

SPICe Briefing

Equality Act 2010

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This paper highlights the key changes implemented by the Equality Act 2010 and refers to specific provisions relevant to Scotland.

The Act brings together over 100 separate pieces of legislation which includes sex, disability and race discrimination, and regulations in employment covering religion and belief, sexual orientation, and age. The intention of the Act is to simplify, harmonise and strengthen previous protections across of range of equality groups.

The Act also introduces a broader public sector equality duty, replacing existing equality duties for race, gender and disability.

The UK Government has decided not to implement some of the provisions in the Act, namely the socio-economic duty, the provision relating to dual discrimination and gender pay information for the private sector.



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EXECUTIVE SUMMARY

The subject matter of the Equality Act 2010 is reserved, and for the most part applies to England, Scotland and Wales.

The Act brings together over 100 separate pieces of legislation including the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disability Discrimination Act 1995. The Act provides a range of protection for nine 'protected characteristics': age, religion and belief, race, disability, sex, sexual orientation, pregnancy and maternity, marriage and civil partnership, and gender reassignment. The intention of the Act is to simplify, harmonise and strengthen previous protections.

The Act provides protection for the protected characteristics across employment, education, and goods, services and public functions, against:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation

And in relation to disability:

- Discrimination arising from disability
- Duty to make reasonable adjustments

However, a number of exceptions apply across the protected characteristics, so it cannot be assumed that all prohibited conduct applies to all protected characteristics in all areas.

The majority of the Act came into force in October 2010. The Act:

- Prohibits direct discrimination where this happens because a person is associated with someone who has a protected characteristic (eg they care for a disabled person), or is perceived to have a protected characteristic (eg thought to be gay).
- Creates a new protection from discrimination arising from disability. This provision makes it unlawful to treat a disabled person unfavourably because of something connected with their disability, where the employer or service provider knows, or could reasonably be expected to know, that the person has a disability.
- Makes it unlawful for employers to ask job applicants questions about disability or health until that person has been offered the job or been included in a pool of successful candidates to be offered a job when a suitable position arises.
- Covers positive action in recruitment and promotion, which came into force in April 2011. This provision is entirely voluntary, but employers will be allowed to use positive action where there is enough evidence reasonably to think that people with a protected characteristic suffer some sort of disadvantage because of that characteristic, or are disproportionately under-represented.

- Contains provisions to protect those aged 18 and over from age discrimination, with regard to the provision of goods, services, facilities and public functions. These provisions, however, are not expected to come into force until April 2012.
- The Default Retirement Age of 65 is being phased out, and by September 2011 employers will only be able to have a compulsory retirement age for their workforce if they can objectively justify it.
- Makes it possible to remove the prohibition which prevents civil partnerships from being registered on religious premises in England and Wales. The Coalition Government is consulting on how to take this forward. It does not apply to Scotland as registration of civil partnerships is a devolved matter.

The Act also introduces a broader public sector equality duty, replacing existing equality duties for race, gender and disability. There is a **general** public sector equality duty in the Act itself and provision for further **specific** duties to be made through Regulations. The general duty came into force on 5 April 2011 and requires public authorities to consider the needs of protected groups, for example, when delivering services and in employment practices. Public authorities must have due regard to the need to:

- Eliminate discrimination, harassment and victimisation which are unlawful under the Act
- Advance equality of opportunity between different groups
- Foster good relations between different groups.

The general duty applies widely to public authorities and to any organisation carrying out public functions in relation to those functions.

The specific duties are legal requirements designed to help public authorities meet the general duty. It is up to the Scottish Government, Welsh Assembly Government and UK Government to set out duties for public authorities in Scotland, Wales and England (and GB bodies), respectively. The specific duties were meant to come into force in April 2011. However, the specific duty is currently only in force in Wales. The UK Government is re-considering its proposals for the specific duty. In Scotland, draft regulations were laid before the Scottish Parliament earlier this year but were not recommended for approval by the Equal Opportunities Committee and were subsequently withdrawn by Ministers.

The Act was based on the last UK Labour Government policy and received Royal Assent before the UK General Election 2010. Following the election there was some speculation as to whether the UK Coalition Government would implement the Act. However, most of the Act has now been implemented although the UK Government has decided not to implement some of its provisions, most notably the duty on public authorities to consider socio-economic inequalities. It has also been decided that provisions relating to dual discrimination and gender pay information for the private sector will not be implemented.

Some provisions in the Act apply to Scotland only and required a LCM in the Scottish Parliament. These provisions were mainly re-stating existing provisions. However, the following provisions are worthy of note:

The socio-economic duty.

Extending the jurisdiction of the Additional Support Needs Tribunal Scotland to hear disability discrimination cases, as in England and Wales. In force since April 2011.

The power to make regulations that will entitle a person to make alterations or additions to the common parts of a building to avoid substantial disadvantage for a disabled person. Regulations are due later this year.

THE EQUALITY ACT 2010

INTRODUCTION

The [Equality Act 2010](#) (the Act) forms part of the law in England, Wales and Scotland (with the exception of section 190 and Part 15).

The Act brings together over 100 separate pieces of legislation into a single Act to create a legal framework which protects the rights of individuals and advances equality of opportunity for all. Anti-discrimination and equalities law has developed over 40 years and has provided varying degrees of protection to what have been referred to as the six equality 'strands': age, religion/belief, race, disability, gender and sexual orientation. The new Act identifies these strands as 'protected characteristics' and extends protection to three other groups: gender reassignment; marriage and civil partnership, and pregnancy and maternity. These 'new' characteristics were either partially covered in previous anti-discrimination legislation, or not covered at all. Effectively, the law has been harmonised and strengthened to provide similar protections to the nine different characteristics.

This paper considers the main new provisions in the Act; the provisions which the UK Coalition Government has opted not to implement; the public sector equality duty which replaces the previous duties on race, gender and disability; and considers provisions specific to Scotland.

WHAT WAS THE PROCESS LEADING TO THE SINGLE EQUALITY ACT?

The previous UK Labour Government launched the Discrimination Law Review with the aim of addressing some long-held inconsistencies in the anti-discrimination legislative framework. A consultation paper entitled [A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain](#) was published in June 2007 (Communities and Local Government). The Bill was introduced in the House of Commons on 27 April 2009 and received Royal Assent on 8 April 2010.

Following the election of the new UK coalition Government on 11 May 2010, there was some speculation about the implementation of the Act. However, on 3 July 2010, the newly appointed Home Secretary and Minister for Women and Equalities, Theresa May, [announced](#) that implementation of the Act would go ahead on 1 October 2010 as planned:

"Implementing the Equality Act to the planned timetable makes clear our commitment to equality. A successful economy needs the full participation of all its citizens and we are committed to implementing the Act in the best way for business."

The majority of the Act came into force on 1 October 2010. Since that date the UK Government has opted not to implement some provisions, these are discussed later.

WHAT IS THE ACT?

