DOES U.S. FEDERAL EMPLOYMENT LAW NOW COVER CASTE DISCRIMINATION BASED ON UNTOUCHABILITY?: IF ALL ELSE FAILS THERE IS THE POSSIBLE APPLICATION OF *BOSTOCK V. CLAYTON COUNTY*

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ABSTRACT

This article discusses the issue of whether a victim of caste discrimination based on untouchability can assert a claim of intentional employment

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discrimination under Title VII or Section 1981. This article contends that there are legitimate arguments that this form of discrimination is a form of religious discrimination under Title VII. The question of whether caste discrimination is a form of race or national origin discrimination under Title VII or Section 1981 depends upon how the courts apply these definitions to caste discrimination based on untouchability. There are legitimate arguments that this form of discrimination is recognized within the concept of race discrimination or national origin discrimination under Title VII or race discrimination under Section 1981. However, if courts reject these conclusions, the approach adopted by the Supreme Court in its June 2020 decision in Bostock v. Clayton County *would provide another potent legal argument for recognizing such discrimination.*

The Bostock *approach avoids the question of whether caste discrimination based on untouchability is a form of national origin or racial discrimination. This approach draws on the Supreme Court's recognition that the "but-for" causation standard applies under both Title VII and Section 1981. The but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause. And multiple but-for causes can exist. Applying this approach to intentional employment discrimination against gays, lesbians, or transgender individuals, the Supreme Court pointed out that such a person's sex is inextricably intertwined with their other status. The Court concluded that discrimination against a person because they are gay, lesbian, or transgender means that you are discriminating against such a person based on that status, which is not protected, and their sex, which is. Thus, under the Bostock approach, because all of those who are victims of caste discrimination based on untouchability are from Asia, their caste is inextricably intertwined with their race. As a result, when Dalits are victims of intentional discrimination based on untouchability, the discriminator is motivated to discriminate against them because of their caste, which is not a protected trait, and their race, which is. Thus, intentional caste discrimination inevitably also involves race discrimination under both Title VII and Section 1981.*

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I.
INTRODUCTION

Untouchability stems from the over 3,000-year-old caste system of the Indian subcontinent, a hierarchical system that stratifies individuals into groups based on birth.[1] For simplification, the "caste system" consists of four distinct hierarchically ranked 'varnas' or major occupational groupings (we will refer to all of those in these groups, collectively, as "Caste Hindus"). Dalits constitute a sort of fifth caste outside the four-fold system. Dalits were also known as "outcastes" or "untouchables" to illustrate that they, religiously, fell outside the four-fold Hindu caste system.[2] These five broad caste groups can be broken down into thousands of hierarchically ranked subcastes or "jatis"—the indigenous Indian word.[3] In traditional Hindu society, occupations were allocated among different social groups according to Hindu law and custom that reflected the "classic expression of inequality, viz., caste."[4] Thus, to a certain extent, employment discrimination based on caste is a way of life. Caste also ensured that there was little concern in Indian society for the rights of individuals. The functioning of the caste system excluded whole segments of society from positions of respect and responsibility without consideration of individual talents, abilities, or interests.[5] Every individual's social position in Indian society was (and to a large extent, particularly in rural India where three-fourths of Dalits reside,[6] still is) defined by the jati into which he or she is born.

Historically, Dalits were forced into the occupations regarded as ritually "impure", such as leather workers, manual scavenging (manually clearing human feces from public and private latrines using hand-held implements, without mechanization or protective equipment), disposing of dead animal carcasses and

1. *See infra* notes 84–85. For a detailed discussion of the caste system, see LOUIS DUMONT, HOMO HIERARCHICUS: THE CASTE SYSTEM AND ITS IMPLICATIONS (1972).

2. *See infra* note 84.

3. Varna is a Hindu concept whereas jati is a cross-religious cultural phenomenon. Thus, not all jatis are subsumed into one of the four varnas.

4. M. N. SRINIVAS, CASTE IN MODERN INDIA 88 (1962).

5. *See generally* DUMONT, *supra* note 1.

6. *India: Official Dalit Population Exceeds 200 Million*, INT'L DALIT SOLIDARITY NETWORK (May 29, 2013), https://idsn.org/india-official-dalit-population-exceeds-200-million/ [https://perma.cc/NHR4-S97W].

temple prostitution (devadasi).[7] Hindus believe that engaging in these activities is religiously polluting to the individuals who perform them and that this spiritual pollution is contagious.[8] Since this spiritual pollution stemmed from birth, even today Dalits cannot escape it by deed, attainment of highly valued educational credentials, or rise in social or economic standing.[9] Because of this religious pollution, Caste Hindus took elaborate precautions to prevent even incidental contact between themselves and Dalits.[10] Like the concept of social distancing that has developed in response to Covid-19 and its variants, when it came to avoiding contact with Dalits, Caste Hindus engaged in extreme social distancing. They commonly banned and segregated Dalits from full participation in Hindu social life and required them to maintain a discrete distance.[11]

