APPENDIX 6

Relevant Provisions from Equality Act, 2010

Part 2 Equality: Key Concepts

Chapter 1 Protected Characteristics

Section 4: The Protected Characteristics

The following characteristics are protected characteristics—

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

Section 7: Gender Reassignment

1. A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.

2. A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

3. In relation to the protected characteristic of gender reassignment—
   a. a reference to a person who has a particular protected characteristic is a reference to a transsexual person;
   b. a reference to persons who share a protected characteristic is a reference to transsexual persons.

Section 8: Marriage and Civil Partnership

1. A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

2. In relation to the protected characteristic of marriage and civil partnership—
   a. a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner;
   b. a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.
Section 9: Race

1. Race includes—
   a. colour;
   b. nationality;
   c. ethnic or national origins.
2. In relation to the protected characteristic of race—
   a. a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
   b. a reference to persons who share a protected characteristic is a reference to persons of the same racial group.
3. A racial group is a group of persons defined by reference to race; and a reference to a person’s racial group is a reference to a racial group into which the person falls.
4. The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.
5. A Minister of the Crown may by order—
   a. amend this section so as to provide for caste to be an aspect of race;
   b. amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances.
6. The power under section 207(4)(b), in its application to subsection (5), includes power to amend this Act.

Section 10: Religion or Belief

1. Religion means any religion and a reference to religion includes a reference to a lack of religion.
2. Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
3. In relation to the protected characteristic of religion or belief—
   a. a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;
   b. a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

Section 11: Sex

In relation to the protected characteristic of sex—

a. a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;
   b. a reference to persons who share a protected characteristic is a reference to persons of the same sex.
Section 12: Sexual Orientation

1. Sexual orientation means a person’s sexual orientation towards—
   a. persons of the same sex,
   b. persons of the opposite sex, or
   c. persons of either sex.

2. In relation to the protected characteristic of sexual orientation—
   a. a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation;
   b. a reference to persons who share a protected characteristic is a reference to persons who are of the same sexual orientation.

Chapter 2: Prohibited Conduct

Discrimination

Section 13: Direct Discrimination

1. A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
2. If the protected characteristic is age, A does not discriminate against B if A can show A’s treatment of B to be a proportionate means of achieving a legitimate aim.
3. If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.
4. If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.
5. If the protected characteristic is race, less favourable treatment includes segregating B from others.
6. If the protected characteristic is sex—
   a. less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;
   b. in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.
7. Subsection (6)(a) does not apply for the purposes of Part 5 (work).
8. This section is subject to sections 17(6) and 18(7).

Section 14: Combined Discrimination: Dual Characteristics

1. A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.
2. The relevant protected characteristics are—
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a. age;
b. disability;
c. gender reassignment;
d. race
e. religion or belief;
f. sex;
g. sexual orientation.

3. For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A’s treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).

4. But B cannot establish a contravention of this Act by virtue of subsection (1) if, in reliance on another provision of this Act or any other enactment, A shows that A’s treatment of B is not direct discrimination because of either or both of the characteristics in the combination.

5. Subsection (1) does not apply to a combination of characteristics that includes disability in circumstances where, if a claim of direct discrimination because of disability were to be brought, it would come within section 116 (special educational needs).

6. A Minister of the Crown may by order amend this section so as to—
   a. make further provision about circumstances in which B can, or in which B cannot, establish a contravention of this Act by virtue of subsection (1);
   b. specify other circumstances in which subsection (1) does not apply.

7. The references to direct discrimination are to a contravention of this Act by virtue of section 13.

Section 19: Indirect Discrimination

1. A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

2. For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if—
   a. A applies, or would apply, it to persons with whom B does not share the characteristic,
   b. it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
   c. it puts, or would put, B at that disadvantage, and
   d. A cannot show it to be a proportionate means of achieving a legitimate aim.

3. The relevant protected characteristics are—
   ◦ age;
   ◦ disability;
   ◦ gender reassignment;
   ◦ marriage and civil partnership;
   ◦ race;
   ◦ religion or belief;
   ◦ sex;
   ◦ sexual orientation.
Adjustments for Disabled Persons

Section 20: Duty to Make Adjustments

1. Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

2. The duty comprises the following three requirements.

3. The first requirement is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

4. The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

5. The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

6. Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

7. A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A’s costs of complying with the duty.

8. A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

9. In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—
   a. removing the physical feature in question,
   b. altering it, or
   c. providing a reasonable means of avoiding it.

10. A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—
   a. a feature arising from the design or construction of a building,
   b. a feature of an approach to, exit from or access to a building,
   c. a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
   d. any other physical element or quality.

11. A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

12. A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

13. The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.
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Table 1.

