a debate on the topic to select the three pupils who will attend the conference. This places a pupil with a nervous system disorder at a significant disadvantage as he has trouble communicating verbally. The school modifies the criteria to enable that pupil to submit his views and ideas on the issue in writing. This is likely to be a reasonable adjustment to the school's practice.

### When is it reasonable for a school to have to make adjustments?

A useful starting point when determining what a reasonable adjustment might be is to consider how to ensure that disabled pupils can be involved in every aspect of school life. Often, effective and practical adjustments involve little or no cost or disruption.

#### **For example:**

- A teacher always addresses the class facing forward to ensure that a pupil with hearing difficulties is able to lip-read. This is an example of a simple reasonable adjustment.

- A primary school introduces a playground buddy system and a friendship bench which creates a supportive and friendly place for disabled pupils during breaks. This is an example of an effective but easy reasonable adjustment.

Where disabled pupils are placed at a substantial disadvantage by a provision, criterion or practice or the absence of an auxiliary aid, you must consider whether any reasonable adjustment can be made to overcome that disadvantage.

You should not expect disabled pupils to suggest adjustments but, if they do, you should consider whether those adjustments would help to overcome the disadvantage and whether the suggestions are reasonable. It is good practice for schools to work with pupils and their parents in determining what reasonable adjustments can be made.

## 2.2 Harassment

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There are three types of harassment which are unlawful under the Equality Act:

- Harassment related to a relevant protected characteristic.
- Sexual harassment.
- Less favourable treatment of a pupil because they submit to or reject sexual harassment or harassment related to sex.

The relevant protected characteristics for the schools provisions are:

- Disability.
- Race.
- Sex.

Pregnancy and maternity are not protected directly under the harassment provisions, however, unwanted behaviour (as described below) will amount to harassment related to sex.

The harassment provisions do not explicitly apply to the protected characteristics of gender reassignment, sexual orientation or religion or belief in relation to schools. However, where unwanted conduct related to any of these protected characteristics results in a pupil suffering disadvantage, that would constitute direct discrimination.

## Harassment related to a protected characteristic

Harassment occurs when you engage in unwanted behaviour which is related to a relevant protected characteristic and which has the purpose or effect of:

- violating a pupil's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for the pupil.

The word 'unwanted' means 'unwelcome' or 'uninvited'. It is not necessary for the pupil to say that they object to the behaviour for it to be unwanted.

In this context 'related to' has a broad meaning and includes situations where the pupil who is on the receiving end of the unwanted behaviour does not have the protected characteristic himself or herself, provided there is a connection between the behaviour and a protected characteristic. This would also include situations where the pupil is associated with someone who has a protected characteristic, or is wrongly perceived as having a particular protected characteristic.

**For example:** A pupil from an Irish Traveller background overhears a teacher making racial slurs about gypsy and traveller people stating their site should be shut down and they were 'trouble'. This would constitute harassment related to a protected characteristic (race).

The definition of harassment as described above does not apply to the protected characteristics of gender reassignment, sexual orientation or religion or belief in relation to schools. However, where unwanted conduct related to any of these protected characteristics results in a pupil suffering disadvantage that would constitute direct discrimination.

**For example:** During a PSHE (personal, social, health and economic education) lesson, a teacher describes homosexuality as 'unnatural' and 'depraved' and states he will only be covering heterosexual relationships in the lesson. A bisexual pupil in the class is upset and offended by these comments. This may be unlawful direct discrimination on the grounds of sexual orientation.

## Sexual harassment

Sexual harassment occurs when you engage in unwanted behaviour which is of a sexual nature and which has the purpose or effect of:

- violating a pupil's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for the pupil.

'Of a sexual nature' can cover verbal, non-verbal or physical conduct including unwelcome sexual advances, inappropriate touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings, or sending emails with material of a sexual nature.

**For example:** A sixth form female pupil is asked intimate questions about her personal life and subjected to sexual innuendos by her teacher. This would be sexual harassment.

### **Less favourable treatment of a pupil because they submit to or reject sexual harassment or harassment related to sex**

It is unlawful to treat a pupil less favourably because they either submit to, or reject, sexual harassment or harassment related to their sex.

## 2.3 Victimization

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Victimization is defined in the Act as:

Treating someone badly because they have done a 'protected act'  
(or because the school believes that a person has done or  
is going to do a protected act).

There are additional victimisation provisions for schools which extend the protection to pupils who are victimised because their parent or sibling has carried out a protected act.

A 'protected act' is:

- Making a claim or complaint of discrimination (under the Act).
- Helping someone else to make a claim by giving evidence or information.

- Making an allegation that the school or someone else has breached the Act.
- Doing anything else in connection with the Act.

If you do treat a pupil less favourably because they have taken such action then this will be unlawful victimisation. There must be a link between what the pupil (or parent or sibling) did and your treatment of them.

The less favourable treatment does not need to be linked to a protected characteristic.

**For example:** A teacher shouts at a pupil because he thinks she intends to support another pupil's sexual harassment claim. This would amount to victimisation.

### Who is not protected?

A pupil who in bad faith gives false information or evidence (that is, that they knew was false) or makes an allegation that was false and given in bad faith would not be protected against victimisation. The original complaint/claim would not be affected providing it was not made in bad faith.

**For example:** A pupil at an independent school with a grudge against his teacher knowingly gives false evidence in another pupil's discrimination claim against the school. He is subsequently excluded from the school for supporting the claim. This treatment could not amount to victimisation because his evidence was untrue and given in bad faith.

### Victimisation for actions of parents or siblings

You must not treat a pupil less favourably because of something their parent(s) or sibling has done in relation to the making of a complaint of discrimination.

A 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. If the daughter is treated less favourably as result of the complaint, this would be unlawful victimisation.

This applies to a child in relation to whom the parent(s) were making a complaint in relation to and also to any other children who are pupils at the school. This also applies if a parent supports a teacher's complaint against the school under Part 5 of the Act.

If the information or evidence was false and given in bad faith (that is, the parent/sibling knew it was false) or the allegation was false and given in bad faith, then this protection for the pupil will still apply, provided that the pupil did not act in bad faith.



**For example:** A pupil makes a complaint 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 complaint, even if it is later found out that the older brother was not acting in good faith.

There must be a link between what the parent(s) or their child has done and you treating the child/sibling badly.

The child who is being treated badly does not need to have any of the protected characteristics.

The fact that a complaint/claim is not upheld does not mean that it was made in bad faith.

## 2.4 Obligations to former pupils

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Even after a person has left your school you must not discriminate against them or harass or victimise them. This only applies if the discrimination or harassment arises out of and is closely connected to their previous relationship with you and would have been unlawful if they were still a pupil. For example, if an ex-pupil asks for a reference from the school it would be unlawful for the reference to be unflattering because of a protected characteristic of the ex-pupil, or because they at one time brought or supported a discrimination complaint against the school.

This obligation to former pupils would include the duty to make reasonable adjustments for disabled former pupils if they continue to be at a substantial disadvantage in comparison to former pupils without a disability. This obligation only applies if the substantial disadvantage arises out of and is closely connected with them having been a pupil.

**For example:** A school sends an annual newsletter to former pupils and one former pupil who has a visual impairment requests that it is sent to him by email rather than in hard copy. The school does not provide him with an electronic copy. This is likely to be an unlawful failure to make a reasonable adjustment.

If someone believes that they are being discriminated against after they have stopped studying with you, they can take the same steps to have things put right as if they were still a pupil. These steps are explained in [Section 6](#).

## 2.5 When are you responsible for what other people do?

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### Liability for employees and agents

As an employer you are legally responsible for acts of discrimination, harassment and victimisation carried out by your employees in the course of employment or by people who take action for you (agents).

It does not matter whether you knew about or approved of those acts.

However, if you can show that you took all reasonable steps to prevent your employees or agents from acting unlawfully, you will not be held legally responsible.

It is important that you take steps to make sure your employees and agents understand that they must not discriminate against pupils, or harass them or victimise them, and that they understand your duties in relation to making reasonable adjustments for disabled pupils.

### Personal liability of your employees and agents

An employee (of a school) is personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment, whether or not the employer is also liable. However, an employee is not personally liable in relation to disability discrimination in schools.

For example, a teaching assistant racially discriminated against a pupil. The school is able to show that it took all reasonable steps to prevent the harassment and therefore was not liable. The pupil can still make a claim of discrimination against the teaching assistant.

However, if this was a case of discrimination on the grounds of disability, the pupil would not be able to make a claim against the teaching assistant because the personal liability provisions do not cover disability discrimination in schools.

If the relationship is one of a person paying for someone else to take action for them and someone taking action for them (their 'agent') rather than employer and employee, the agent is personally responsible in the same circumstances.