Caste discrimination based on untouchability in the employment context has generally been a hidden form of discrimination in the U.S., until recently. Even though the caste system has existed for thousands of years, caste discrimination based on untouchability was rarely recognized as an issue on American soil due to the historically low numbers of South Asians in the U.S., of which only the tiniest fraction were Dalits. As late as 1960, there were less than 13,000 people of Indian origin in the country.[12] Over the past thirty years, however, the number of South Asian immigrants in the U.S. has skyrocketed. According to the Census Bureau, there were more than 5.4 million people of South Asian descent in the U.S. in 2018.[13] But, a 2003 University of Pennsylvania study revealed that only 1.5% of Indian immigrants in the U.S. were Dalits or members of the lower

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7. SMITA NARULA, BROKEN PEOPLE: CASTE VIOLENCE AGAINST INDIA'S "UNTOUCHABLES" 141 (1999).

8. N. K. BOSE, THE STRUCTURE OF HINDU SOCIETY 28 (1975).

9. As a Dalit surgeon emphatically put it:

> It is India's most shameful paradox—this country has made almost unimaginable progress in nearly every sphere of human life, but the one thing unchanged is the condition of its dalits and backward communities. I am a microsurgeon specialising in hand and spinal reconstruction, and am [a Member of the Legislative Assembly] from Bihar, but I still remain very much a dalit—a dhobi ("washerman"), to be precise, open to routine humiliation from the upper castes.

Smita Narula, *Equal by Law, Unequal by Caste: The "Untouchable" Condition in Critical Race Perspective*, 26 WIS. INT'L L.J. 255, 266 (2008).

10. *See* DEVANESAN NESIAH, DISCRIMINATION WITH REASON? THE POLICY OF RESERVATIONS IN THE UNITED STATES, INDIA AND MALAYSIA 38 (1997). Despite the doctrinal denunciations of caste and their espousal of equality, Sikhs, Muslims, and Christians also engage in social distancing practices with respect to Dalits. *See infra* note 128 and accompanying text.

11. *See infra* note 122.

12. SANJOY CHAKRAVORTY, DEVESH KAPUR, & NIRKVIKAR SINGH, THE OTHER ONE PERCENT: INDIANS IN AMERICA 24 (2017).

13. *American Community Survey, Asian Alone or in Any Combination by Selected Groups*, U.S. CENSUS BUREAU (2018), https://data.census.gov/cedsci/table?q=B02018&tid=ACSDT1Y2019.B02018&hidePreview=true [https://perma.cc/8R84-ACL4]. There were 4,605,550 Asian Indians, 208,200 Bangladeshi, 24,143, Bhutanese, 197,880 Nepalese, 554,202 Pakistanis, and 55,812 Sri Lankans. *Id*.

castes.[14] Like all immigrants, South Asians brought their beliefs with them, including those about the caste system.

As a result of more immigration from South Asia, more employment discrimination claims based on caste can be expected. For example, Cisco Systems, Inc. ("Cisco"), is engaged in an employment discrimination litigation initially commenced in June 2020 by the California Department of Fair Employment and Housing ("DFEH").[15] In the case, DFEH alleges that Cisco engaged in caste discrimination based on untouchability against John Doe, a Dalit, in violation of the California Fair Employment and Housing Act ("FEHA").[16] Equality Labs, a nonprofit advocacy organization for Dalits,[17] received complaints of caste discrimination from almost 260 U.S. tech workers in a three-week period in the fall of 2020.[18] In addition, in October 2020, the Washington Post published a statement from a group of 30 Dalit female Indian engineers employed by Google, Apple, Microsoft, Cisco, and other tech companies. [19] The statement thanked John Doe for filing his complaint and discussed the caste bias they have encountered both in educational institutions in India and in the U.S. tech sector.[20] In May 2021, a labor trafficking case was filed in the U.S. District Court of New Jersey on behalf of 200 Indian nationals recruited from India to work on construction of the largest Hindu temple in the U.S.[21] They were placed in a state of total dependence on their employers.[22] Their employers took their passports away and imprisoned them in a compound.[23] They were subjected to casteist

14. Tinku Ray, *The US Isn't Safe from the Trauma of Caste Bias*, WORLD (Mar. 8, 2019, 9:00 AM), https://www.pri.org/stories/2019-03-08/us-isn-t-safe-trauma-caste-bias [https://perma.cc/8W5Y-B8LE].

15. Cal. Dep't of Fair Emp. & Hous. v. Cisco Sys. Inc., No. 20CV372366 (Santa Clara Cnty. Super. Ct. Oct. 16, 2020). The claim was originally filed on June 30, 2020 in the United States District Court of the Northern District of California. DFEH brought suit against Cisco regarding its discriminatory treatment of John Doe, in violation of Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act (FEHA). DFEH, however, dismissed the filing in the US District Court on October 16, 2020 and refiled in the Superior Court of California, Santa Clara County, the same day, resting its claims solely on FEHA.