The aim of the Act is to simplify, strengthen and harmonise the previous legislation to provide the UK with a new discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

The nine main pieces of legislation that have been consolidated are:

- the Equal Pay Act 1970
- the Sex Discrimination Act 1975
- the Race Relations Act 1976
- the Disability Discrimination Act 1995
- the Employment Equality (Religion or Belief) Regulations 2003
- the Employment Equality (Sexual Orientation) Regulations 2003
- the Employment Equality (Age) Regulations 2006
- the Equality Act 2006, Part 2, 3 and 4
- the Equality Act (Sexual Orientation) Regulations 2007

The Act brings together and re-states all the enactments listed above and a number of other related provisions. Most of these statutes have been repealed. The Equality Act 2006 will remain in force in so far as it relates to the constitution and operation of the Equality and Human Rights Commission.

The Act, broadly speaking, provides protection for people on the basis of certain characteristics (described in the section below) in the areas of employment, education, and in the provision of goods, services and public functions. There are six main types of protection under the Act which are described in general terms in the table below.

Direct discrimination (s.13)	This occurs where someone is treated less favourably than another person, because of a protected characteristic
Some exceptions	It is not discrimination to treat a disabled person more favourably than a person who is not disabled If the characteristic is age, different treatment may be justified if it is a proportionate means of meeting a legitimate aim
Indirect discrimination (s.19)	This occurs when a policy or practice applied has an effect which particularly disadvantages people with a protected characteristic, unless the policy or practice can be justified
Harassment (s.26)	This is unwanted conduct which has the effect of violating someone's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment Harassment also covers unwanted conduct of a sexual nature
Victimisation (s.27)	This occurs where someone is treated badly because they have taken action under the Act, or might be taking action, or are

	supporting someone who is taking action
Reasonable adjustments (s.20-22)	<p>This is a duty which requires employers, service providers and education providers to make reasonable adjustments to ensure disabled people do not face substantial disadvantage in comparison to someone who is not disabled.</p> <p>The duty has three requirements:</p> <p>To make changes to a provision, criterion or practice</p> <p>To make changes to physical features</p> <p>To provide auxiliary aids</p> <p>Failure to comply with this duty is unlawful discrimination.</p>
Discrimination arising from disability (s.15)	Makes it unlawful to treat a disabled person unfavourably because of something connected with their disability, where the employer/service provider knows, or could reasonably be expected to know that the person has a disability. Discrimination is unlawful, unless it can be justified.

PROTECTED CHARACTERISTICS

The Act protects people from discrimination on the basis of 9 'protected characteristics', these used to be called 'grounds' or 'strands' (Part 2, Chapter 1&2). Each of the protected characteristics was covered by previous equality legislation, in varying degrees. There has been some 'levelling up' of the range of protections to cover all protected characteristics, for example, ensuring that each group is protected from discrimination based on association or perception (see below).

Characteristic	Meaning
Age	Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds).
Disability	A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.
Race	Refers to the protected characteristic of Race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.
Religion or Belief	Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.
Sex	A man or a woman.

Sexual orientation	Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.
Gender reassignment	A transsexual person has the protected characteristic of gender reassignment, which is the process of transitioning from one gender to another. Cross-dressers who are not transsexual because they do not intend to live permanently in the gender opposite to their birth sex are not protected by the Act. However, cross-dressers will be protected from direct discrimination and harassment if this is experienced because someone thinks they are transsexual, even if that is not the case (UK Government Equalities Office Transgender FAQ).
Marriage and civil partnership	People who are married or in a civil partnership are protected from discrimination because they are in that relationship.
Pregnancy and maternity	Pregnancy is the condition of being pregnant. Maternity refers to the period of 26 weeks after the birth, which reflects the period of a woman's ordinary maternity leave entitlement in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Source: EHRC [‘Protected characteristics: definitions’](#)

KEY CHANGES

The Equality Act is a mixture of pre-existing rights and responsibilities that have changed, been extended, or been introduced for the first time. This section considers the key changes.

Public sector duty extension

Section 149 creates a single equality duty for the public sector which incorporates all the protected characteristics, although marriage and civil partnership is only partially covered. As before for race, gender and disability, there is a general equality duty which applies to all public authorities, as well as a specific duty for listed authorities (s. 153). The specific duties were due to come into force in April 2011, following consultation by each administration. However, the specific duty is only currently in force in Wales. This is discussed further on page 19.

Discrimination based on association or perception

The Equality Act prohibits direct discrimination where this happens because a person is associated with someone who has a protected characteristic (eg they care for a disabled person), or is perceived to have a protected characteristic (eg thought to be gay). The wording of the Act provides that less favourable treatment occurs ‘because of’ a protected characteristic (s.13 (1)), rather than purely on grounds of someone’s own age or sex, for example.

This definition of direct discrimination provides a more standardised approach by removing the requirement for an individual victim to have one of the protected characteristics of age, disability, gender reassignment and sex. It brings the protection for these groups into line with that of race, sexual orientation and religion or belief in the previous legislation.

This change in definition reflects the outcome of [Coleman v Attridge Law \[2008\] EUECJ C-303/06¹](#), where a legal secretary with a disabled young son requiring care, sought to claim that she was subjected to unfair treatment and harassment by her employers. Ms Coleman claimed that she was forced to resign from her job after being refused flexible working so that she could care for her child. Other employees were granted flexible working. Ms Coleman's case was that she was targeted because her child had a disability. The case relied on the application of European Law, the [Framework Employment Equality Directive 2000/78](#), which covers associative direct discrimination and harassment. The European Court of Justice ruled that the Directive protects not just disabled people but those associated with disabled people (i.e. carers). This protection was not contained in the Disability Discrimination Act 1995.

Examples of associative or perceived discrimination are given in the Explanatory Notes to the Act:

- If a Muslim shopkeeper refuses to serve a Muslim woman because she is married to a Christian, this would be direct religious or belief-related discrimination on the basis of her association with her husband.
- If an employer rejects a job application form from a white man who he wrongly thinks is black, because the applicant has an African-sounding name, this would constitute direct race discrimination based on the employer's mistaken perception.

Less favourable treatment

To decide whether a service provider or employer has treated a service user/employee less favourably, a comparison must be made with how other service users/employees have been treated or would have been treated in similar circumstances. If the service user/employee has been put at a clear disadvantage compared with others, then it is more likely that the treatment will be less favourable. Less favourable treatment could also involve being deprived of a choice or excluded from an opportunity.

For direct discrimination because of pregnancy and maternity, the test is whether the treatment is **unfavourable** rather than less favourable. There is therefore no need for the woman to compare her treatment with that experienced by other employees or service users.