Employees or agents will still be responsible for their acts of discrimination, harassment or victimisation even if they did not know their actions were against the law.

But there is an exception to this. An employee or agent will not be responsible if their employer or principal has told them that there is nothing wrong with what they are doing and he or she reasonably believes this to be true.

It is a criminal offence, punishable by a fine of up to £5,000, for an employer or principal to make a false statement in order to try to get an employee or agent to carry out an unlawful act.

Usually, a school will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent, however, case law indicates that it is possible that you could be found to be legally responsible for failing to take action where you have some degree of control over a situation where there is a continuing course of offensive conduct, but you do not take action to prevent its recurrence even though you are aware of it happening.

### **Instructing and causing discrimination**

As a school you must not instruct, cause or induce someone to discriminate against, harass or victimise another person, or to attempt to do so.

Both the person who receives the instruction and the intended victim will have a claim against whoever gave the instructions. This applies whether or not the instruction is carried out, provided the recipient or intended victim suffers loss or harm as a result.

It only applies where the person giving the instruction is in a legal relationship with the person receiving the instruction such as employer and employee or agent and principal.

Employment Tribunals will deal with complaints from an employee or agent who has received the instructions and the victim can make a claim in the same way as they would for any other claim under the Act. So if you instruct a member of staff to discriminate against a pupil on grounds of their sex then the member of staff can make a claim to an Employment Tribunal and the pupil can make a claim to a county or sheriff court.

The Equality and Human Rights Commission can also take action for unlawful instructions to discriminate.

### **Aiding contraventions**

It is unlawful for you to help someone else carry out an act which you know is unlawful under the Equality Act.

However, if the person giving assistance has been told by the person he or she assists that the act is lawful and he or she reasonably believes this to be true, he or she will not be legally responsible.

What equality law means for you as an education provider: schools

It is a criminal offence, punishable by a fine of (currently) up to £5,000, to make a false statement in order to get another person's help to carry out an unlawful act under the Equality Act.

## Section 3: Admissions

### 3.1 Introduction

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You must not discriminate against a person in relation to admission to your school. It is the 'responsible body' of a school that is responsible for ensuring there is no discrimination in relation to admissions. This varies depending on the type of school as set out in [Annex B](#).

### 3.2 What does the Act say?

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You must not discriminate against, or victimise a person:

- in the arrangements that you make for deciding who is offered admission as a pupil
- as to the terms on which you offer to admit the person as a pupil
- by not admitting the person as a pupil.

You must not harass a person who has applied for admission as a pupil.

If you are a single-sex school there are exceptions for admissions to enable you to restrict admission to pupils of one sex. If you are a school with a religious character there is an exception for admissions to enable you to have admissions criteria which give preference to members of your own religion. This is explained in more detail in [Section 3.7](#).

### 3.3 How this fits in with other legal obligations on schools in relation to admissions

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Nothing in the Equality Act 2010 requires you or the admissions authority for a school to act in a way which is inconsistent with other legal obligations relating to schools admissions. In fact, following the Admissions Code and any other government guidance is likely to reduce the risk of you discriminating unlawfully under the Equality Act in relation to admissions.

Further guidance for schools in England and Scotland can be found in the Commission's technical guidance at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

- **The admissions authorities for maintained schools in England** must comply with the Schools Admissions Code produced by Department for Education which sets out the law relating to school admissions. Local authorities have an important role in monitoring compliance with the Admissions Code and are required to report annually to the Schools Adjudicator on the fairness and legality of the admissions arrangements for all schools in their area, including those for whom they are the admissions authority.
- **The admissions authorities for maintained schools in Wales** must comply with the Schools Admissions Code produced by the Welsh Assembly Government which sets out the law relating to school admissions ([www.wales.gov.uk](http://www.wales.gov.uk)).
- **Local authority schools in Scotland** should comply with any guidance produced by the Scottish Government on schools admissions.

### 3.4 You must not discriminate in the arrangements you make for deciding who is offered admission as a pupil to your school

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#### What does this mean?

This covers everything you do in relation to admission arrangements including:

- Information about the school and application process.
- Admissions criteria.
- Entrance exams and interviews.

#### How do I avoid discriminating in my admission arrangements?

##### Admissions information and application process

Information about you as a school and how to apply for admission should not discriminate by suggesting that applications from people with certain protected characteristics would not be welcome. This would be direct discrimination. Further, the admissions arrangements must not result in a person with a relevant protected characteristic being treated worse than those not sharing the protected characteristic, unless the policy can be objectively justified.

In relation to disabled people, you should ensure that the information and application process is accessible to disabled people and make reasonable adjustments as necessary.

### **Admissions criteria**

Although the use of admissions criteria is permitted, you must ensure that the criteria you use do not discriminate, either directly or indirectly, against anyone with a protected characteristic.

Having criteria which exclude people with a particular protected characteristic will be direct discrimination. Direct discrimination is always unlawful.

Indirect discrimination may occur if admissions criteria exclude a greater proportion of pupils from particular categories unless you can show that your criteria are a proportionate means of achieving a legitimate aim.

You should also ensure that disabled people are not discriminated against because of something arising in consequence of their disability, unless you can show it is a proportionate means of achieving a legitimate aim.

Reviewing your admissions criteria regularly will help you to ensure that they do not inadvertently exclude people with a particular characteristic.

You will need to have arrangements in place to deal with the reasonable adjustment needs of disabled candidates.

Examples of discriminatory criteria might include:

- Setting fixed proportions of boys or girls in a coeducational school.
- Catchment areas that disproportionately exclude pupils from particular groups, unless it can be justified (for example, on nearness to the school).
- Applying factors to one racial group which are not applied to another racial group.
- Using different cut-off points in attainment scores for girls and boys and children of different faiths or nationalities.

### **Selective schools**

#### ***In England***

- If you are a grammar school you can select your entire intake based on academic ability and often use entrance exams to determine who to admit. You must ensure that the assessments are not discriminatory, for example, by being culturally biased in a way that excludes a considerably higher proportion of pupils from a particular racial group.

- If you are a partially selective school, such as one with a specialism, you can select up to 10 per cent of pupils on the basis of aptitude in prescribed subjects.

### ***In Wales***

- If you are a partially selective school, such as one with a specialism, you can select up to 10 per cent of pupils on the basis of aptitude in prescribed subjects.

### ***In Scotland***

- If you are an education authority school, you may only select pupils for admission on ability if such arrangements have been approved by Scottish Ministers.

### ***In England, Scotland and Wales***

If you are an independent school, you can select pupils based on your own criteria which can include academic ability.

If you are a selective school, you are not discriminating by applying these forms of selection to disabled children who apply but you still have a duty to make reasonable adjustments. This is explained in more detail below under the heading 'permitted forms of selection'.

As a selective school, you must apply the selective criteria consistently to everyone who applies.

**For example:** A selective school imposes a higher pass mark for applicants from an ethnic minority background, or to girls. This would be direct race or sex discrimination.

Local authorities (in England and Wales) and education authorities (in Scotland) also have a duty to ensure that there are sufficient places available for all girls and boys who meet the pass mark for selective schools.

### ***Entrance exams***

If you are a selective school (as described above) you may use entrance exams or assessments (such as the 11+) to select your intake.

These tests, assessments or auditions must be objective and must not discriminate against applicants on grounds of any of the protected characteristics.

Tests and assessments must be accessible to children with disabilities and you must comply with your duty to make reasonable adjustments for disabled people who are being assessed. This may mean making reasonable adjustments to the assessment process such as making the test material available in an adapted format, allowing



extra time or providing a scribe, depending on the individual needs of the child (see [Section 3.7](#)).

### 3.5 You must not place terms on a person's admission to your school which are discriminatory

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#### What does this mean?

Although most schools do not place terms on a person's admission, some do and, while in some situations it may be appropriate to place terms on a person's admission (such as the payment of fees if you are an independent school), these terms should not be discriminatory.

#### How do I avoid discriminating in relation to admission terms?

You should ensure that you do not offer admission to a person with a protected characteristic on terms which are less favourable than those which are or would be offered to someone without the protected characteristic.

Examples of discriminatory terms may include:

- Charging higher fees for boys than girls.
- Only allowing disabled pupils to attend on a part-time basis when other pupils are allowed to attend on a full-time basis.

**For example:** A pupil who is gay is offered a place at an independent school on the condition that he hides his sexual orientation and pretends that he is straight (heterosexual). This would be unlawful sexual orientation discrimination.

### 3.6 You must not refuse to admit a person as a pupil for discriminatory reasons

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#### What does this mean?

Refusing to admit a person because of a protected characteristic is unlawful. If you are a single-sex school, there are exceptions for admissions to enable you to restrict admission to pupils of one sex. If you are a school with a religious character, there is an exception for admissions to enable you to have admissions criteria which give preference to members of your own religion. This is explained in more detail in [Section 3.7](#).