16. California Fair Employment and Housing Act (FEHA), CAL. GOV'T CODE § 12900 (West 2022). The complaint filed by DFEH alleges that Cisco engaged in unlawful employment practices based on religion, ancestry, national origin/ethnicity, and race/color against John Doe, a Dalit.

17. EQUALITY LABS, https://www.equalitylabs.org [https://perma.cc/7CHN-Z3XQ] (last visited Feb. 3, 2021).

18. Nitasha Tiku, *India's Engineers Have Thrived in Silicon Valley. So Has Its Caste System.*, WASH. POST (Oct. 27, 2020), https://www.washingtonpost.com/technology/2020/10/27/indian-caste-bias-silicon-valley/ [https://perma.cc/2SVG-HZPL].

19. *Dalit Women Technologists' Statement About Caste in Silicon Valley*, WASH. POST (Oct. 27, 2020), https://www.washingtonpost.com/context/a-statement-on-caste-bias-in-silicon-valley-from-30-dalit-women-engineers/d692b4f8-2710-41c3-9d5f-ea55c13bcc50/ [https://perma.cc/VF6A-K42V].

20. *Id*.

21. Complaint, Kumar v. Bochasanwasi Shri Akshar Purushottam Swaminarayan Sanstha, Inc., No. 3:21-CV-11048 (D. N.J. May 11, 2021).

22. *Id*. at § 104.

23. *Id*. at § 4.

insults and humiliations.[24] Their status as Dalits was the reason why they were recruited, exploited, and mistreated in this way.[25] In fact, the U.S. State Department has consistently noted caste-based trafficking, sexual, and labor exploitation from India disproportionately impacts Dalits.[26]

If we propose the normative question in the context of American society, should caste discrimination based on untouchability, if it is practiced, be a form of employment discrimination, the answer must be a resounding yes! The comparison between caste and other forms of discrimination was made in the U.S. by abolitionists in the 1830s, who expressed their disgust at the caste system.[27] Before the Civil War, abolitionists analogized the treatment of enslaved Black people in the U.S. to the Indian caste system in order to argue against the horrors of slavery in the south and for better treatment of formerly enslaved persons in the north.[28]

U.S. courts have rarely addressed the issue of whether anti-discrimination employment measures ban caste discrimination.[29] For purposes of discussing caste discrimination in employment, the most appropriate federal laws are 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964. Section 1981, which originated with the Civil Rights Act of 1866, only applies to race discrimination.[30] Title VII makes it "unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's race, color, religion, sex, or national origin."[31]

This article is limited to federal employment claims for intentional caste discrimination based on untouchability under Section 1981 and Title VII. Because Section 1981 provides a basis for claims of discrimination for police misconduct, housing, zoning, and education, the article is also suggesting that federal law provides other important legal remedies for Dalits beyond the employment

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24. *Id*. at § 7 (People in the Scheduled Caste in India, for example, were formerly considered "untouchables" and "endure near complete social ostracization." At the temple in New Jersey, temple leadership did what they could to remind these marginalized workers of their place in the social hierarchy. Defendant Swami Prasanand, for example, called the workers "worms," thus exacerbating the psychological coercion the workers experienced.)

25. *Id*.

26. *See, e.g.*, OFF. TO MONITOR AND COMBAT TRAFFICKING IN PERS., U.S. DEP'T OF STATE, 2021 TRAFFICKING IN PERSONS REPORT: INDIA, https://www.state.gov/reports/2021-trafficking-in-persons-report/india/ [https://perma.cc/P2AC-UQ7K] (last visited Feb. 26, 2022).

27. *See infra* notes 172–73.

28. *Id.*

29. *See, e.g.*, Mazumder v. Univ. of Mich., 195 F. App'x 320, 323 (6th Cir. 2005). The caste discrimination issue was raised, but not fully litigated, and the Court expressed an unfamiliarity with the concept through their use of quotation marks around the term.

30. *See* 42 U.S.C. § 1981(a) ("All persons within the jurisdiction of the United States shall have the same right in every State and Territory . . . to the full and equal benefit of all laws and proceedings . . . *as is enjoyed by white citizens*.") (emphasis added).

31. 42 U.S.C.A. § 2000e–2(a)(1).

context.[32] In this article, we will contend that there is a legitimate argument that caste discrimination is a form of religious discrimination under Title VII. However, the strongest arguments involve the assertions that caste discrimination based on untouchability are included within race and/or national origin discrimination.