(EHRC 2010a and 2010b)

Discrimination arising from disability

The Disability Discrimination Act 1995 provided protection from disability-related discrimination but, following the judgment of the House of Lords in the case of [London Borough of Lewisham v Malcolm \[2008\] UKHL 43²](#), those provisions no longer provided the degree of protection from disability-related discrimination that was originally intended. The effect of the judgement meant that disabled people were not protected when they were treated unfavourably because of something arising in consequence of their disability. For example:

¹ For further information on this case see EHRC website, available at: <http://www.equalityhumanrights.com/legal-and-policy/legal-updates/recent-developments-in-disability-discrimination-cases/the-coleman-case/>

² For further information on this case see EHRC website, available at: <http://www.equalityhumanrights.com/legal-and-policy/legal-updates/recent-developments-in-disability-discrimination-cases/the-malcolm-case/>

- A pupil with Aspergers syndrome is taught separately from other pupils because he has been making noise in class. The pupil has been removed because of the noise he was making, which is a consequence of his disability.
- An employer dismisses an employee because she has had 3 months' sick leave. The employer is aware that the employee has MS and most of her sick leave is disability related (EHRC conference notes 19 January 2011 unpublished).

Therefore, the Act creates a new protection from discrimination arising from disability (s. 15). This provision makes it unlawful to treat a disabled person unfavourably because of something connected with their disability, where the employer/service provider knows, or could reasonably be expected to know, that the person has a disability. This type of discrimination is only justifiable if the employer/service provider can show that it is a proportionate means of achieving a legitimate aim, often referred to as the 'objective justification' test.

Objective justification test

An employer or service provider, for example, may be required to show that discrimination is a 'proportionate means of achieving a legitimate aim'. Legitimate aim is not defined in the Act, but it cannot solely be about reducing costs, although costs could be a factor. Being 'proportionate', again not defined in the Act, has been taken from EU Directives which have been clarified by CJEU decisions which view proportionate to be 'appropriate and necessary'. (EHRC 2010a)

Auxiliary aids in schools

Under the Disability Discrimination Act 1995, schools were exempt from providing auxiliary aids and services for pupils, such as sign language interpreters or information in formats such as Braille or audiotape. The Equality Act does not make this exemption. Schedule 13 of the Act requires schools to provide auxiliary aids and services to disabled pupils where it is reasonable to do so. However, this provision is not yet in force. The UK Government anticipates implementation of this provision in September 2011 to allow schools and local authorities time to plan for this new requirement (UK Government Equalities Office [Education FAQ](#)).

In addition to this requirement which will apply to Scotland, there are other relevant provisions in Scottish legislation.

The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) does not specifically require the provision of auxiliary aids in schools, although education authorities do have a duty to make adequate and efficient provision for the additional support required for each child or young person with additional support needs for whose school education they are responsible (s. 4). This duty does not require education authorities to do anything which would result in unreasonable public expenditure being incurred (s.4(b)).

The Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 requires education authorities and owners of independent schools to prepare a strategy to increase the physical accessibility of the school environment and the accessibility of the curriculum for disabled pupils. The strategy must also provide for the improvement of communication with disabled pupils, and must have regard to the need to allocate adequate resources. Regulations³ require responsible bodies to make accessibility strategies available in

³ The Education (Disability Strategies) (Scotland) Regulations. SSI 2002/391.

different formats, on request, for example, video tape, sign language or lip speaking, Braille and large print.

Questions about disability and health in the recruitment process

The Act makes it unlawful for employers to ask job applicants questions about disability or health until that person has been offered the job or been included in a pool of successful candidates to be offered a job when a suitable position arises (s. 60). The following exceptions apply:

- Where reasonable adjustments are required for the person to attend the selection process
- Considering whether an applicant would be able to carry out an essential function of the job, with reasonable adjustments in place if required
- Monitoring diversity in the range of people applying for the job
- Taking positive action to support disabled people
- Identifying candidates for a job where there is an occupational requirement for the person to be disabled.

The aim of this provision is to ensure that employers do not make enquiries which can deter disabled people from applying for certain jobs. [Guidance](#) for employers and job applicants is now available.

Positive actions

Positive action provisions existed in previous legislation, but these applied to different protected characteristics in different ways and there has been confusion about what is allowed under discrimination law. Positive action differs from positive discrimination:

‘Positive action means offering targeted assistance to people, so that they can take full and equal advantage of particular opportunities. Positive discrimination means explicitly treating people more favourably on the grounds of race, sex, religion or belief, etc. by, for example, appointing someone to a job just because they are male or just because they are female, irrespective of merit. Positive discrimination is prohibited under British and European law.’ ([Communities and Local Government 2007](#)).

Section 158 (in force since 1 October 2010) provides that the Act does not prohibit the use of positive action measures (ie, it is voluntary) to:

- minimise disadvantage experienced by people who share a protected characteristic
- reduce their under-representation in relation to particular activities, and
- meet their particular needs.

It will, for example, allow measures to be targeted to particular groups, including training to enable them to gain employment, or health services to address their needs. Any such measures must be a proportionate way of achieving the relevant aim, ie, achieving the aim of overcoming a disadvantage suffered by persons who share a particular protected characteristic. An example would be, employers being able to offer shadowing, mentoring or training opportunities to people from ethnic minorities to help them compete more fairly for jobs (UK Government Equalities Office 2008a).

This section also contains a power to make regulations setting out any actions which are not permitted to provide greater legal certainty (s. 158 (3)).

Section 159 of the Act covers positive action in recruitment and promotion. This section came into force in April 2011. Again, this provision is entirely voluntary, but employers will be allowed to use positive action where there is enough evidence to make it reasonable to think that people with a protected characteristic suffer some sort of disadvantage because of that characteristic or are disproportionately under-represented. When either of these conditions apply, an employer who is choosing between candidates of equal merit, can choose the person with the targeted protected characteristic. For example, a nursery with only female staff could employ a male candidate ahead of a female candidate of equal merit in order to create a more representative workforce (UK Government Equalities Office 2010b). However, an employer cannot have a policy in relation to such positive action.

Guidance on positive action in [recruitment and promotion](#), and in [appointments](#), has been made available.

Political parties

The Act also contains voluntary positive action measures for political parties. Political parties are able to take action in their selection arrangements in order to address under-representation in elected bodies. Where the number of elected candidates from a protected group representing a political party is disproportionately low, the Act allows that party to reserve places on its electoral shortlist for those with that protected characteristic, for example race, disability etc, where this would be proportionate. Other changes to selection arrangements can include:

- Encouraging prospective candidates with a particular protected characteristic to come forward, for example, by holding an event just for them or writing just to members who share the under-represented protected characteristic
- Increasing candidates' prospects of being selected, for example, by giving public speaking training only to people with the under-represented protected characteristic
- Identifying suitable candidates, for example, by reducing the time people with the under-represented protected characteristic have to have been party members to be allowed to stand for election ([EHRC website](#))

These arrangements can include women-only shortlists for elections, but not shortlists restricted to other protected groups (S.104 (6&7)). The reference to shortlists is for the protected characteristic of sex, so could in theory apply to men-only shortlists if men were under-represented. The Act allows women-only shortlists until 31 December 2030, which under the Sex Discrimination Act was due to expire in 2015 (S. 105), and replicates the previous legislation by including a power to extend the expiry date.