## How do I avoid discriminating in relation to admission decisions?

If your admissions criteria are non-discriminatory (see [Section 3.5](#) above) and you follow them then you are unlikely to refuse admission to a person for a discriminatory reason. Those making admissions decisions should be aware of the school's obligations under the Equality Act and take care not to make assumptions about applicants that may lead to unlawful discrimination. Any refusal to admit an applicant should be for a legitimate reason set out in the admissions criteria and not for any other reason.

Discriminatory reasons may include:

- Refusing to admit a disabled pupil with behavioural difficulties because you are concerned that they will be disruptive.
- Refusing to admit a child for whom English is a second language.

**For example:** The admissions tutor for an independent school interviews an applicant who has cerebral palsy which makes her speech unclear. The tutor assumes that the applicant also has learning difficulties and refuses to admit her as he thinks she will be unable to cope with the highly academic environment of the school. This would be unlawful disability discrimination.

## 3.7 Exceptions

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### Admission to single-sex schools

As a single-sex school, you are permitted to admit pupils of only one sex and this would not constitute sex discrimination. This applies if you are a single-sex school that admits pupils of the opposite sex on an exceptional basis or admits them in comparatively small numbers only to particular courses or classes. This also applies if you are a mixed-sex school which has single-sex boarding. There are special transitional provisions if you are a single-sex school that ceases to be a single-sex school and turns coeducational.

This means that if you are a school which admits only boys, you are not discriminating unlawfully against girls. And even if the daughters of certain staff members at the boys' school are allowed to attend, you are still regarded as a single-sex school and are not discriminating unlawfully against girls by not admitting any girls other than daughters of staff.

If you are a boys' school which admits some girls to the Sixth Form, or which lets girls attend for a particular GCSE course not offered at their own school, you are still regarded as a single-sex school. You are not discriminating unlawfully if you refuse to admit girls to classes and other courses other than the particular ones for which you have made an exception.

**For example:** A boys' school which admits girls to A-level science classes is not discriminating unlawfully if it refuses to admit them to A-level media studies or maths classes.

These exceptions only apply to admissions and do not apply to the provision of education, or access to benefit, facility or service or exclusion.

So if as a single-sex school you do admit some pupils of the opposite sex, you must not discriminate against them in the provision of education, or access to any benefit, facility or service or by excluding them.

If you are a coeducational school which only offers boarding to one sex, you are not acting unlawfully by not offering boarding to both sexes. So if you are a mixed-sex school which has facilities for female boarders, you can lawfully state in your prospectus that boys cannot be accepted as boarders.

### **Schools with a religious character**

If you are designated as a school with a religious character, you are exempt from the requirement not to discriminate on grounds of religion or belief in relation to admissions. This means that you may have admissions criteria which give preference to members of your own religion. If you are a maintained school with a religious character you must still comply with the Admissions Code and therefore the criteria are only used to determine who is admitted if you are oversubscribed. In practice this might mean that you are unable to impose religious criteria, if you are not oversubscribed, or you might be able to select all of your pupils on religious grounds if you are heavily oversubscribed.

This exception does not allow you to discriminate on any other of the prohibited grounds, such as sex, race or sexual orientation.

**For example:** A Muslim school may give priority to Muslim pupils when choosing between applicants for admission. However, the school may not discriminate between pupils based on other protected characteristics, such as by refusing to admit a child of the school's own faith because she is of African origin or a lesbian.

## Disabled pupils and selection on academic ability or aptitude

If you are a selective school selecting on the basis of academic ability or aptitude as described in Section 3.4, it is not unlawful for you to apply the same selection criteria to disabled children who apply for admission.

**Permitted forms of selection in England and Wales** are the selective admission arrangements operated by grammar schools, and selection by ability and aptitude in accordance with the School Standards and Framework Act 1998 as set out in Section 3.4.

**Permitted forms of selection in Scotland** are those arrangements approved by Scottish Ministers.

So if a child with learning difficulties fails your entrance exam you can lawfully reject their application for admission even though the reason they failed the exam is because they are disabled.

However, you must comply with your duty to make reasonable adjustments which may include making adjustments to the assessment process, for example, providing the exam paper in large font for a visually impaired pupil, or allowing rest breaks for a pupil with ME.

The permitted form of selection exception does not allow you to refuse admission to any disabled child, it just allows you to refuse admission to a child whose disability prevents them from meeting the academic level required for entry to the school.

# Section 4: Providing education and access to any benefit, service or facility

## 4.1 Introduction

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You must not discriminate against a pupil at your school in the provision of education or access to any benefit, facility or service. It is the ‘responsible body’ of a school that is responsible for ensuring there is no discrimination in relation to education or access to any benefit, facility or service. Any reference to ‘school’ in this section means ‘responsible body of a school’.

## 4.2 What does the Act say?

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You must not discriminate against, or victimise a pupil:

- in the way you provide education for the pupil
- in the way you afford the pupil access to a benefit, facility or service
- by not providing education for the pupil
- by not affording the pupil access to a benefit, facility or service
- by subjecting the pupil to any other detriment.

You must not harass a pupil.

## 4.3 What does this mean?

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### What is covered?

Your duty to pupils covers everything that you provide for pupils and goes beyond just the formal education you provide. It covers all school activities such as extra-curricular and leisure activities, afterschool and homework clubs, sports activities and school trips, as well as school facilities such as libraries and IT facilities.

## What is not covered?

### Curriculum content

These obligations do not apply to anything done in connection with the content of the curriculum. This means that you are not restricted in the range of issues, ideas and materials you use in your syllabus and can expose pupils to thoughts and ideas of all kinds, however controversial. Even if the content of the curriculum causes offence to pupils with certain protected characteristics, this will not make it unlawful unless it is delivered in a way which results in harassment or subjects pupils to discrimination or other detriment.

**For example:** A school curriculum includes the teaching of evolution in science lessons. This would not be religious discrimination against a pupil whose religious beliefs include creationism.

Although Jewish pupils may find studying the holocaust very upsetting, it is not unlawful for a school to cover this topic.

### ***Activities which take place on school premises but are provided by someone else (who is not acting as an agent for the school)***

If school premises are used by other organisations to run activities or provide services which are not connected with the school then you would not be responsible for the activities or services provided, although you may have obligations towards members of the public who use your premises or facilities in these circumstances.

**For example:** A holiday club uses a primary school premises during school holidays. The holiday club is run by a private company not connected with the school. The primary school is not responsible for the actions of the holiday club. The holiday club will have obligations under the Act as a service provider.

## 4.5 How do I avoid discriminating in the provision of education (and benefits, services and facilities)?

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Regular reviews of your practices, policies and procedures will help to ensure that there is no discrimination against pupils with a protected characteristic.

Effective staff training is a useful tool in ensuring that all your staff are fully aware of the requirements of the Act and the implications of this for your education provision and delivery. This should help you to avoid unlawful discrimination.

Treating a pupil less favourably because of a protected characteristic, such as not allowing them to participate in a particular activity which other pupils are allowed to participate in is likely to be direct discrimination which is always unlawful.

**For example:** A 16-year-old pupil is diagnosed with gender dysphoria. The pupil has adopted a male name by Deed Poll. The school allows a change of name in its records but refuses to use any male pronouns with regard to this pupil. This greatly distresses the pupil. Such treatment is likely to amount to direct discrimination because of gender reassignment.

(Example provided by [Gender Identity Research and Education Society](#).)

Indirect discrimination can occur without you intending it to but this does not prevent it from being unlawful. Indirect discrimination can occur when your policies, criteria and practices inadvertently result in pupils with a particular characteristic being treated worse than other pupils.

**For example:**

- A school which has a number of Muslim pupils does not provide Halal food in its canteen which results in the Muslim pupils being unable to have school lunches. This is likely to be unlawful indirect religion or belief discrimination as the school is unlikely to be able to justify this action.
- A school with a significant proportion of Jewish pupils arranges extra-curricular drama sessions on a Saturday morning. This is likely to result in indirect religion or belief discrimination unless the school can justify holding the sessions at a time when Jewish pupils may not be able to attend.

Indirect discrimination can only be justified if the policy, criterion or practice is a proportionate means of achieving a legitimate aim.

**For example:** The same school arranges school sports matches for Saturday morning as this is when the local school league matches are played, this is likely to be a proportionate means of achieving a legitimate aim and therefore lawful.

Discrimination arising from a pupil's disability can also occur inadvertently if you treat a disabled pupil badly because of something arising in consequence of their disability and cannot justify this as a proportionate means of achieving a legitimate aim.

**For example:** A school won't allow a pupil who is HIV positive to take part in physical education lessons as they fear that if he is injured he will be a risk to other pupils. This is unlawful discrimination because it is based on misconceptions and assumptions and not on any real risk.