The question of whether caste discrimination is a form of race or national origin discrimination under Title VII or race discrimination under Section 1981 comes down to whether caste fits within the definition of those protected traits under the respective statutory frameworks. Title VII does not include a definition for "race," and the Supreme Court has not yet elaborated on the term for purposes of Title VII. Though Section 1981 doesn't use the word "race," within a decade of the passage of the Civil Rights Act of 1866, the Supreme Court confirmed that it "is intended for the protection of citizens of the United States in their enjoyment of certain rights without discrimination on account of race, color, or previous condition of servitude."[33]

In addressing what groups constitute a race under Section 1981, the Supreme Court stated in *Saint Francis College v. Al Khazraji* that the definition of race was to be drawn from how it was understood in the 19th century.[34] The number of groups recognized as different races was far more expansive in the 19th century than is commonly thought today. The prevailing conceptions of race in the U.S. have been strongly influenced by the federal government's definitions of different races that first went into effect in 1977.[35] In *Saint Francis College*, the Court reviewed several 19th-century sources defining race, specifically listing several races from those sources; these included Finns, Romani, Basques, Hebrews, Swedes, Norwegians, Germans, Greeks, Italians, Spanish, Mongolians, Russians, and Jews.[36] As one can see, the concept of race also includes what today we might think of as ethnic or national origin groups. What is also of particular importance is that the Romani are one of the listed "racial" groups.[37] The Roma, however, are believed to be Dalits who migrated from India into Persia, the near East and, finally, into Eastern and Central Europe beginning around A.D. 600.[38] There are other compelling reasons to assert that Americans of the 19th century viewed

32. While the largest percentage of actions filed under 42 U.S.C.A. § 1981 are employment discrimination claims, § 1981 causes of action include race discrimination for police misconduct, housing, zoning, and schools. *See, e.g.*, Theodore Eisenberg & Stewart Schwab, *The Importance of Section 1981*, 73 CORNELL L. REV. 596, 601 (1988).

33. United States v. Cruikshank, 92 U.S. 542, 555 (1875).

34. Saint Francis Coll. v. Al-Khazraji, 481 U.S. 604, 610 (1987).

35. *See infra* note 293 and accompanying text.

36. *Saint Francis Coll.*, 481 U.S. at 611.

37. *Id.*

38. Palash Ghosh, *Centuries of Discrimination: European Roma Linked to India's 'Untouchables'*, INT'L BUS. TIMES (Dec. 4, 2012), https://www.ibtimes.com/centuries-discrimination-european-roma-linked-indias-untouchables-917965 [https://perma.cc/2UR8-QCG2].

different Indian castes as separate races.[39] Further, while Section 1981 and Title VII are from two different Civil Rights Acts, whose initial passages were almost 100 years apart, courts often analyze intentional employment discrimination claims involving race and national origin under the two statutes in a very similar, if not identical, way. "[T]he facts necessary to support a claim for relief under Title VII are nearly identical to the facts which support a claim under Section 1981."[40]

There are, therefore, several arguments that caste discrimination fits within the concept of race discrimination under Section 1981 and the protected traits of religion, race, and national origin under Title VII. However, the greatest strength of the argument that caste discrimination is covered by federal employment discrimination law is the fact that if courts reject the argument that caste discrimination fits within any of the protected categories of those two provisions, the analysis used by the Supreme Court in *Bostock v. Clayton County*,[41] a major Title VII case decided in 2020, would come into play.

The approach taken by the Supreme Court in *Bostock* would, if applied to a claim of caste discrimination, avoid the difficult question of whether caste fits in the definition of race or national origin. In *Bostock*, the Court addressed whether discrimination against gay, lesbian, and transgendered individuals constitutes sex discrimination under Title VII. In addressing the question, Justice Neil Gorsuch explained that, in Title VII claims, "a but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause."[42] There can be multiple but-for causes. Gorsuch noted that although a person's sexual orientation and gender identity are separate and distinct from a person's sex, their sex is nevertheless inextricably linked to their other status.[43] Even if an

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39. *See* remarks made in particular by Senator Charles Sumner. In his discussion during the passage of the Civil Rights Act of 1866, Sumner compares the Indian caste system with Brahmans and Shudras to the U.S. race situation with blacks and whites. *See infra* notes 177–82 and accompanying text; *see also* CHARLES SUMNER, EQUALITY BEFORE THE LAW PROTECTED BY NATIONAL STATUTE: SPEECHES OF HON. CHAS. SUMNER 15 (1874), https://tile.loc.gov/storage-services/service/rbc/lcrbmrp/t2415/t2415.pdf [https://perma.cc/MV2K-ZXK7] ("Religion and reason condemn Caste as impious and unchristian, making republican institutions and equal laws impossible; but here is Caste not unlike that which separates the Sudra from the Brahmin."). This analogy was meant to demonstrate that racism in the United States is similar to the caste system of the South Asian continent. Thus, the framers of the Civil Rights Act of 1866 would have viewed discrimination against Dalits as interracial discrimination as opposed to intra-racial discrimination.