Gender reassignment definition

Section 7 of the Act replaces similar provisions in the Sex Discrimination Act 1975 but changes the definition by no longer requiring a person to be under medical supervision to come within it.

The previous UK Government had not intended to change the definition of gender reassignment but, following consultation, undertook to remove the requirement 'to be under medical supervision'. It had originally been argued that 'medical supervision' could be as minimal as counselling, ensuring that transsexual people who are unable to, or had elected not to undergo surgical or hormone treatment as part of the process of gender reassignment are protected under the law ([Communities and Local Government 2007](#)), and further that the definition 'is intended to apply to people who make a commitment over a period of time to live permanently in their non-birth gender, with or without requiring surgical intervention'(UK Government Equalities

Office 2008b). However, it was argued that the definition should be expanded to include people who are not under any medical supervision, as there is a widespread misunderstanding that 'medical supervision' means surgical intervention (UK Government Equalities Office 2008b).

Private members' clubs

Part 7 covers associations and private members' clubs, and applies to all the protected characteristics except marriage or civil partnership. Section 101 makes it unlawful for a private members' club to refuse membership to a potential member, or grant it on less favourable terms because of a protected characteristic. It does not stop clubs from restricting their membership to people who share a protected characteristic, such as a women only club (Schedule 16). Previous legislation gave protection to the characteristics of race, disability and sexual orientation, which the Equality Act now extends to the characteristics of gender, age, religion or belief, pregnancy and maternity, and gender reassignment. For example, it would be unlawful for a private members' golf club which has members of both sexes to only allow women to play on certain days while men can play at all times.

Section 102 makes it unlawful to refuse to invite a person as a guest to a members' club because of a particular characteristic, or to apply certain conditions to that person which would not apply to other potential guests. Previously, legislation had only provided this protection to the characteristic of disability, but this is now extended to all protected characteristics, except marriage and civil partnership (Explanatory notes to the Act).

The intention behind these provisions is to standardise protection for different protected groups and ensure fairness (UK Government Equalities Office 2008b).

Pregnancy and maternity

Section 17 covers discrimination because of a woman's pregnancy or maternity in specified situations outside work. It covers services and public functions, premises, education and associations, extending previous coverage under the Sex Discrimination Act 1975 which covered goods, facilities, services and premises.

Section 17(4) provides specific protection for breastfeeding mothers for 26 weeks after giving birth from being treated unfavourably. Once the baby is older than 26 weeks, protection for breastfeeding in public is provided on grounds of sex discrimination under section 13 (6) (a). In Scotland, the Breastfeeding etc. (Scotland) Act 2005 made it an offence to stop or prevent a child under the age of two being fed milk in a public place or licensed premises, where the child is otherwise lawfully permitted to be. The Scottish law applies to breastfeeding and bottle-feeding.

Protection under s. 17 also extends to school pupils being discriminated against because they are pregnant or new mothers. For example, a school must not prevent a pupil taking an exam because she is pregnant (Explanatory notes to the Act 2010).

Age protection outside the workplace

Part 3 of the Act contains provisions to protect age discrimination for those aged 18 and over, with regard to the provision of services (includes goods and facilities) and public functions. These provisions, however, are not expected to come into force until April 2012⁴ (UK

⁴ Section 2(3) (a) of The Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010/2317.

Government Equalities Office 2010c). The previous UK Government spent some time considering the extension of age discrimination outside the workplace, as employment was already covered by the Employment Equality (Age Regulations) 2006/1031⁵.

The provision of services includes services provided by, for example, local authorities, government departments, hospitals, voluntary organisations, hotels, banks, railway stations, airports, leisure centres and shops. Examples of public functions might be where a public authority has a statutory duty to perform such a function, for instance, law enforcement or the collection of taxes. Private and voluntary organisations also carry out public functions, such as managing a prison or responsibilities for child protection (EHRC 2011).

The previous UK Government set out its intention regarding age discrimination in its original proposals for a Single Equality Bill (Communities and Local Government 2007). The general principle underpinning any legislation would be that a difference in treatment based on age should not be permitted unless it can be justified. For example, free bus passes for over-60s or group holidays for particular age groups.

It was decided that children should not be covered by age discrimination legislation given that a child's age is closely related to their development and needs, and it is important for children's services to be tailored in an age appropriate way. However, children still have other protections under the Act. For example, if they are carers they will be protected from discrimination through association with a disabled person, they will also have protections in terms of discrimination because of disability, race, religion or belief, sex and sexual orientation (UK Government Equalities Office 2009a).

A [consultation](#) on ending age discrimination outside the workplace has been launched by the UK Government's Equalities Office; it closes on 25 May 2011.

Default Retirement Age

The Employment Equality (Age) Regulations 2006 made compulsory retirement ages below 65 unlawful unless they could be objectively justified, i.e., where the employer can prove that retirement is a proportionate way of achieving a legitimate aim. However, the Regulations also made it lawful for employers to discriminate against employees on the grounds of their age when it came to retirement, thereby creating a 'default retirement age' of 65 (DRA). Before the Age Regulations, an employee over 65 was not protected by the right to claim unfair dismissal or statutory redundancy, and could therefore be summarily dismissed (Dept for Business Innovation and Skills 2010). Use of the DRA is not compulsory; employers can retain employees as long as they wish. The Age Regulations also introduced the right for employees to have 6 months notice of retirement, and a right to request working beyond 65, which employers have a duty to consider.

The original intention with the Age Regulations was to manage demographic change specifically, people living longer, and to allow people to manage their retirement without the barrier of previous assumptions based on age and retirement (HM Government 2005). However, it created a DRA of 65 which was challenged by Age Concern and Help the Aged ([Age UK](#)) who sought a judicial review of the Regulations, arguing that the Regulations had improperly implemented the EU's 2000 Equal Treatment Directive by including a national DRA and that people over the age of 65 do not have the right to choose to continue working. It was ruled that the DRA was lawful when it was introduced, and therefore the law would stay, but the

⁵ See for example: [A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain](#) (2007), [Equality Bill: Making it work Ending age discrimination in services and public functions: A consultation](#) (2009a), and [Making it work: Ending age discrimination in services and public functions: Policy statement](#) (2010).

Judge recognised the ‘compelling’ case for setting the retirement age higher than 65. The ruling also took account of the Government’s intention to review the DRA (*Age UK v Secretary of State for Business Innovation and Skills* 2009).

The previous UK Government had intended to conduct a review of the DRA in 2010 (HM Government 2005, 2009 and HM Treasury 2010), and this has now been taken forward by the Coalition Government which [announced](#) it is to phase out the DRA by September 2011, following a consultation (Department for Business Innovation and Skills 2011). Details have been set out in the [Employment Equality \(Repeal of Retirement Age Provisions\) Regulations 2011/1069](#) which came into force on 6 April 2011. This will mean employers will only be able to have a compulsory retirement age for their workforce if they can objectively justify it, which means they will have to show that the discrimination is proportionate and that it contributes to a legitimate aim. Schedule 9 of the Equality Act has been amended as a result of these regulations.