<table>
<thead>
<tr>
<th>Part of this Act</th>
<th>Applicable Schedule</th>
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<tbody>
<tr>
<td>Part 3 (services and public functions)</td>
<td>Schedule 2</td>
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<tr>
<td>Part 4 (premises)</td>
<td>Schedule 4</td>
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<tr>
<td>Part 5 (work)</td>
<td>Schedule 8</td>
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<td>Part 6 (education)</td>
<td>Schedule 13</td>
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<td>Part 7 (associations)</td>
<td>Schedule 15</td>
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<tr>
<td>Each of the Parts mentioned above</td>
<td>Schedule 21</td>
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</tbody>
</table>

Section 21: Failure to Comply with Duty

1. A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
2. A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
3. A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Section 22: Regulations

1. Regulations may prescribe—
   a. matters to be taken into account in deciding whether it is reasonable for A to take a step for the purposes of a prescribed provision of an applicable Schedule;
   b. descriptions of persons to whom the first, second or third requirement does not apply.
2. Regulations may make provision as to—
   a. circumstances in which it is, or in which it is not, reasonable for a person of a prescribed description to have to take steps of a prescribed description;
   b. what is, or what is not, a provision, criterion or practice;
   c. things which are, or which are not, to be treated as physical features;
   d. things which are, or which are not, to be treated as alterations of physical features;
   e. things which are, or which are not, to be treated as auxiliary aids.
3. Provision made by virtue of this section may amend an applicable Schedule.

Discrimination: Supplementary

Section 23: Comparison by Reference to Circumstances

1. On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.
2. The circumstances relating to a case include a person’s abilities if—
a. on a comparison for the purposes of section 13, the protected characteristic is disability;
b. on a comparison for the purposes of section 14, one of the protected characteristics in the
combination is disability.
3. If the protected characteristic is sexual orientation, the fact that one person (whether or not the
person referred to as B) is a civil partner while another is married is not a material difference be-
tween the circumstances relating to each case.

Section 24: Irrelevance of Alleged Discriminator’s Characteristics

1. For the purpose of establishing a contravention of this Act by virtue of section 13(1), it does not
matter whether A has the protected characteristic.
2. For the purpose of establishing a contravention of this Act by virtue of section 14(1), it does not
matter—
   a. whether A has one of the protected characteristics in the combination;
b. whether A has both.

Section 25: References to Particular Strands of Discrimination

1. Age discrimination is—
   a. discrimination within section 13 because of age;
b. discrimination within section 19 where the relevant protected characteristic is age.
2. Disability discrimination is—
   a. discrimination within section 13 because of disability;
b. discrimination within section 15;
c. discrimination within section 19 where the relevant protected characteristic is disability;
d. discrimination within section 21.
3. Gender reassignment discrimination is—
   a. discrimination within section 13 because of gender reassignment;
b. discrimination within section 16;
c. discrimination within section 19 where the relevant protected characteristic is gender
   reassignment.
4. Marriage and civil partnership discrimination is—
   a. discrimination within section 13 because of marriage and civil partnership;
b. discrimination within section 19 where the relevant protected characteristic is marriage and
civil partnership.
5. Pregnancy and maternity discrimination is discrimination within section 17 or 18.
6. Race discrimination is—
   a. discrimination within section 13 because of race;
b. discrimination within section 19 where the relevant protected characteristic is race.
7. Religious or belief-related discrimination is—
   a. discrimination within section 13 because of religion or belief;
b. discrimination within section 19 where the relevant protected characteristic is religion or
   belief.
8. Sex discrimination is—
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a. discrimination within section 13 because of sex;
b. discrimination within section 19 where the relevant protected characteristic is sex.

9. Sexual orientation discrimination is—
a. discrimination within section 13 because of sexual orientation;
b. discrimination within section 19 where the relevant protected characteristic is sexual orientation.

Other Prohibited Conduct

Section 26: Harassment

1. A person (A) harasses another (B) if—
a. A engages in unwanted conduct related to a relevant protected characteristic, and
b. the conduct has the purpose or effect of—
   i. violating B’s dignity, or
   ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
2. A also harasses B if—
a. A engages in unwanted conduct of a sexual nature, and
b. the conduct has the purpose or effect referred to in subsection (1)(b).
3. A also harasses B if—
a. A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
b. the conduct has the purpose or effect referred to in subsection (1)(b), and
   c. because of B’s rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
4. In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
a. the perception of B;
b. the other circumstances of the case;
c. whether it is reasonable for the conduct to have that effect.
5. The relevant protected characteristics are—
   ◦ age;
   ◦ disability;
   ◦ gender reassignment;
   ◦ race;
   ◦ religion or belief;
   ◦ sex;
   ◦ sexual orientation.

Section 27: Victimisation

1. A person (A) victimises another person (B) if A subjects B to a detriment because—
a. B does a protected act, or
b. A believes that B has done, or may do, a protected act.
2. Each of the following is a protected act—
   a. bringing proceedings under this Act;
   b. giving evidence or information in connection with proceedings under this Act;
   c. doing any other thing for the purposes of or in connection with this Act;
   d. making an allegation (whether or not express) that A or another person has contravened this Act.
3. Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
4. This section applies only where the person subjected to a detriment is an individual.
5. The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.