40. Caldwell v. Martin Marietta Corp., 632 F.2d 1184, 1186 (5th Cir. 1980). *See also* Village of Freeport v. Barrella, 814 F.3d 594, 607 (2d Cir. 2016) ("[W]e analyze claims of racial discrimination identically under Title VII and § 1981 in other respects, and we see no reason why we should not do the same with respect to how we define race with for purposes of those statutes.").

41. Bostock v. Clayton County, 140 S. Ct. 1731 (2020).

42. *Id.* at 1739. He also noted that Congress amended Title VII in 1991 to allow a plaintiff to prevail merely by showing that a protected trait was a "motivating factor" in an adverse employment action. *Id.* Thus, "under this more forgiving standard, liability can sometimes follow even if sex wasn't a but-for cause of the employer's challenged decision." *Id.* However, the motivating factor test is not the issue in *Bostock*.

43. *Id.* at 1746–47.

employer's goal is only to discriminate against a person because they are gay, lesbian, or a transgender individual, it is not possible without also discriminating against the person because of their sex. To demonstrate this, Gorsuch noted that if you changed the gay, lesbian, or transgender individual's sex, say a gay man to a woman, would that change lead to a different outcome by the employer? If the answer is yes, then the discrimination is also based on sex.[44] Clearly the answer is yes, because the change would eliminate the gay, lesbian, or transgender status that was the motivation for the adverse employment treatment. Although an individual's status as gay, lesbian, or transgender is not a listed protected trait, *Bostock* holds, it is equivalent to discrimination based on the protected trait of sex.[45]

The *Bostock* approach should apply to claims of caste discrimination based on untouchability. Since all Dalits in the U.S. originated in South Asia,[46] caste is inextricably linked to being a member of the Asian race. When a person discriminates against a Dalit based on untouchability, they are discriminating against that person based both on caste, which is not a protected category, and race, which is. But it is important to note that this *Bostock* argument is only legally necessary if courts first conclude that caste discrimination based on untouchability is not a form of race or national origin discrimination under Title VII or race discrimination under Section 1981.

Dalits have legal protection under the 1989 Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act against discriminatory and abusive behavior by high-caste communities.[47] In addition, the Protection of Civil Rights Act 1955 specifically prohibits discrimination and offences related to business, trade, employment, healthcare, religion, and various other civil spheres.[48] However, these provisions are under criminal law and do not provide civil remedies to meet the holistic needs of caste-related employment discrimination in private companies. Until the mid-1990s, caste discrimination was neither recognized in international human rights law nor included in human rights discourse.[49] This changed due to Dalit activists and their supporters throughout the world advocating for global recognition of the discrimination they face not just in India, but throughout the South Asian diaspora.[50] They have succeeded in getting caste

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44. *Id.* at 1741.

45. *Id.*

46. *See, e.g.*, GAIL OMVEDT, DALITS AND THE DEMOCRATIC REVOLUTION 31 (1994) ("The caste system exists in the South Asian subcontinent and there only.").

47. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (Act. No. 33/1989) (India), https://tribal.nic.in/actRules/preventionofAtricities.pdf [https://perma.cc/LZ7Z-D4BR] (last visited July 10, 2022).

48. *See generally* The Protection of Civil Rights Act, 1955 (Act. 22/1955) (India), https://www.indiacode.nic.in/handle/123456789/1544?locale=en [https://perma.cc/9WDF-NEYF].

49. Annapurna Waughray, *Caste Discrimination: A Twenty-First Century Challenge for UK Discrimination Law*, 72 MODERN L. REV. 182, 191 (2009).

50. *Id.*

discrimination declared a violation of international human rights law.[51] However, because of the prodigious international weight of U.S. law, for the 200 million Dalits in India alone and the Dalit diaspora,[52] a determination that U.S. federal employment discrimination law banned caste discrimination based on untouchability by private employers would have incalculable global ramifications.

This article is written in four parts. The first part discusses the immigration of South Asians to the U.S., including their dramatic increase in numbers over the past thirty years. It also provides an explanation of the caste system and the discrimination that Dalits have endured and continue to experience.[53] The second part will focus on employment discrimination claims for caste discrimination based on untouchability under Section 1981.[54] The third part will discuss Title VII claims of caste discrimination based on untouchability.[55] The fourth part will provide the argument that is derived from *Bostock v. Clayton County* that caste discrimination is intertwined with race discrimination.[56] It will discuss the *Bostock* case, and how this approach applies under Title VII, as well as *Comcast Corporation v. National Association of African American Owned Media*,[57] another Supreme Court case in 2020 in which the Court applied the same approach to a Section 1981 claim.