The CBI had previously called for the removal of the DRA to be delayed by a year, suggesting that firms faced uncertainty and a risk of unfair dismissal claims until there was more legal clarity over the plans (BBC news online 2010a, and the Herald 2010). Following the UK Government’s announcement to go ahead with the removal, the CBI is concerned that it will leave businesses with a number of difficult practical issues, stating that:

‘Employers accept that more people will want to work beyond 65 as the population ages, but the Government has not recognised the fundamental question, which is how should employers manage retirement on the basis of a performance appraisal. This will be particularly acute in physically-demanding sectors’ (CBI 2011).

Age campaigners welcome the move to remove the DRA as it allows older employees to choose whether they want to continue working past the age of 65 (*Age UK* 2011).

ACAS has produced [guidance](#) for employers on working without the DRA.

Pension Age

Retirement age and pension age are not the same. Retirement age is the age at which someone can be required to leave work. The state pension age is the age at which someone can draw an unreduced pension. The coalition Government announced that the state pension age is to be equalised at 66 for men and women by 2020. This brings forward the plans of the previous Government by six years (BBC news online 2010b).

Power to remove prohibition preventing civil partnerships being registered on religious premises

Section 202 makes it possible to remove the express prohibition which prevents civil partnerships from being registered on religious premises in England and Wales. It does not apply to Scotland as the registration of civil partnerships is a devolved matter. In order for this to come into force the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 would need to be amended. The UK Government indicated it would take this forward (HM Government 2010) and has published a [consultation](#) (2011b) seeking views on proposals to implement Section 202 (closes 23 June 2011).

This provision was added to the Equality Act during its passage through the House of Lords ([Report Stage 2 March 2010](#)). It was tabled by Lord Alli who argued that many gay and lesbian couples want to share their civil partnerships with the congregations with whom they worship, and a number of religious organisations want them to be able to do that. He was clear that this

would not place obligations on religious organisations to host civil partnerships on their premises:

‘The amendment does not, I repeat, does not, place an obligation on any religious organisations to host civil partnerships in their buildings. We have made that clear by including in the amendment the words:

"For the avoidance of doubt, nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so".’ (HL Deb 2010)

Following a free vote, the amendment was passed by 95-21.

Scotland

As mentioned above, the registration of civil partnerships is a devolved matter and any decision on this issue in Scotland would be a matter for the Scottish Government. In answer to PQs ([S3W-32747](#) and [S3W-32748](#)) from George Foulkes MSP, the Cabinet Secretary for Justice Kenny MacAskill stated that there had been no formal discussion with faith leaders regarding civil partnership ceremonies in religious premises, and that there were no plans to legislate for this in Scotland (Scottish Parliament 2010a).

In 2009 there were two petitions in the Scottish Parliament regarding same sex marriage. One petition called for same sex couples to be allowed to register a civil marriage and a religious marriage if the relevant religious body consents ([PE1239](#)). The second petition, on behalf of the Equal Marriage campaign, called for legislation allowing same sex marriage and mixed sex civil partnership ([PE1269](#)). Although PE1269 was closed by the Petitions Committee in March 2010, the issues were considered along with PE1239. However, the Petitions Committee closed PE1239 on 25 January 2011, stating:

“The Committee agreed to close the petition under Rule 15.7 of Standing Orders on the grounds that the Scottish Government has repeated on six successive occasions that it has no plans to change the law in this area and that it is not a priority. In addition, in response to specific points raised by the Committee, the Scottish Government has responded that it does not consider it necessary to conduct research to ascertain how the constitutional difficulties attached to same sex marriage can be resolved and that it does not consider it helpful to establish an advisory committee at this point in time.”

PROVISIONS THE UK GOVERNMENT HAS DECIDED NOT TO TAKE FORWARD

Public Sector Socio-Economic Duty

Part I of the Act introduced a new duty on some public authorities to have due regard to the reduction of socio-economic disadvantage. The intention was to require specified public authorities, when making strategic decisions, to consider how their decisions might help reduce the inequalities associated with socio-economic disadvantage. The Explanatory Notes to the Bill, as introduced in the House of Commons on 24 April 2009, stated:

‘Such inequalities could include inequalities in education, health, housing, crime rates, or other matters associated with socio-economic disadvantage. It will be for public authorities subject to the duty to determine which socio-economic inequalities they are in a position to influence.’

When introduced, the duty applied only to England and Wales, so the Equal Opportunities Committee recommended that the Scottish Government consult on the duty extending to Scotland. A [consultation exercise](#) on the duty was subsequently undertaken by the Scottish Government (2009a) along with discussions with key stakeholders such as the Equality and Human Rights Commission. The consultation closed on the 28 October 2009 and received [69 responses](#). The majority of respondents, including the EHRC, believed that the socio-economic duty should be applied to Scotland. Views were mixed in public bodies, and while more public bodies overall were in favour than not, most local authorities and partnerships did not share this view (Scottish Government 2009a).

The Scottish Government took the view that placing socio-economic issues on a statutory footing would add weight to existing mechanisms such as Single Outcome Agreements. The duty would apply to specified public authorities in Scotland and would complement and reinforce the existing work that is being undertaken to tackle inequality. The duty is high level and non-prescriptive in nature. The implementation of the duty would be supported by a provision which allows Scottish Ministers to take powers to issue guidance which would be drafted to ensure that it supports and enhances the arrangements already established through the Concordat and Single Outcome Arrangements. Socio-economic status will not become a protected characteristic as a result of this Act (Scottish Government 2009b).

Addressing the Equal Opportunities Committee on 5 October 2010, Alex Neil, the Minister for Housing and Communities, indicated that there was uncertainty over the enactment of the socio-economic duty and that the new coalition Government may not activate the duty. Responding to the question of what the Scottish Government would do if the UK Government opted to repeal the duty, the Minister stated:

‘We have the legal option of implementing the duty in Scotland. We are able to do that under the 2010 act, in my view. There are potential problems with that, however, and I have asked for some contingency work to be done by our legal people to explore what the challenges would be if we decided to implement the statutory socio-economic duty but the UK Government was not going to do so in the rest of the United Kingdom’. (Scottish Parliament Equal Opportunities Committee 2010a).

On 17 November 2010, Theresa May Home Secretary and Minister for Women [announced](#) that the socio-economic duty will be scrapped (UK Government Equalities Office 2010d).