(Example based on information provided by the National Aids Trust.)

You need to have arrangements in place to ensure you deal with the reasonable adjustment needs of your disabled pupils.

The equality duties will help to ensure that all your school activities are non-discriminatory.

### Curriculum delivery

The way in which the curriculum is delivered is covered by the Act so you must ensure issues are taught in a way that does not subject pupils to discrimination. In addition, what is taught in the curriculum is crucial to tackling key inequalities for pupils including gender stereotyping, preventing bullying and raising attainment for certain groups.

#### **For example:**

- During a science lesson a teacher doesn't allow Muslim pupils to carry out practical experiments with chemicals and says this is because he doesn't want them to get ideas for making bombs. This would be unlawful discrimination on grounds of religion or belief.
- A school reviews the subjects it covers in PSHE and ensures they include equality and diversity including gender equality and non-violent, respectful relationships between boys and girls, women and men. This is good practice.

(Example adapted from one provided by WNC.)

Teaching staff should be encouraged to think about the way they deliver their teaching to ensure that they do not inadvertently discriminate against pupils.

**For example:** Requiring pregnant schoolgirls to attend parenting classes at the local college at the same time as science GCSE classes would be unlawful direct discrimination on the grounds of pregnancy and maternity.

Offering the classes at a different time so that prospective parents, both girls and boys, could attend science and parenting classes would be good practice and help the school to avoid unlawful discrimination.



## Academic options

Indirect discrimination may occur when pupils with particular protected characteristics are discouraged from taking part in academic opportunities or from studying certain subjects or certain opportunities are promoted to some pupils but not others.

**For example:** To assist pupils in making GCSE subject choices a school arranges careers talks. A talk on careers in engineering is presented to boys and a talk on careers in nursing is given to girls. Setting up gender segregated careers talks which has the effect of preventing pupils of either sex to attend either talk is likely to be unlawful indirect sex discrimination. This is an example of gender stereotyping.

Making assumptions about a person's ability to excel in a subject due to a protected characteristic could lead to unlawful discrimination.

## School trips

School trips, including field trips and residential trips are often an important part of school life for pupils. You should seek to ensure that any trips that you arrange do not discriminate against any of your pupils. However, in some limited cases it may be impossible to make a school trip accessible for all pupils and the learning needs of other pupils should be part of the decision making process. Cancelling the trip because a disabled pupil can't attend where it puts other pupils at a disadvantage may not be the best or only decision.

**For example:** A school plans a trip to a natural history museum. A pupil with Down's syndrome is excluded from the trip as the school believes she will not be able to participate in the activities provided by the museum for school groups. This is likely to be unlawful direct disability discrimination.

Forward planning will assist you in arranging trips which all pupils are able to participate in. Offering a range of different trips and activities may also help to ensure no pupils are excluded from taking part.

Arranging residential trips that coincide with religious festivals or holidays might prevent pupils from certain religions being able to attend and result in indirect discrimination.

The risk assessments that you carry out in relation to school trips should include a consideration of the reasonable adjustment needs of disabled pupils and it is good practice to seek ways of including rather than excluding such pupils on trips.

**For example:** As part of their risk assessment for a school trip to an outdoor activity centre, school staff visit the centre and speak with staff to decide what reasonable adjustments are needed for disabled pupils to fully participate on the trip. Some pupils have mobility issues so hoists are provided for these pupils for rock-climbing activities. Support staff attend the trip to assist pupils with higher level needs and all staff receive medical training. This is an example of making reasonable adjustments for disabled pupils and demonstrates a good practice approach to inclusion.

### Identity-based bullying

As a school you have legal duties to your pupils in relation to bullying and you must ensure that you treat all bullying on the grounds of a protected characteristic with the same emphasis as any other form of bullying.

**For example:** A sixth form pupil is bullied for being bisexual and, although he reports the bullying to a teacher, no action is taken as the teacher believes that it is just a bit of banter and he deserves 'some teasing' if he is going to say he is bisexual. This is likely to be direct sexual orientation discrimination.

### School uniform

It is important that you ensure that your school uniform policies do not discriminate against pupils with a protected characteristic. You should be reviewing your uniform policies and dress codes both to ensure they do not have the effect of unlawfully discriminating against pupils with a protected characteristic and to comply with your equality duties. You should consider making exceptions to your standard policies for certain pupils but also ensure that you are not setting different rules for different categories of pupils that might be discriminatory – for example requiring girls to wear clothing that is much more expensive than that for boys.

Examples of policies that might be discriminatory are:

- a general rule of no head gear in school which requires a Sikh pupil to remove his turban
- not making reasonable adjustments to school uniform requirements for disabled pupils who require them, for example, not allowing a disabled child who is allergic to the regulation nylon trousers to wear cotton ones.
- requiring pupils to dress (or not to dress) in a way that conflicts with a genuine religious requirement of their religion or belief.

- requiring pupils to have a particular haircut (such as a 'short back and sides' cut) where this precludes a style commonly adopted by a particular ethnic group, such as 'cornrow' hair-braids commonly worn by boys of Afro-Caribbean origin.

### **Work experience/placements**

Pupils should be given the same opportunities for work experience and placements and assumptions shouldn't be made about what would suit pupils with particular protected characteristics; for example, assuming that only boys would be interested in placements involving bricklaying or car maintenance or that only girls would be interested in hairdressing.

Although you are unlikely to be held to be responsible for any discrimination which occurs while a pupil is on work experience, putting in place effective communication with work experience providers and supporting pupils while they are on placement will help to reduce the chances of discrimination during work experience.

### **Assessments and exams**

As well as public exams such as SATs or GCSEs, which are set by external bodies, you will be assessing pupils regularly using a variety of methods. Reviewing your assessment methods will help you to ensure that you do not discriminate when assessing pupils. Assuming a uniformity in pupils' cultural, linguistic, religious or lifestyle experiences could result in you indirectly discriminating against pupils from particular racial groups.

You may need to make reasonable adjustments during assessment for disabled pupils such as extra time or rest breaks, or to the assessment method such as allowing a disabled pupil to submit their work in an accessible format.

### **Behaviour and discipline**

Reviewing behaviour and discipline policies regularly will help you to ensure that they do not inadvertently discriminate. Thinking about the reasons behind a pupil's behaviour may help you to identify instances of bullying or disability-related behaviour. Section 5 deals with exclusions from school.

## 4.6 Exceptions

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### Religion and belief exceptions

#### Collective worship

Acts of worship and other religious observance organised by you are not covered by the provisions prohibiting religious discrimination whether or not it is part of the curriculum.

This means that you (even if you are not a school with a religious character) can carry out collective worship of a broadly Christian nature (as maintained schools in England and Wales and public schools in Scotland are required to under other legislation) without this being unlawful under the Equality Act.

The Equality Act does not require you to provide opportunities for separate worship for the different religions and beliefs represented among your pupils.

You are free to organise or to participate in ceremonies and festivals celebrating any faith, such as Christmas, Diwali, Chanukah or Eid, without being subject to claims of religious discrimination against children of other religions or of none.

Parents can remove their children from collective worship and sixth form pupils in England and pupils aged 12 and over in Scotland can choose to withdraw themselves.

#### Schools with a religious character

As a school designated with a religious character, you are exempt from the requirement not to discriminate on grounds of religion or belief in relation to admissions and in the provision of education and in access to any benefit, facility or service. This means that as a school with a religious character, you do not have to make special provision for pupils of a different faith or incorporate aspects of their faith into your curriculum.

However, you must not discriminate on any other of the prohibited grounds. Nor can you discriminate on religious grounds by excluding a pupil or subjecting them to any other detriment.

If you convey your beliefs in a way that involves haranguing or berating a particular pupil or group of pupils then this would be unacceptable in any circumstances and would constitute unlawful discrimination.

More guidance on this issue can be found on the Department for Education website: <http://www.education.gov.uk/>

**For example:**

- A teacher at a Church of England school tells pupils that homosexuality is 'wrong' and that gay and lesbian people will 'burn in hell' unless they are 'cured of the disease'. A gay pupil in the class is deeply offended and intimidated by this hostile and degrading language. This may be unlawful direct discrimination on the grounds of sexual orientation.
- A Jewish school which provides spiritual instruction or pastoral care from a rabbi is not discriminating unlawfully by not making equivalent provision for pupils from other religious faiths.
- A Roman Catholic school which organises a visit for pupils to Lourdes is not discriminating unlawfully by not arranging a trip to Mecca for two Muslim pupils at the school.

A school with a religious character would be acting unlawfully if it sought to penalise or exclude a pupil because he or she had renounced the faith of the school or joined a different religion or denomination.

## Section 5: Exclusion from school

### 5.1 Introduction

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You must not discriminate against or victimise a pupil by excluding them (either temporarily or permanently) from your school.