II.
CASTE SUBORDINATION OF DALITS IN SOUTH ASIA AND THE U.S.

Over the past thirty years, the number of South Asian immigrants in the U.S. has skyrocketed. The first section of this part will discuss the history of immigration to the U.S. from South Asia, including its recent dramatic rise. As the number of South Asians in the U.S. increased, the number of incidents of caste

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51. Specifically, caste discrimination is viewed as a violation of the International Convention on the Elimination of all Forms of Racial Discrimination as a sub-category of racial discrimination based on descent, and separately as a category of discrimination based on work and descent, a broader form of discrimination condemned by the U.N. *Id.* One of the Dalit activists' and supporters' most highly publicized efforts, however, occurred when they unsuccessfully lobbied to have caste discrimination officially recognized as a form of racial discrimination at the 2001 U.N. World Conference against Racism, Racial Discrimination, Xenophobia and other related forms of Intolerance held in Durban, South Africa. They were unsuccessful, but as a result caste acquired global visibility as a ground of discrimination. *Id.* at 193.

52. Gautham Subramanyam, *In India, Dalits Still Feel Bottom of the Caste Ladder*, NBC NEWS (Sept. 13, 2020), https://www.nbcnews.com/news/world/india-dalits-still-feel-bottom-caste-ladder-n1239846 [https://perma.cc/3T3Y-M7FS]; *see also* Larry Simon & Sukhdeo Thorat, *Editorial*, 2 CASTE: A GLOBAL JOURNAL ON SOCIAL EXCLUSION vi, viii (2021); *India: Official Dalit population exceeds 200 million*, INT'L DALIT SOLIDARITY NETWORK (May 29, 2013), https://idsn.org/india-official-dalit-population-exceeds-200-million/ [https://perma.cc/73DL-X2ZH].

53. *See infra* notes 58–142 and accompanying text.

54. *See infra* notes 143–253 and accompanying text.

55. *See infra* notes 254–350 and accompanying text.

56. *See infra* notes 351–94 and accompanying text.

57. Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media, 140 S. Ct. 1009 (2020).

discrimination based on untouchability increased as well. The second section of this part will discuss the 3,500-year-old five-fold caste system. The third section will discuss the discrimination Dalits experience due to the concept of untouchability that exists within South Asian and American societies today.

A. Brief History of South Asian Immigration to the U.S.

South Asians did not start to migrate in large numbers until the British Empire outlawed slavery in the 1833 and created a new demand for replacement labor.[58] Subjects of the British Empire, South Asians coming to the west coast of the Americas in the latter half of the 19th century also tended to head to British Columbia, especially Vancouver.[59] A few South Asians immigrated to the U.S. in the 19th century. In 1870, there were only 586 reported India-born individuals in the U.S. and 2031 in 1900.[60]

Congress enacted several measures aimed at stemming immigration from Asia, beginning with the Page Act in 1875.[61] For South Asians, this culminated in 1917. Congress adopted legislation that banned anyone born within a geographical area that included most of Asia and all of South Asia.[62] The area was known as the Asiatic Barred Zone. [63]

According to the 1920 census, fewer than 5,000 Indians resided in the U.S. at the time.[64] Some lived in the Northeast and Midwest and became parts of working-class neighborhoods from New York to Baltimore to Detroit, but most resided in California.[65] With restrictions on immigration in place, the numbers of South Asians declined. As late as 1940, there were only 2,405 South Asians in the US.[66] The U.S. gradually lifted restrictions on immigration from South Asia after World War II.[67] According to the Census Bureau figures in 1960, fewer than 13,000 people of Indian origin lived in the U.S.[68] In 1965, Congress enacted the

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58. CHAKRAVORTY, KAPUR, & SINGH, *supra* note 12, at 5.

59. Maia Ramnath, *Two Resolutions: The Ghadar Movement and India's Radical Diaspora, 1913–1918*, 92 RADICAL HIST. REV. 7, 10–11 (2005).

60. CHAKRAVORTY, KAPUR, & SINGH, *supra* note 12, at 6.

61. Page Act, Pub. L. No. 41-141, 18 Stat. 477 (1875); Geary Act, Pub. L. 52-60, 27 Stat. 25 (1892) (repealed 1943); Chinese Exclusion Act, Pub. L. No. 47-126, 22 Stat. 58 (1882) (repealed 1943).

62. Immigration Act of 1917, Pub. L. No. 64-301, 39 Stat. 874, 875. The 1917 Act also included a requirement that barred aliens over the age of 16 who could not read English or some other dialect or language and who were incapable of reading.

63. *See* CHAKRAVORTY, KAPUR, & SINGH, *supra* note 12, at 11.

64. CHAKRAVORTY, KAPUR, & SINGH, *supra* note 12, at 6.

65. Ramnath, *supra* note 59, at 11. ("Even through the 1920s there were never more than a few thousand Indians in the United States, the vast majority of whom lived on the West Coast, over three-fourths of them in California."). *See also* VIVEK BALD, BENGALI HARLEM AND THE LOST HISTORIES OF SOUTH ASIAN AMERICA 7 (2013) (describing the roots South Asian immigrants put down in New York, Baltimore, and Detroit, noting that the "greatest number appear to have settled in Harlem").