The UK Government Equalities Office website states that the Home Secretary has written to her counterparts in the devolved administrations with respect to whether Wales and Scotland will be implementing this duty ([UK Government Equalities Office FAQ on Socio-economic duty](#)). Following a PQ ([S3W-37919](#)), Alex Neil stated:

‘I wrote to the UK Minister for Women and Equalities on 2 December 2010 expressing disappointment that the UK Government propose to not commence the socio-economic duty. I urged the UK Government to commence Part 1 of the Equality Act 2010, and to consult fully with the Scottish Government before a final decision is taken’. (Scottish Parliament 2010b)

To date, the Scottish Government has not received any correspondence from the UK Government in relation to the socio-economic duty.

Gender pay gap information in the private sector

Section 78 of the Act created a power to make regulations which would require employers in the private sector to publish information relating to the pay of employees to show the differences in pay between men and women. The UK Coalition Government has considered this and decided

that employers will only be asked to publish equality data about their workforce on a voluntary basis, rather than making it compulsory. It is aimed at organisations with 250 staff or more (UK Government Equalities Office 2010a).

Under the specific public sector equality duty, there was an intention to require the public sector to publish information relating to pay. The public sector duties which were due to come into force in April 2011 are only in force in Wales. In Scotland the Regulations were not recommended for approval by the Equal Opportunities Committee and were subsequently withdrawn, and the UK Government has opted to consult further on the Regulations for English and GB public bodies (see page 19 for further discussion on the specific public sector equality duty). Below are the current or most recently proposed requirements for public bodies across Britain.

- Scotland – it was proposed that listed public authorities with 150 or more staff, publish information on the gender pay gap ‘which for the purposes of this provision means the percentage difference between men’s average hourly pay (excluding overtime) and women’s average hourly pay (excluding overtime)’⁶. Regulations will need to be re-introduced on the specific public sector equality duty.
- Under the Gender Equality Duty⁷, public authorities in Scotland (did not apply to England and Wales) with 150 staff or more were required to publish an equal pay statement, setting out the authority’s policy on equal pay between men and women, and review the policy every three years. There was no requirement to publish actual details of the pay differences between men and women.
- England – The [current proposal](#) is to require all listed public authorities to ‘...publish information to demonstrate its compliance with section 149(1)’ (UK Government Equalities 2011d). The previous draft regulations, which have been withdrawn by the UK Government, would have required listed public authorities to ‘...publish sufficient information to demonstrate its compliance with section 149(1) (Regulation 2(1))’⁸.
- Wales – for all listed public authorities to publish pay differences in relation to all protected characteristics. In the [draft regulations](#), the characteristics of sexual orientation and gender reassignment were exempt, but they are [now included](#). In addition, public bodies will be required to have an equality objective to address the causes of any pay differences, ie a gender pay difference, although it can be applied to other characteristics.

Dual discrimination

Section 14 provides protection from less favourable treatment resulting from a combination of two protected characteristics, i.e. multiple discrimination. It covers all the characteristics except pregnancy and maternity, and civil partnerships and marriage. A claimant must show that less favourable treatment was because of a combination of two relevant protected characteristics to bring a direct discrimination claim. Under all previous discrimination legislation, claims could only be made on the grounds of one characteristic, although it would be possible to bring separate claims on different protected grounds.

A consultation document published by the previous UK Government described the different types of multiple discrimination (2009c):

⁶ The Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011 (draft). Available at: <http://www.legislation.gov.uk/sdsi/2011/9780111012215/contents>

⁷ The Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007. SSI.2007/32. Available at: <http://www.legislation.gov.uk/ssi/2007/32/contents/made>

⁸ The Equality Act 2010 (Statutory Duties) Regulations 2011 (draft). Available at: [http://www.equalities.gov.uk/docs/110113%20-%20Equality%20Act%202010%20\(Statutory%20Duties\)%20-%20%20Regulations%202011.doc](http://www.equalities.gov.uk/docs/110113%20-%20Equality%20Act%202010%20(Statutory%20Duties)%20-%20%20Regulations%202011.doc)

- When someone is treated less favourably because of more than one protected characteristic, but each type of discrimination occurs on separate occasions. Existing law provides remedies for these circumstances.
- When someone is treated less favourably because of more than one protected characteristic, and although the two forms of discrimination happen at the same time, they are not related to each other. This is known as 'Additive' multiple discrimination, for example, a lesbian experiences both homophobia and sexist bullying from her employer during the same incident. Existing law provides remedies for these circumstances.
- 'Intersectional' multiple discrimination is when discrimination involves more than one protected characteristic and it is the unique combination of characteristics that results in discrimination, in such a way that they are completely inseparable. This often occurs as a result of stereotyped attitudes or prejudice relating to particular combinations of the protected characteristics.

It is 'intersectional' multiple discrimination which the Act makes provision for. Examples include:

- If a driving school considers a job is not appropriate for an older woman, because it thinks an older woman would not have the strength and agility to grab the steering wheel or brake quickly, but the school would have appointed an older man or a younger woman.
- A bus driver does not allow a Muslim man onto a bus, claiming that he could be a 'terrorist'. (UK Government Equalities Office 2009b)

However, the Coalition Government considered this provision and has decided not to bring forward regulations stating that it would be too costly for businesses. This was [announced](#) by the Chancellor, George Osborne, in his budget statement for 2011 (HM Treasury 2011a and 2011b). It is estimated that it would have cost businesses £3m a year (HM Treasury 2011c).

PUBLIC SECTOR EQUALITY DUTY

The Act replaces the previous equality duties relating to race, disability and gender to cover the protected characteristics (Part 2, Chapter 1). Section 149 (1) places a **general duty** on public authorities to:

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

The new general equality duty, which came into force on 5 April 2011, requires public authorities, and any organisation carrying out functions of a public nature, to consider the needs of protected groups, for example, when delivering services and in employment practices. However, it is important to note that the elimination of discrimination, harassment and victimisation applies to all the protected characteristics, but the duties on advancing equality and fostering good relations do not apply to the protected characteristic of marriage and civil partnership.

Section 153 of the Act gives Ministers in England, Wales and Scotland the power to impose specific duties through regulations. The specific duties are legal requirements designed to help public authorities meet the general duty. The original intention was for the specific duties to come into force in April 2011 and each administration held consultations on draft regulations (UK Government 2010c, Scottish Government 2010a, and Welsh Assembly Government 2010).

While there was broad agreement between the administrations on the intent and aims of the duty, there were differences in the detail for the specific duties.

For reasons explained below, the specific duties are currently only in force in Wales. It is now intended that the specific duties for England will come into force in July 2011, and sometime later in the year for Scotland.

The previous equality duties relating to race, gender and disability are no longer in force.

Scotland

The Scottish Government consulted on the draft Regulations (setting out the specific duties) and Order (listing the public authorities covered by the general duty for all of their functions) between 13 September and 26 November 2010. It laid the Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011 and the Equality Act 2010 (Specification of Public Authorities) (Scotland) (Order) 2011 on 31 January 2011.