### 5.2 What does the Act say?

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You must not discriminate against a pupil by excluding the pupil from the school.

You must not victimise a pupil by excluding the pupil from the school.

### 5.3 How this fits in with other legal obligations on schools in relation to exclusions from school

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Nothing in the Equality Act 2010 requires you to act in a way which is inconsistent with other legal obligations relating to exclusions from school. In fact, following the exclusion guidance and any other government guidance is likely to reduce the risk of you discriminating in relation to exclusions.

- **Maintained schools in England** (including grammar schools, Academies, and Pupil Referral Units) must comply with the Department for Education's *Exclusion from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion*. This sets out the law relating to exclusions. The exclusions guidance makes it clear that pupils should only be excluded from school as a last resort and that exclusions should only be made on grounds of a pupil's behaviour. Nothing in the Act conflicts with this guidance.
- **Maintained schools in Wales** (including Pupil Referral Units) must comply with *Guidance on Exclusion from Schools and Pupil Referral Units* produced by the Welsh Assembly Government and available from their website ([www.wales.gov.uk](http://www.wales.gov.uk)). The exclusions guidance makes it clear that pupils should only be excluded from school as a last resort and that exclusions should only be

made on the grounds of a pupil's behaviour. Nothing in the Act conflicts with this guidance.

- In Scotland, public schools managed by education authorities are subject to Regulations 4 and 4A of The Schools (General) (Scotland) Regulations 1975 and section 28H of the Education (Scotland) Act 1980 which sets out a statutory regime for exclusions. Nothing in the Equality Act conflicts with other legal obligations of schools in relation to exclusions.
- **Independent schools (other than Academies)** do not have to follow the exclusions guidance from DfE, the Welsh Assembly government or Scottish Government and can set their own exclusion policies. However, they must comply with the Equality Act and must not discriminate against pupils by excluding them or subjecting them to any other detriment. Their exclusions policies must not be discriminatory.
- **Academies** must comply with the DfE guidance in the same manner as maintained schools in England have to.

## 5.4 You must not discriminate against a pupil by excluding them from school

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### What does this mean?

This does not mean that you cannot exclude a pupil with a protected characteristic and there may of course be occasions when it is appropriate to exclude a pupil with a protected characteristic.

However, it does mean that you must not exclude a pupil because of their protected characteristic.

#### For example:

- An independent school finds out that a pupil has been diagnosed as autistic and immediately excludes him. This would be unlawful direct disability discrimination.
- A Catholic school excludes a pupil who has turned away from the Catholic faith and declared himself an atheist. This would be unlawful direct religion or belief discrimination.

Also, pupils with a protected characteristic must not be excluded for behaviour that pupils without the protected characteristic would not be excluded for.

**For example:** Two pupils are caught fighting, one who is a boy is excluded, and the other who is a girl is not excluded. This would be unlawful sex discrimination. However, if the school could show that the reason the boy was excluded was that this was the third time he had been in trouble for fighting and it was the first time the girl had been fighting, they would be able to justify the difference in treatment.

It also means that the procedures you use for deciding what punishment a pupil will receive and for investigating incidents must not discriminate against pupils with a particular protected characteristic.

**For example:** As part of their procedures for investigating and deciding on a punishment, a school arranges for parents or guardians of pupils to come into the school and discuss a course of action with the head teacher. In cases where parents cooperate with the head teacher and are shown to be committed to assisting the pupil to manage their behaviour it is less likely that the pupil will face exclusion.

This procedure may indirectly discriminate against the Gypsy and Traveller pupil whose parents may be less likely to come to the school to speak with the head teacher as they face a range of barriers including a lack of confidence in speaking to school staff and a level of mistrust based on a perception that they are not valued by the school community.

The school reviews their procedures and puts specific measures in place to assist Gypsy and Traveller parents, including an outreach programme with a dedicated member of staff to build trust with the parents so they can get more involved in the school community and their child's education. This is good practice which can help avoid indirect discrimination.

Excluding a disabled pupil for behaviour which arises as a consequence of their disability is likely to result in unlawful disability discrimination unless you can show that the exclusion was a proportionate means of achieving a legitimate aim.

**For example:** A pupil with ADHD is excluded for his behaviour including refusing to sit at his desk, distracting other pupils by talking and running around during classes. The pupil has been cautioned previously and the school does not see any other option than to exclude him. This is likely to be unlawful discrimination as he was excluded for behaviour which is related to his disability. It is unlikely to be a proportionate means of achieving a legitimate aim as no other efforts were made to support the pupil to manage his behaviour.



In addition, you have a duty to disabled pupils to make reasonable adjustments to your procedures if needed. This might include:

- disregarding behaviour which is a direct consequence of their disability
- making reasonable adjustments to manage such behaviour
- considering alternative, more appropriate punishments, and
- ensuring that a disabled pupil is able to present their case fully where their disability might hinder this.

**For example:** A pupil with Tourette syndrome involuntarily yells out and sometimes swears in class as a result of his disability. This behaviour is disregarded by the school and he is not punished when this occurs.

In the above example, the school puts an inclusion strategy in place for the pupil with ADHD. This includes providing a support worker, implementing specific behaviour management techniques, and using positive discipline and reward methods. When any behaviour that is related to the pupil's disability does occur, the teacher does not punish him but rather uses one of the agreed strategies to manage it effectively. These reasonable adjustments assist the pupil in managing his behaviour and improve his educational outcomes.

**For example:**

- A pupil with learning difficulties sometimes becomes disruptive in the classroom and as part of the school's differentiated behaviour management strategy she is given time out of class to work with her support worker and positive rewards on a daily basis for good behaviour rather than punitive punishments such as detention.
- A school wishes to speak with a pupil with autism to find out why he acted aggressively towards other pupils. The pupil finds unfamiliar situations very stressful which has a negative effect on his communication. In order for him to be enabled to best explain his actions, the school works with his support worker so he is prepared for the meeting, and the meeting is held in a familiar space.

## 5.5 How do I avoid discriminating in relation to exclusions from school?

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Reviewing your behaviour and exclusions policies regularly will help you to ensure that they do not inadvertently discriminate against pupils with a particular protected characteristic by including factors that would make it more likely that pupils with that particular protected characteristic would be disciplined or excluded than those without.

Indirect discrimination may occur if behaviour or exclusions policies result in a greater proportion of pupils with protected characteristics being disciplined or excluded.

**For example:** A school's blanket exclusion policy of 'three strikes and you're out' is found to be indirectly discriminating against Gypsy and Traveller pupils. Pupils from these communities are facing extreme levels of racially motivated bullying and are retaliating to the bullying which in turn was not being adequately investigated. The blanket exclusion policy was reviewed and incidents investigated on a case-by-case basis.

If your exclusions and behaviour policies are non-discriminatory (and you take into account your duty to make reasonable adjustments to your policies and procedures for disabled pupils) then you are less likely to exclude a pupil for a discriminatory reason. Those making decisions about discipline and exclusions should be aware of the school's obligations under the Equality Act and take care not to make assumptions that may lead to unlawful discrimination.

The equality duties will assist you in trying to ensure that your policies and procedures do not discriminate against pupils.

**For example:** Under the equality duties, a school carries out regular monitoring and evaluation of its data on exclusions for pupils with protected characteristics, and finds that a disproportionately high number of pupils who are either temporarily or permanently excluded are black boys and pupils with a learning difficulty. The school behaviour and discipline policies are prioritised for an equality impact assessment (EIA) which uncovers that certain aspects of the policy are discriminating against these pupils. This includes a lack of a differentiated behaviour policy for those on the autistic spectrum and with moderate learning difficulties, and a lack of awareness and training of teachers in relation to how to avoid discriminating against black boys in the classroom. Following the EIA, a new policy is developed, with an action plan and

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training for staff, and a whole school behaviour and discipline strategy is implemented.

# Section 6: Dispute resolution and enforcement

## 6.1 Introduction

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This section explains what happens if someone makes a complaint against you and what legal action they can take. It also explains what action may be taken to put right any discrimination, harassment or victimisation that is found to have taken place.

## 6.2 Resolving disputes

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It is usually in everyone's best interests to attempt to resolve disputes without the need for legal action. In many instances, the pupil (or their parent acting on their behalf) who believes you have discriminated unlawfully against them will approach you before commencing legal proceedings. You are likely to have a complaints procedure which should be able to deal with complaints of discrimination, harassment and victimisation. The governing bodies of maintained schools in England are required under Section 29(1) of the Education Act 2002 to have a complaints procedure to deal with all complaints relating to the school.

It is good practice to make pupils and parents aware of your complaints procedure and to ensure it is accessible to everyone, for example, by making it available in different languages or formats if appropriate.