66. CHAKRAVORTY, KAPUR, & SINGH, *supra* note 12, at 14.

67. *Id.* at 22–23.

68. *Id.* at 24.

Family Reunification and Refugee Law, also known as the Hart-Cellar Act,[69] which fundamentally changed U.S. immigration law. The Act and subsequent immigration reforms reshaped American immigration policies. Among the changes were provisions that led to significant increases in immigration from South Asia.[70] According to a report by the Migration Policy Institute, in 2019 there were almost 2.7 million Indian immigrants in the country, up from 450,000 in 1990.[71] South Asian Americans Leading Together, a national movement strategy and advocacy organization, estimates that in 2017 there were nearly 4.1 million people of Indian ancestry residing in the U.S., up 40% since 2010.[72] Many Indian students also seek American higher education. During the academic year that began in 2015, nearly 166,000 Indian immigrants were enrolled in U.S. higher education institutions, making up about one-sixth of the international students in the country.[73] About 20% of Indian immigrants live in California; Texas and New Jersey are home to about 10% each, with the next three most populous states being New York, Illinois, and Georgia, collectively accounting for another 17%. [74] The Indian population in the U.S. is both well-educated and prosperous. In 2019, almost 80% of Indian immigrants ages 25 and older had at least a bachelor's degree, in contrast to about 33% of the adult U.S. population overall.[75] In addition, Indian households' 2019 median income of $132,000 was double that of U.S. born households.[76]

Commentators have generally credited the Y2K problem, also known as the "millennium bug," as the catalyst for the upsurge in immigration from India.[77] When the Y2K problem became apparent, India had a sizable and appropriate labor force to address the issue. While attacking the Y2K problem, tech companies in the West, including in the U.S., recognized that Indian firms offered not just cheap labor, but highly skilled services at a low cost.[78] As a result, multi-national information technology companies became aware of this vast pool of skilled

69. Immigration and Nationality Act of 1965, 8 U.S.C. § 1151.

70. *See, e.g.*, *id.*; Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102; Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978.

71. Mary Hanna & Jean Batalova, *Indian Immigrants in the United States*, MIGRATION POL'Y INST. (Oct. 16, 2020), https://www.migrationpolicy.org/article/indian-immigrants-united-states-2019 [https://perma.cc/J727-QDHA].

72. *Demographic Snapshot of South Asians in the United States*, S. ASIAN AMS. LEADING TOGETHER (Apr. 2019), https://saalt.org/wp-content/uploads/2019/04/SAALT-Demographic-Snapshot-2019.pdf [https://perma.cc/2B6Y-9QY8].

73. Jie Zong & Jeanne Batalova, *Indian Immigrants in the United States in 2015*, MIGRATION POL'Y INST. (Aug. 31, 2017), https://www.migrationpolicy.org/article/indian-immigrants-united-states-2015 [https://perma.cc/S2QL-QWPA].

74. Hanna & Batalova, *supra* note 71.

75. *Id.*

76. *Id.*

77. CHAKRAVORTY, KAPUR, & SINGH, *supra* note 12, at 53.

78. ANNALEE SAXENIAN, THE NEW ARGONAUTS: REGIONAL ADVANTAGE IN A GLOBAL ECONOMY 276 (2006).

workers. This created a huge demand for their services.[79] Around 1995, the Indian Y2K cohort started entering the US in large numbers to help fill the growing demands for information technology workers.[80]

Even though there have been South Asians in the U.S. for over 170 years, very few of them have been Dalits.[81] Thus, while Dalits make up about 16.5% of the population in India,[82] in 2003, a University of Pennsylvania study noted that only 1.5% of Indian immigrants in the United States were Dalits or members of lower castes.[83] Due to discrimination in South Asia, few Dalits have had the money or requisite skills to participate in immigration to North America in either the past or recent immigration waves.

B. The Five-Fold Caste System

There is some debate, but scholars typically agree that the caste system is thousands of years old.[84] For example, Prakash Louis asserts that the caste system is at least 3,000 years old.[85] The Buddha, who lived about 2,500 years ago, preached against it.[86] For simplification, the caste system can be broken down into four distinct 'varnas,' or major occupational groupings, plus the Dalits as a sort of fifth caste.[87] The Bhagavad Gita, which is one of the most revered Hindu texts, mentions the four-fold division.[88] More importantly, one of the most sacred Hindu creation myths contained in the Rigveda sanctions the caste system.[89] According

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79. CHAKRAVORTY, KAPUR, & SINGH, *supra* note 12, at 52–56.

80. *Id.* at 30. A tangible result of this increased demand was a substantial increase in annual remittance flows into India from just around 6 billion dollars in 1995 to over 70 billion by 2012. *See id.* at 54; *see also* Hanna & Batalova, *supra* note 71.

81. *See supra* note 14 and accompanying text.