An [analysis](#) of the consultation was published on 10 February 2011 (George Street Research 2011). 123 responses were received, with the majority of respondents agreeing with the proposals set out in the consultation. The authors concluded, 'Respondents submitted detailed responses which indicated broad support for the proposed Regulations and which reflect the interest in, and importance of, equality issues amongst organisations, authorities and individuals in Scotland'.

However, when the SSIs were due to be considered by the Equal Opportunities Committee (on 1 March 2011), it received [correspondence](#) from the Coalition for Racial Equality and Rights, and two individuals, expressing concerns about the quality of the Scottish Government's consultation as well as the content of the Regulations. The Committee decided to postpone the session in order to hear evidence based on these submissions, on 8 March 2011, as well as taking evidence from the Minister for Housing and Communities. On the 7 March, the Committee received further correspondence arguing against the regulations from UNISON, the Scottish Women's Budget Group and the STUC, and received evidence in support of the Regulations from the Equality and Human Rights Commission.

Regarding the consultation, it was felt that the questions asked, as well as the analysis of responses, process of consideration, and publication of the outcome, were flawed and did not give due consideration to some significant concerns raised by respondents (see in particular, correspondence from the [CRER](#), [UNISON](#), the [STUC](#) and one [individual](#)). Concerns about the content of the Regulations included:

- Equality outcomes – the regulations proposed that public bodies in Scotland publish equality outcomes to meet the general duty. However, the draft Welsh regulations proposed that public bodies provide a reason for not including an objective for any protected characteristic. It was felt that the Scottish regulations may create prioritisation or hierarchies of priority between people with different characteristics because outcomes are not required for each protected characteristic.
- Equality impact assessments – the regulations did not include a duty to publish impact assessments, as opposed to draft regulations in Wales. There were also concerns that there was no requirement to engage with protected groups when conducting impact assessments, and that the regulations only applied to new policies or policies being revised, excluding existing policies from the need to be impact assessed.
- Employment information – the regulations proposed that employers with at least 150 staff publish data on the percentage of staff by ethnicity, gender and disability. This regulation varied considerably between England and Wales, where the latter proposed information

on recruitment, training, grievance and disciplinary procedure for each protected characteristic (except gender reassignment or sexual orientation), and the former proposed information on the effects its policies have on their staff who share relevant protected characteristics.

The Minister did not accept the criticisms and said they were 'ill-founded'. With regard to the consultation process he said,

'There was a tight timeframe within which to consider and analyse the consultation responses and to finalise and lay the SSIs. If we had missed the parliamentary deadlines, we would not have been able to lay the SSIs until much later this year. However, I assure the committee that the consultation responses were fully considered' (Scottish Parliament Equal Opportunities Committee 2011).

In terms of the content of the regulations the Minister said 'we think that we have got this broadly right', and later went on to say that more prescriptive detail could be issued in guidance or further supplementary regulations.

After hearing evidence from the witnesses and from the Minister, the Committee voted not to support the Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011, but it did approve the Equality Act 2010 (Specification of Public Authorities) (Scotland) (Order) 2011. This means that Scottish public bodies only have to comply with the general duty, until the specific duties come into force.

The Scottish Government subsequently withdrew the draft regulations and the Minister sent a letter to the Committee on 10 March 2011 indicating that further consultation on the regulations would be undertaken after the elections in May 2011, with the intention of laying the regulations later in the year (Alex Neil 2011).

England

The UK Government consulted on draft regulations for English public bodies between 19 August and 10 November 2010. On 12 January 2011 it published a [summary of responses to the consultation, including the Government's response](#); specific duties [draft regulations](#); the draft order listing the bodies the public sector duty will apply to; and [guidance on the duty](#) from the Government Equalities Office (2011c and 2011d).

However, the UK Government made an announcement to Parliament on 17 March 2011 that it had published a policy review paper seeking views on new draft specific duties regulations. Since the original draft published in January, the UK Government has considered the regulations 'further in the light of the policy objective of ensuring that public bodies consider equality when carrying out their functions without imposing unnecessary burdens and bureaucracy, and thinks there is room to do more to strip out unnecessary process requirements' (UK Government Equalities Office [online](#)). Responses to the [review](#), which included the draft regulations, were sought by 21 April 2011 (UK Government Equalities Office 2011e).

[Revised guidance](#) has since been published to take account of the fact that there are no specific duties in force for GB public bodies (UK Government Equalities Office 2011f).

Wales

The Welsh Assembly Government consulted on draft regulations for Welsh public bodies between 21 September and 17 December 2010. The regulations were laid on 3 March 2011 and

[approved](#) by the Welsh Assembly on 29 March 2011. The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011, and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 came into force on 6 April 2011.

How will the public sector duties be enforced?

Enforcement of the general duty by individuals can only be achieved by bringing an action for judicial review in the High Court (England and Wales) or Court of Session in Scotland. Enforcement of the specific duties is only by the EHRC through judicial review or through compliance notices on public authorities. If an authority fails to respond to the compliance notice, the EHRC can apply to the Courts to force the authority to comply. The Act does not change the existing enforcement procedures.

There has now been a significant number of judicial review cases in England concerning public sector equality duties. Although not binding in Scotland, they are likely to be considered persuasive by Scottish courts. The EHRC has identified some general principles which the courts may apply when considering such cases, for example:

- the need to consider equality issues thoroughly in the context of the duties before any significant individual decisions are made, or any policy is introduced or significantly changed.
- equality impact assessments may provide important evidence as to whether the public authority has complied with its duties.
- a public authority should refer to Commission guidance and codes of practice explicitly and keep records of its decision making. If it departs from the code or guidance, there must be clear reasons to do so.
- if another organisation or person is carrying out a function under guidance by the public authority, the responsibility for ensuring that the general duties are met remains with the public authority.
- the duties apply not just to decision-making but also to implementation.

(EHRC [website](#))

SCOTTISH PROVISIONS IN THE ACT

The Bill contains provisions that triggered the Sewel Convention in relation to Scotland. The first Legislative Consent Motion (LCM) was submitted to the Scottish Parliament in [May 2009](#) which covered:

- the public sector duty to promote equality
- the hearing of disability discrimination school education cases by the Additional Support Needs Tribunals for Scotland
- the arrangements for educational endowments
- qualification authorities, and,
- transitional arrangements for single sex educational establishments to become co-educational.

That LCM was considered by the Subordinate Legislation Committee, which reported on 4 June 2009, and by the Equal Opportunities Committee, which reported on 12 June 2009.

New provisions added to the Bill required that the previous Motion be revised and a supplementary LCM was lodged on [16 December 2009](#). This extended coverage to include:

- The socio-economic duty
- Reasonable adjustments to common parts of buildings.

The LCM was agreed to by the Scottish Parliament on [28 January 2010](#) (Scottish Parliament 2010c).

This section summarises the Scottish provisions, except for the public sector equality duty and the socio-economic duty which are referred to earlier in the paper.