Defending a claim can be lengthy, expensive and draining, and it can have a damaging impact on your reputation. It is likely to be in everyone's interest to try to put things right before a claim is brought. However, you will want to decide whether the person making the complaint has cause for complaint or not.

Consider the information given in this guide. You will need to make a realistic assessment about whether what you or your staff and agents have done (or failed to do) amounts to discrimination, harassment or victimisation. You may need to conduct an investigation into the complaint in order to form this view. You may need to get legal advice on this.

You must make reasonable adjustments to any internal complaints procedures to prevent disabled people from being placed at a substantial disadvantage in comparison with people who are not disabled. Failure to do so will itself amount to unlawful discrimination.

Although, as stated above, it is good practice to try to resolve disputes internally wherever possible, there are occasions where this will not be practical or appropriate, or a parent or pupil wants to pursue legal action rather than trying to resolve the dispute. There is no legal requirement to go through a complaints procedure first.

Parents can also make a complaint to Ofsted about a maintained school if the complaint affects the school as a whole rather than cases to do with individual pupils. Ofsted will not deal with complaints where there is an alternative legal remedy.

The Secretary of State can give directions, using powers under the Education Act 1996, to require a maintained school or non-maintained special school in England to comply with its obligations under the Equality Act. This 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. In Wales, there are powers for local authorities and the Welsh Ministers to intervene in such circumstances.

Obtaining information before issuing a claim (explained in [Section 6.5](#) below) may in fact resolve a dispute without the need for further action.

### **6.3 Conciliation/mediation**

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If the matter cannot be resolved through your internal complaints procedure then there are various mediation and conciliation services that might assist you in resolving the dispute.

#### **Local authority dispute resolution services**

Local authorities (LAs) in England and Wales must have in place independent disagreement resolution services to deal with disputes between parents and schools (and in Wales to deal with disputes between pupils and schools) in relation to special educational needs disputes, and in some cases these services are available to help to resolve other disputes.

In Wales, local authorities are specifically required to have in place independent disagreement resolution services for disputes between disabled pupils and schools.

## 6.4 Where claims are made

If the matter isn't resolved through internal complaints procedures or mediation then a pupil (or their parent) may decide to take a legal claim against you. Where the pupil (or parent) makes a claim depends on the type of discrimination (harassment or victimisation) which they allege has taken place.

If the claim is in relation to any of the protected characteristics other than disability, it will be made to a county court (in England and Wales) or the sheriff court (Scotland). More details about claims to a county or sheriff court are provided in [Section 6.6](#).

Disability discrimination claims in Scotland are made to the Additional Support Needs Tribunals for Scotland (ASNTS). More details about claims to the ASNTS are provided in [Section 6.7](#).

Disability discrimination claims in England and Wales are made according to the following table:

Claims about permanent exclusions from schools maintained by LAs, including community schools, voluntary-aided and voluntary-controlled schools and foundation schools and Academies	In England, the First-tier Tribunal (Special Educational Needs and Disability). However, the jurisdiction of the Tribunal does not preclude Education Appeal Panels considering issues of disability discrimination.  In Wales, Education Appeal Panels
Admission decisions for schools maintained by LAs, including community schools, voluntary-aided and voluntary-controlled schools and foundation schools and Academies	Education Appeal Panels
All other claims (including all claims against independent schools) in England	First-tier Tribunal (Special Educational Needs and Disability)
All other claims (including all claims against independent schools) in Wales	Special Educational Needs Tribunal for Wales

More details about disability discrimination claims in England and Wales are provided in [Section 6.8](#).

## 6.5 The general principles that apply to discrimination cases brought in a court, tribunal or appeal panel

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### Obtaining information

If someone thinks they may have been discriminated against, harassed or victimised because of a protected characteristic, they can try to obtain information from you to help them decide if they have a valid claim or not.

Where the claim is about something that happened before 6 April 2014, there is a specified questions procedure with a set questionnaire form to support the process. The form does not need to be used, provided the same questions are asked. If you do not respond to the questionnaire within eight weeks, then the court or tribunal can take that into account when making a judgment. The court or tribunal can also take into account answers which are evasive or unclear, except where other responses might prejudice a criminal matter.

The set questions procedure and the questionnaire were abolished on 6 April 2014 though they will continue to apply to complaints about events which took place before that date.

For claims about events which took place on or after 6 April 2014, it will remain good practice for those who think that they may have experienced unlawful discrimination, harassment or victimisation contrary to equality law to seek relevant information before issuing a formal claim and for you to respond as fully as you feel able. This may prevent the complaint escalating to a formal claim.

The Government Equalities Office has issued a good practice guide on asking and responding to questions about discrimination in the provision of services and public functions including education services. This can be found at:

<https://www.gov.uk/government/publications/asking-and-responding-to-questions-of-discrimination-in-the-provision-of-goods-and-services-and-public-functions>

That guidance makes it clear that you should treat any questions seriously and promptly and not ignore them. The questions and answers can form part of the evidence in a case brought under the Equality Act 2010.

## 6.6 Claims brought in the county courts and sheriff court

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All claims except those which relate to disability discrimination are made to:

- a county court in England and Wales
- the sheriff court in Scotland.

You can find more information about procedures in the county court at:

[www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk) and about procedures in the sheriff court at:

[www.scotcourts.gov.uk/sheriff/index.asp](http://www.scotcourts.gov.uk/sheriff/index.asp)

If you are a public authority, a person who wishes to claim discrimination may also bring a claim for judicial review in the High Court in England and Wales or the Court of Session in Scotland. Different procedures and time limits apply to bringing such claims.

### Who can make a claim?

Anyone can make a claim to a county or sheriff court if they believe that you have discriminated against, harassed or victimised them. In England and Wales a person who does not have mental capacity, or who is under 18 will have to make a claim through a 'litigation friend' who is an adult appointed to conduct the claim on their behalf (often, but not always, their parent). In Scotland, a parent may make a claim on behalf of their child up to the age of 16. A parent may also have the right to make a claim on behalf of a child over the age of 16 where the child lacks the legal capacity to make a claim. Pupils over the age of 16 can make a claim in their own right. Below the age of 16, a child has the right to make a claim in their own right if the child has sufficient understanding and maturity to do so. A child over the age of 12 is presumed to have sufficient understanding and maturity to instruct a solicitor in such proceedings. Where both child and parent have rights to make a claim, either may do so.

### Time limits

A claim must normally be started (and, in Scotland, served on the school) within six months of the alleged discrimination. Where there has been a continuing process of discrimination taking place over a period of time, the six months begins at the date of the last discriminatory act. Courts have the discretion to consider a claim brought outside the six-month period if they consider that it is fair to do so.



## Remedies

A county or sheriff court can:

- Declare that you have unlawfully discriminated against, harassed or victimised the person making the claim, or declare that no unlawful discrimination, harassment or victimisation has taken place.
- Impose an injunction (in England and Wales) or specific implement or interdict (in Scotland) requiring you to do something (such as admit the child as a pupil) or to prevent you from repeating any discriminatory act in the future.
- Order you to pay compensation including compensation for injury to feelings.
- Order you to pay interest on any compensation.
- Order either party to pay costs.

## 6.7 Disability discrimination claims in Scotland

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### What claims can the Tribunal hear?

The Additional Support Needs Tribunals for Scotland can hear all types of disability discrimination claims against schools.

### Time limits

A claim must be made to the Additional Support Needs Tribunal for Scotland within six months less one day of the alleged discrimination. Where there has been a continuing process of discrimination taking place over a period of time, the six months begins at the date of the last discriminatory act. The Tribunal has the discretion to consider a claim brought outside the six-month period if they consider that it is fair to do so.

### What can the Tribunal order?

The Tribunal may make any order it thinks appropriate in that individual case, often with the intention of trying to remedy the damage done to the disabled person and reduce any future disadvantage.

The Tribunal cannot order the payment of compensation but can order the school to apologise to a pupil, to carry out staff training and/or to change its policies and procedures.

### **Who can make a claim?**

The parent of a disabled child can make a claim that their child has been discriminated against.

A disabled pupil who has capacity can make a claim that they have been discriminated against. A child aged 12 or over is presumed to have capacity.

### **Tribunal procedures**

The rules covering Tribunal procedures are available on the Tribunal website ([www.asntscotland.gov.uk](http://www.asntscotland.gov.uk)).

## **6.8 Disability discrimination Tribunal claims in England and Wales**

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### **What claims can the Tribunal hear?**

Disability discrimination claims against schools in England are heard by the First-tier Tribunal (Special Educational Needs and Disability) and in Wales by the Special Educational Needs Tribunal for Wales, except for claims about:

- maintained school and Academy admissions decisions (these are heard by admission appeal panels which are covered later in [Section 6.9](#)), or
- in Wales, permanent exclusions from maintained schools and Academies (these are heard by exclusion appeal panels which are covered later in [Section 6.10](#)). In England, the Tribunal has jurisdiction to consider disability discrimination claims relating to permanent exclusion, though exclusion appeals panels are not precluded from considering these issues as well.

