

The Equality Act 2010 - 3 Minute Read

What is it and what does it mean for you?



The Equality Act brings together lots of different equality laws, many of which we have had for a long time. By doing this, the Act makes equality law simpler and easier to understand.

The Equality Act came into force in October 2010 and contains information relevant to schools that governing bodies, principals and headteachers might find useful to gain an understanding of the duties, policies and procedures inherent in the Act.

The Act will also ensure that the statutory duties towards children with special educational needs and/or disabilities (SEND) are effectively implemented.

The key points concerning the school provisions within the Act have been presented in this 3-Minute Read in a clear and accurate manner.

Benefits of non-discrimination

As schools should already be aware, avoiding discrimination and promoting equality supports the agenda of improving attainment and progression for all pupils.

Good education and skills are crucial for opening up opportunities and increasing the chance of a successful life.

In England, equality and diversity are a "limiting judgement" in Ofsted inspections. This means that **if equality measures are not implemented effectively this will restrict the overall inspection grade.**

Who is protected?

Part 6 (Education) of the Equality Act protects pupils from discrimination, harassment and victimisation, based on 'protected characteristics'.

The protected characteristics for the schools provisions are:

- Disability (with some exceptions).
- Gender reassignment.
- Pregnancy and maternity.
- Race.
- Religion or belief (with some exceptions).
- Sex (with some exceptions).
- Sexual orientation.

What is protected?

Under part 6 of the Equality Act, a school cannot discriminate, harass or victimise any pupil with a protected characteristic in the context of:

- Whether the pupil makes an application to the school.
- The arrangement that the school makes in deciding who is offered admission.
- The terms that it offers a pupil to be admitted to the school.
- Not admitting the pupil.
- The way that the school provides an education to the pupil.
- The way that the school provides access to a benefit, facility or service.
- Any other decision to the detriment of the pupil.

Exceptions

Under schedule 11 of the Equality Act, **provisions under section 85 (1) are exempted in the following cases:**

- In single sex schools, boarding schools and for schools turning co-educational, provisions relating to sex discrimination in the context of admissions do not apply.
- In faith schools, provisions relating to religious discrimination in the context of admission, the curriculum, and acts of worship, do not apply.
- Disability discrimination provisions do not apply to independent educational institutions or maintained schools not designated a grammar, that provide for selection of pupils with reference to high ability or aptitude. Neither do these provisions apply to maintained grammar schools seeking to maintain a fair representation of ability levels.

Who has legal obligations under the schools provisions?

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

LAs have obligations under the school provisions where they are the responsible body for the school. LAs also have obligations as service providers and bodies carrying out public functions

Schedule 17 places a duty on educational charities to comply with the schools provisions of this Act

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

The body that is responsible to ensure that "**all reasonable steps**" are taken to prevent discrimination, harassment or victimisation from taking place varies, dependant upon type of school:

- Maintained school – Governing body
- Pupil referral unit – LA
- Maintained nursery – LA
- Independent schools – Proprietor
- Non-maintained special schools - Proprietor

In some circumstances an employee or agent of the school may be personally liable for acts of discrimination, harassment or victimisation.

Public sector equality duty

Section 149 of the Equality Act, places an equality duty on the public sector, including schools, to undertake the following:

- **Eliminate discrimination**, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- **Advance equality** of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- **Foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.

Under schedule 18, section 149 does not apply, in relation to age, in the provision of education, benefits, facilities and services, to pupils in schools.

Accessibility plans

Schedule 10 of the Equality Act requires the responsible body of a school to prepare, publish, implement, review and revise, a **written accessibility plan** that will:

- Increase the extent to which persons with disabilities (PWDs) can participate in the school's curriculum.
- Improve the physical environment of the school to increase the extent in which PWDs can take advantage of the education, benefits, facilities and services, provided by the school.
- Improve the delivery of information to PWDs which is readily available to pupils who are not disabled in accessible formats i.e. braille.

Duty to make reasonable adjustments

Schedule 13 makes provision for schools to comply with section 20 of the Equality Act, which imposes a **duty to make reasonable adjustments** in the following cases:

- Where a provision, criterion or practice puts a PWD at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take reasonable steps to avoid the disadvantage.
- Where a physical feature puts a PWD at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take reasonable steps to avoid the disadvantage.
- Where a PWD 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 reasonable steps to provide the auxiliary aid.

Failure to comply with reasonable adjustment duty

Under section 21 of the Equality Act, the failure of a school to comply with the first, second or third requirement (see previous slide):

- Constitutes a failure to comply with a duty to make reasonable adjustments.
- Discriminates against a PWD.

Schedule 13 applies only for the purpose of establishing whether the responsible body 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.

Enforcement

The parents of pupils with disabilities have the right under schedule 17, to summon a school to a **Special Educational Needs Tribunal**, where the responsible body (see slide 6) has contravened chapter 1 of part 6 of the Equality Act, because of a person's disability.

The tribunal is empowered to take any action to reduce the adverse effects on a person in relation to the claim.

Both the claimant and the responsible body may appeal on a point of law to the Court of Session against a decision of a Tribunal relating to a claim under this schedule.

Failure to attend to give evidence to the tribunal or submit any relevant documents pertaining to the investigation, constitutes an offence, liable upon summary conviction, to a fine not exceeding £1000.

Positive action

Pupils with protected characteristics may be disadvantaged for social or economic reasons or for reasons to do with past or present discrimination.

The Act contains provisions which enable schools to take action to tackle the particular disadvantage, different needs or disproportionately low participation of a particular pupil group, provided certain conditions are met.

These conditions are known as the **positive action provisions** and enable (but do not require) schools to take proportionate action to address the disadvantage faced by particular groups of pupils.

It is **never unlawful** to treat pupils with disabilities (or applicants) more favourably than pupils without disabilities (or applicants). That is, a school is permitted to positively discriminate in favour of pupils with disabilities (applicants).

What's next?

If you wish to discover more about the Equality Act and its school provisions, you can access the Act in full [here](#).

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