The hearing of disability discrimination school education cases by the Additional Support Needs Tribunal for Scotland (ASNTS)

Under the Disability Discrimination Act, cases in disability discrimination in school education in Scotland are heard by the Sheriff Court. Schedule 17 of the Equality Act gives Scottish Ministers powers to extend the jurisdiction of the ASNTS to hear disability discrimination cases, as in England and Wales. The intention is that all disability discrimination cases on the provision of education and associated services in all Scottish schools (ie, including private schools) as well as cases around admissions and exclusions will be heard by the ASNTS.

The policy behind this provision is based on the premise that the ASNTS 'aims to provide independent and expert decision making, in an impartial, efficient and effective manner, and seeks to be user-friendly through informal and flexible proceedings and to be accessible to all users' (Scottish Government 2010b).

The Scottish Government consulted key stakeholders in the summer of 2007. The general view was that disability discrimination cases should be transferred to the ASNTS. A further [consultation](#) was published in July 2010 on proposed secondary legislation, followed by the [analysis](#) in February 2011. There was broad support from respondents, and the secondary legislation was laid on 15 February 2011. The [Additional Support Needs Tribunals for Scotland \(Disability Claims Procedure\) Rules 2011/104](#) came into force in April 2011.

Educational Endowments

Benefactors of, or charities connected to, educational institutions often provide benefits to pupils in the form of scholarships, grants or endowments. If the school is single sex when the arrangement is set up – and some of these endowments date back to the 19th century – the endowment may restrict the benefits to members of one sex. If the school becomes co-educational, a modification is needed in order to enable the benefits to be offered to pupils of either sex.

This provision was previously contained in the Sex Discrimination Act 1975 and therefore the provision is retained in the Equality Act 2010.

General Qualification Bodies

This only applies to the Scottish Qualification Authority (SQA), as in Scotland it is the only body which awards qualifications in schools. General qualification bodies are defined in the Act as bodies that can confer a relevant qualification. In line with the Education (Scotland) Act 1996 the regulator and qualification body will be the SQA. In England, there are a number of different

awarding bodies operating in competition with each other, and a separate regulator. However, in Scotland, there is not a competitive market for general qualifications as there is in the rest of the UK.

These provisions aim to ensure non-discrimination, and, in particular, a right to reasonable adjustments in exams for disabled pupils, in access to qualifications.

Sections 96-97 give Scottish Ministers the power to prescribe the regulator in Scotland in relation to obligations under the Equality Act, and to prescribe relevant qualifications. The [Equality Act 2010 \(Qualifications Body Regulator and Relevant Qualifications\) \(Scotland\) Regulations 2010/315](#) have been in force since 1 October 2010.

Transitional arrangements for single sex educational establishments to become co-educational

Schedule 11, paragraphs 3 and 4, enable a school which is changing from a single-sex to a co-educational school to apply for a transitional exemption order to allow it to continue to restrict admittance to a single sex until the transition from single-sex is complete.

This provision gives Scottish Ministers the power to make a transitional exemption order when requested to do so by the responsible body for a single-sex education authority school or grant aided school. Independent schools in Scotland can apply to the Equality and Human Rights Commission for such an Order.

Reasonable adjustments to common parts of buildings

Under Section 52 of the Housing (Scotland) Act 2006, tenants have the 'right to ask for permission to adapt' a property to suit the needs of a disabled occupant. Landlords cannot unreasonably refuse applications to alter the house, including common parts, to suit the needs of a disabled tenant. However, this right does not extend to consents required from other joint owners of the common parts, and it does not cover disabled owner-occupiers who want to make changes to common parts.

Section 37 of the Equality Act 2010 gives Scottish Ministers the power to make regulations that will entitle a person to make alterations or additions to the common parts of a building where the person's only or main home is in that building, and the alterations or additions are likely to avoid substantial disadvantage in the use of the common parts for a disabled person. The powers provide for the regulations to require that owners of the common parts do not refuse consents unreasonably and where this happens, for the sheriff to be able to make an order authorising works.

Two concerns were raised by the Equal Opportunities Committee regarding this power when the LCM was considered (Scottish Parliament Equal Opportunities Committee 2010b). Firstly, the Committee questioned the reason for such provision in equality legislation, which is reserved, as opposed to housing legislation, which is devolved. Alex Neil, the Minister for Housing and Communities said:

'There is a gap in the law in Scotland. If adaptations to assist a disabled person are required to be made to, say, stairwells or closes that are under common ownership and a housing contract exists, those adaptations are covered by the housing legislation, which is the Scottish Parliament's responsibility. However, if no such contract exists, the issue comes under equalities legislation, which, unfortunately, is reserved' (col 1394).

The Committee pursued this issue with the Minister, who indicated that legal advice had been taken from lawyers, at the Scottish Government and at Westminster, who came to the same conclusion that this matter is reserved (Scottish Parliament Equal Opportunities Committee 2010c).

The second issue raised by the Committee concerns the potential difference in protection for disabled people in Scotland, compared to England and Wales. In England and Wales, the commonhold owner or freeholder has responsibility for common parts, but in Scotland owners have joint responsibility for common parts in the same building. In Scotland the onus would fall on the disabled person to secure the necessary consent from other owners, whereas in England and Wales the onus would fall on the commonhold owner or freeholder, referred to as the 'responsible person', to seek consent for reasonable adjustments.

The Minister said 'I am absolutely determined to ensure that the net effect of the arrangements is similar to that in England and Wales and that there is no disadvantage to the disabled person.' (Scottish Parliament Equal Opportunities Committee 2010b, col 1396). In further correspondence to the Committee the Minister said that the provisions in Scotland will be equivalent to those in England and Wales but need to take account of the different legal systems in operation. The Act also allows for the provisions to require that consent cannot be withheld unreasonably (Scottish Parliament Equal Opportunities Committee 2010c).

The Scottish Government consulted on proposed regulations (closed 1 April 2011) with the aim of bringing them into force after the elections in May 2011. The consultation set out a system whereby the disabled person is the 'responsible person' who must consult owners, get quotations from suppliers, organise the work and apply for grants, although they can enlist someone to act on their behalf. It is also proposed that the disabled person should be responsible for the cost of work to adapt common parts, and that there should be grants available to help meet the needs of disabled people (Scottish Government 2011b).

CODES OF PRACTICE FOR THE ACT

In line with their statutory powers, the EHRC has produced [Codes of Practice](#) on employment; services, public functions and associations; and equal pay. The purpose of the Codes of Practice is to explain the new statutory provisions of the Equality Act, particularly to those who have obligations under the Act and those who have rights under the Act. The codes are admissible in evidence in civil proceedings, and failure to comply with a code must be taken into account by a court or tribunal, where relevant. A Code of Practice for Schools (separate code for Scotland), and for Further and Higher Education will become available in the summer 2011. A draft code of practice in relation to the equality duty will shortly be consulted on.

A range of non-statutory [guidance](#) is also available to aid the implementation of the Act for employers, workers, service users and service providers.

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