All disability discrimination claims against independent schools are heard by the First-tier Tribunal (Special Educational Needs and Disability) in England and the Special Educational Needs Tribunal for Wales. Any references to 'tribunal' in this section include a reference to both of these tribunals.

### **Time limits**

Claims must be made within six months of the alleged discrimination. Where there has been a continuing process of discrimination taking place over a period of time, the six months begins at the date of the last discriminatory act.

In Wales, there is provision for the time period to be extended by three months where a dispute is referred to the independent disagreement resolution service that local authorities are required to have in place for resolving disputes between disabled pupils and schools.

The Tribunal can (but does not have to) consider a claim which is out of time.

The Tribunal regulations set the time scale for the processing and hearing of claims including the deadline for sending in further information or evidence. This information is available from the Tribunal website and in guidance produced by the Tribunal.

(See [www.tribunals.gov.uk](http://www.tribunals.gov.uk) and [www.sentw.gov.uk](http://www.sentw.gov.uk).)

### **What can the Tribunal order?**

The Tribunal may make any order it thinks appropriate in that individual case, often with the intention of trying to remedy the damage done to the disabled person and reduce any future disadvantage.

The Tribunal cannot order the payment of compensation but can order you to apologise to a pupil, to carry out staff training and/or to change your policies and procedures.

### **Who can make a claim?**

In England, only the parent of a disabled child can make a claim that their child has been discriminated against.

A child cannot make a claim in their own right.

In Wales, a disabled child can make a claim in their own right in certain areas.

Currently, this is only possible in the Carmarthenshire County Council and Wrexham County Borough Council local authority areas as part of a pilot scheme. It is intended that from 30 June 2015 this will be possible across the whole of Wales.

## **6.9 Disability Discrimination Claims against admission decisions of maintained schools in England and Wales**

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### **Admission appeal panels**

Admission appeal panels are independent appeal panels set up (by the admissions authority for the school) to hear appeals against admissions decisions for maintained schools and Academies. They also deal with disability discrimination claims in relation to admissions decisions for maintained schools and Academies.

They cannot deal with discrimination claims in relation to any other protected characteristics; these are dealt with by the courts (see [Section 6.6](#)).

They cannot hear disability discrimination claims about admission decisions of independent schools; these are heard by Tribunals (see [Section 6.8](#)).

They cannot hear disability discrimination claims about admissions arrangements or about terms being placed on a person's admission; these are heard by Tribunals (see [Section 6.8](#)).

### **Time limits**

The appeals are organised by admission authorities following admission decisions who are responsible for the timetable for the appeals. Parents are advised of the time limits and procedure at the same time as they are advised of the admissions decision.

### **What can the panel order?**

An admissions appeal panel can overturn the decision and order you to admit the child.

### **Who can make a claim?**

The parent of a disabled child can appeal the decision (and make a claim of disability discrimination).

In the case of a decision about sixth form education, a young person and/or their parent has a right of appeal (and therefore the right to make a claim of disability discrimination) against the decision.

### **Procedure in England**

The rules and procedures for admission appeal panels are set out in detail in the Schools Admission Appeals Code produced by DfE and available from their website ([www.education.gov.uk](http://www.education.gov.uk)).

### **Procedure in Wales**

The rules and procedures for admission appeal panels are set out in detail in the Schools Admission Appeals Code produced by the Welsh Assembly Government and available from their website ([www.wales.gov.uk](http://www.wales.gov.uk)).

## 6.10 Disability Discrimination Claims against permanent exclusions from maintained schools in England and Wales

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### Independent Appeal Panels (for exclusion)

Independent Appeal Panels (IAPs) are panels set up by local authorities to hear appeals against permanent exclusions from maintained schools, including Pupil Referral Units, and Academies. They also deal with disability discrimination claims in relation to permanent exclusion from maintained schools, Academies, and Pupil Referral Units, though in England a claim can also be made to the Tribunal.

They cannot deal with discrimination claims in relation to any other protected characteristics; these are dealt with by the courts (see [Section 6.6](#)).

They cannot hear disability discrimination claims in relation to permanent exclusion from an independent school; these are heard by Tribunals (see [Section 6.8](#)).

They cannot hear disability discrimination claims about fixed-term exclusions; these are heard by the Tribunals (see [Section 6.8](#)).

### Time limits

The claim is made as part of the appeal against the permanent exclusion and therefore is made at the same time.

The deadline is 15 school days from receipt of the governors' letter confirming the exclusion.

The IAP hearing must take place within 15 school days of the appeal/claim being lodged. In England, where a disability discrimination claim is also made to the Tribunal, the IAP hearing should not be delayed. The Tribunal may however postpone considering the claim until the conclusion of the IAP process.

### What can the panel order?

An IAP can:

- a) uphold the exclusion
- b) recommend that the governing body reconsiders their decision, or
- c) in relatively limited circumstances, overturn the decision and direct that the governing body considers the exclusion again.

### **Who can make a claim in England?**

The parent of a disabled child can appeal (and make a claim of disability discrimination) against the permanent exclusion of a child from a maintained school, Academy or Pupil Referral Unit.

A disabled pupil aged 18 or older can appeal (and make a claim of disability discrimination) against the decision to permanently exclude them from a maintained school or Pupil Referral Unit or Academy.

### **Who can make a claim in Wales?**

The parent of a disabled child can appeal (and make a claim of disability discrimination) against the permanent exclusion of their child from a maintained school or Pupil Referral Unit or Academy.

A disabled pupil who was 11 years old (or older) at the start of the school year can appeal and make a claim.

### **Procedure in England**

The rules and procedure for IAPs are set out in *Exclusion from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion*.

### **Procedure in Wales**

The rules and procedure for IAPs are set out in Part 4 of *Guidance on Exclusion from Schools and Pupil Referral Units* produced by the Welsh Assembly Government and available from their website ([www.wales.gov.uk](http://www.wales.gov.uk)).

# Section 7: Schools providing further education

## 7.1 Introduction

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As a school providing courses of further education you must not discriminate against, harass or victimise a person who is enrolled on a course or seeks enrolment on a course.

Unlike your obligations to your pupils, your obligations to people enrolled on FE courses include the protected characteristic of age.

**For example:** A school offers a further education course in plumbing but restricts it to people aged under 55. This would be unlawful age discrimination unless the school could show it was a proportionate means of achieving a legitimate aim. (Unlike the other protected characteristics, direct age discrimination is open to justification in this way.)

## 7.2 What does the Act say?

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You must not discriminate against or victimise a person:

- in the arrangements you make for deciding who is enrolled on the course
- as to the terms on which you offer to enrol a person on the course
- by not accepting a person's application for enrolment
- in the services you provide or offer to provide to a person enrolled on a course.

You must not harass a person who:

- seeks enrolment on a course
- is enrolled on a course
- is a user of services you provide in relation to the course.

Harassment in this context covers all protected characteristics.

### 7.3 What does this mean?

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If you are a maintained school in England or Wales providing further education which is:

- part-time education for people (other than pupils) over compulsory school age, or
- full-time education for people who are 19 or over

you must not discriminate, harass or victimise in relation to this further education.

Everything you do in relation to providing further education is covered by these obligations, including any information about the courses, enrolment, teaching and learning, and other services offered to people on the courses.



# Annex A: Protected characteristics

The protected characteristics for the schools provisions are:

- Disability.
- Gender reassignment.
- Pregnancy and maternity.
- Race.
- Religion or belief.
- Sex.
- Sexual orientation.

Age and marriage and civil partnership are NOT protected characteristics for the schools provisions.

## Disability

A person is a disabled person (someone who has the protected characteristic of disability) if they have a physical and/or mental impairment which has what the law calls 'a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'.

There is no need for a person to have a medically diagnosed cause for their impairment; what matters is the effect of the impairment not the cause.

In relation to physical impairment:

- Conditions that affect the body such as arthritis, hearing or sight impairment (unless this is correctable by glasses or contact lenses), diabetes, asthma, epilepsy, conditions such as HIV infection, cancer and multiple sclerosis, as well as loss of limbs or the use of limbs are covered.
- HIV infection, cancer and multiple sclerosis are covered from the point of diagnosis.
- Severe disfigurement (such as scarring) is covered even if it has no physical impact on the person with the disfigurement, provided the long-term requirement is met (see below).

- People who are registered as blind or partially sighted, or who are certified as being blind or partially sighted by a consultant ophthalmologist, are automatically treated as disabled under the Act.

Mental impairment includes conditions such as dyslexia and autism as well as learning disabilities such as Down's syndrome and mental health conditions such as depression and schizophrenia.

The other tests to apply to decide if someone has the protected characteristic of disability are:

- The length the effect of the condition has lasted or will continue: it must be long term. 'Long term' means that an impairment is likely to last for the rest of the person's life, or has lasted at least 12 months or where the total period for which it lasts is likely to be at least 12 months. If the person no longer has the condition but it is likely to recur or if the person no longer has the condition, they will be considered to be a disabled person.
- Whether the effect of the impairment is to make it more difficult and/or time-consuming for a person to carry out an activity compared to someone who does not have the impairment, and this causes more than minor or trivial inconvenience.
- If the activities that are made more difficult are 'normal day-to-day activities' at work or at home.
- Whether the condition has this impact without taking into account the effect of any medication the person is taking or any aids or assistance or adaptations they have, like a wheelchair, walking stick, assistance dog or special software on their computer. The exception to this is the wearing of glasses or contact lenses where it is the effect while the person is wearing the glasses or contact lenses, which is taken into account.

**For example:** Someone who has ADHD might be considered to have a disability even if their medication controls their condition so well that they rarely experience any symptoms, if without the medication the ADHD would have long-term adverse effects.

Progressive conditions and those with fluctuating or recurring effects are included, such as depression, provided they meet the test of having a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

## Gender reassignment

Gender reassignment is a personal process (rather than a medical process) which involves a person expressing their gender in a way that differs from or is inconsistent with the physical sex they were born with.

This personal process may include undergoing medical procedures or, as is more likely for school pupils, it may simply include choosing to dress in a different way as part of the personal process of change.

A person will be protected because of gender reassignment where they:

- make their intention known to someone – it does not matter who this is, whether it is someone at school or at home or someone like a doctor:
  - once they have proposed to undergo gender reassignment they are protected, even if they take no further steps or they decide to stop later on
  - they do not have to have reached an irrevocable decision that they will undergo gender reassignment, but as soon as there is a manifestation of this intention they are protected
- start or continue to dress, behave or live (full-time or part-time) according to the gender they identify with as a person
- undergo treatment related to gender reassignment, such as surgery or hormone therapy, or
- have received gender recognition under the Gender Recognition Act 2004.

It does not matter which of these applies to a person for them to be protected because of the characteristic of gender reassignment.

This guidance uses the term 'transsexual person' to refer to someone who has the protected characteristic of gender reassignment.

## Pregnancy and maternity

The Act lists pregnancy and maternity as a protected characteristic. Pregnancy and maternity discrimination is covered in Section 2.

## Race

Race means a person's:

- colour, and/or
- nationality (including citizenship), and/or
- ethnic or national origin

and a racial group is composed of people who have or share a colour, nationality or ethnic or national origins.

A person has the protected characteristic of race if they belong to a particular racial group, such as 'British people'.

Racial groups can comprise two or more racial groups such as 'British Asians'.

## Religion or belief

The protected characteristic of religion or belief includes any religion and any religious or philosophical belief. It also includes a lack of any such religion or belief.

A religion need not be mainstream or well known to gain protection as a religion. It must, though, be identifiable and have a clear structure and belief system.

Denominations or sects within religions may be considered a religion. Cults and new religious movements may also be considered religions or beliefs.

Belief means any religious or philosophical belief and includes a lack of belief.

'Religious belief' goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same religion.

A belief which is not a religious belief may be a philosophical belief, such as humanism or atheism.

A belief need not include faith or worship of a god or gods, but must affect how a person lives their life or perceives the world.

For a belief to be protected by the Equality Act:

- It must be genuinely held.
- It must be a belief and not an opinion or viewpoint based on information available at the moment.
- It must be a belief as to a weighty and substantial aspect of human life and behaviour.
- It must attain a certain level of cogency, seriousness, cohesion and importance.
- It must be worthy of respect in a democratic society.
- It must be compatible with human dignity and not conflict with the fundamental rights of others.

## Sex

A person's sex refers to the fact that they are male or female. In relation to a group of people, it refers to either men or women or to either boys or girls.

## Sexual orientation

Sexual orientation means the attraction a person feels towards one sex or another (or both), which determines who they form intimate relationships with or are attracted to.

- Some people are only attracted to those of the same sex (lesbian women and gay men).
- Some people are attracted to people of both sexes (bisexual people).
- Some people are only attracted to the opposite sex (heterosexual people).

Everyone is protected from being treated worse because of sexual orientation, whether they are bisexual, gay, lesbian or heterosexual.

Sexual orientation discrimination also covers discrimination connected with manifestations of that sexual orientation.

## Annex B: Responsible bodies for schools

Type of school	Responsible body
Independent schools in England, Wales and Scotland	The proprietor
Education authority schools in Scotland	The education authority
Non-maintained special schools in England and Wales	The proprietor
Grant-aided schools in Scotland	The managers
Maintained schools in England and Wales	The governing body or the local authority
Pupil Referral Units	The local authority
Academies (including alternative provision Academies that are not an independent educational institution)	The proprietor

## Annex C: Public sector equality duty

The public sector equality duty is a unique duty. It applies to public bodies, including education authorities and grant-aided schools, maintained schools, Academies and Pupil Referral Units, which have legal responsibilities to demonstrate that they are taking action on equality in policymaking, the delivery of services and public sector employment.

The duties require public bodies to take steps not just to eliminate unlawful discrimination and harassment, but also to actively promote equality.

The purpose of the public sector equality duty is not to focus on process or increase bureaucracy but rather to offer an outcome-based method of ensuring that schools are best meeting the needs of all their pupils.

The duty provides a framework to help schools tackle persistent and long-standing issues of disadvantage, such as underachievement of boys from certain ethnic groups, gender stereotyping in subject choice and bullying of disabled young people. They also provide a strategic and systematic means of tackling major entrenched disadvantage across the sector.

Schools were previously bound by three separate duties for race, disability and gender.

The Equality Act introduced a single public sector equality duty, which applies to all protected characteristics. It harmonised the existing three duties into one new duty that covers all eight equality strands: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Where schools are concerned, age is a relevant characteristic in considering their duties in their role as an employer but not in relation to pupils.

The single public sector equality duty requires public authorities to have 'due regard' to the need to:

- Eliminate discrimination, harassment and victimisation.
- Advance equality of opportunity.
- Foster good relations.

Having 'due regard' to the need to advance equality of opportunity is defined further in the Equality Act 2010 as having due regard to the need to:

- Remove or minimise disadvantages
- Take steps to meet different needs
- Encourage participation when it is disproportionately low.

For schools, having 'due regard' means, in particular:

- When making a decision or taking an action a school must assess whether it may have implications for people with particular protected characteristics.
- It should consider equality implications before and at the time that it develops policy and takes decisions; not as an afterthought, and it needs to keep them under review.
- The equality duty has to be integrated into the carrying out of a school's functions. The analysis necessary to comply with the duty should be carried out rigorously and with an open mind – it is not a question of just ticking boxes.
- Schools need to do this themselves and cannot delegate responsibility for carrying out the duty to anyone else.

In addition to the general public sector equality duty, maintained schools in England and Wales and proprietors of Academies have certain specific equality duties. These duties are different in England and Wales.

In England, maintained schools (and in the case of Pupil Referral Units, the local authority that set it up and maintains it) and Academies are required to publish information showing how they comply with the public sector equality duty and setting equality objectives. They need to update the published information at least annually and publish objectives at least once every four years. Further guidance for schools in and Academies in England on ensuring compliance with the public sector equality duty can be found in the Commission's guide: *Public sector equality duty guidance for schools in England*.

Maintained schools in Wales have more extensive specific duties relating to the following:

- Publication of equality objectives
- Engagement with appropriate persons
- Provision of relevant information
- Assessing and monitoring the impact of policies and practices



- Collecting employment information and addressing the cause of pay differences
- Training
- Pay differences and action plans
- Strategic Equality Plans
- Annual reports
- Disclosure of information
- Accessibility of information.

Guidance on these specific duties can be found at:

<http://www.equalityhumanrights.com/wales/publications/guidance-on-the-equality-duty-for-the-welsh-public-sector/>

In Scotland, education authorities and managers of grant-aided schools have the following specific duties:

- report on mainstreaming the equality duty
- publish equality outcomes and report progress
- assess and review policies and practices
- gather and use employee information
- publish gender pay gap information
- publish statements on equal pay
- consider award criteria and conditions in relation to public procurement
- publish in a manner that is accessible.

Guidance about the how the public sector equality duty impacts on these duties can be found at:

<http://www.equalityhumanrights.com/scotland/public-sector-equality-duty-in-scotland/> and <http://www.scotland.gov.uk/Topics/People/Equality/PublicEqualityDuties>

# Contacts

This publication and related equality and human rights resources are available from the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

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