82. DR. C. CHANDRAMOULI, OFF. OF THE REGISTRAR GEN. & CENSUS COMM'R, INDIA, MINISTRY OF HOME AFFS., *Census of India 2011: Release of Primary Census Abstract Data Highlights* (2013), https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/India/2013/INDIA_CENSUS_ABSTRACT-2011-Data_on_SC-STs.pdf [https://perma.cc/8MSZ-5DGD].

83. Ray, *supra* note 14.

84. OLIVER MENDELSOHN & MARIKA VICZIANY, THE UNTOUCHABLES 5–7 (1998). There has also been criticism that the four-fold caste system was created by British colonial thinkers and was never recognized in South Asia in the way the four-fold division suggests. *See* SANJOY CHAKRAVORTY, THE TRUTH ABOUT US: THE POLITICS OF INFORMATION FROM MANU TO MODI (2019). *See also*, Sanjoy Chakravorty, *Viewpoint: How the British Reshaped India's Caste System*, BBC NEWS (June 19, 2019), https://www.bbc.com/news/world-asia-india-48619734 [https://perma.cc/U9UC-ZGAF].

85. PRAKASH LOUIS, CASTEISM IS HORRENDOUS THAN RACISM: DURBAN AND DALIT DISCOURSE 21–22 (2001).

86. *See, e.g.*, OMVEDT, *supra* note 46; *see also* DR. B. R. AMBEDKAR, THE BUDDHA & HIS DHAMMA 172 (2010); OMVEDT, BUDDHISM IN INDIA: CHALLENGING BRAHMANISM AND CASTE (2003).

87. B. R. AMBEDKAR, THE ESSENTIAL WRITINGS OF B. R. AMBEDKAR (Valerian Rodrigues ed., 2002). For an explanation of the Shudra caste and its relationship to the Dalit caste, see *infra* notes 108–13 and accompanying text.

88. *Id.* at 198.

89. B. R. Ambedkar, *Riddles in Hinduism*, *in* 4 BABASAHEB AMBEDKAR WRITING & SPEECHES 190 (1974).

to this revered text, all existence derived from the division of an original primal man known as Purusha. [90] Three-quarters of Purusha transcended the world we perceive and one-quarter came to Earth.[91] From the part that came to Earth, his head became the Brahmins, the priestly caste.[92] His arms became the Kshatriyas, the princely and warrior caste.[93] The stomach or the thighs of Purusha became the Vaishyas, the business and merchant caste.[94] Because of their dominance in the caste system, these three groups are collectively referred to as "high-caste" or "forward-caste" Hindus.[95] Members of these three upper castes undergo special initiation religious ceremonies that make them "twice born."[96]

The caste system embodies the message that the advantage accorded to high-caste Hindus is the result of divine privilege attributable to the good karma these individuals accumulated over many prior lives. In other words, the spiritual advantage of high-caste Hindus in this current life is a form of self-executing justice accumulated through their various prior rounds of existence.

Though the caste system reaches far back in history, various studies conducted in the past decade have illuminated the effects the caste system continues to have today. High-caste Hindus still dominate India's political, judicial, economic, financial, educational, and religious institutions. Even though an Economist article estimated that only 3.6% of India's 1.4 billion population are Brahmins,[97] experts estimate that they hold more than 70% of government posts.[98] In addition, Brahmins hold 78% of the judicial positions and approximately half of parliamentary seats in India.[99] A 2010 study found that about 93% of board members of India's top 1000 businesses were members of the upper castes.[100] A 2019 U.S. study of 4,005 leading Indian firms revealed that only three out of 35,000 directorships belonged to Dalits and other marginalized

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90. *See also* 1 J. MUIR, ORIGINAL SANSKRIT ON THE ORIGIN AND HISTORY OF THE PEOPLE OF INDIA TEXTS 7–11 (1868), https://www.forgottenbooks.com/en/readbook/OriginalSanskritTexts_10020220 [https://perma.cc/L9PQ-WZWL].

91. *Id.* at 10.

92. *See* NESIAH, *supra* note 10, at 37.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Why Brahmins Lead Western Firms but Rarely Indian Ones*, ECONOMIST (Jan. 1, 2022), https://www.economist.com/asia/2022/01/01/why-brahmins-lead-western-firms-but-rarely-indian-ones [https://perma.cc/Y7WP-C8CP]. There are 50 million Brahmins. *Id.*

98. *See* Henry Chu, *A Gift for India's Inter-Caste Couples*, L.A. TIMES (Nov. 4, 2007), at A6.

99. Kevin D. Brown & Vinay Sitapati, *Lessons Learned from Comparing the Application of Constitutional Law and Federal Anti-Discrimination Law to African-Americans in the U.S. and Dalits in India in the Context of Higher Education*, 24 HARV. BLACKLETTER L.J. 3, 16 n.78 (2008).

100. D Ajit, Han Donker, & Ravi Saxena, *Corporate Boards in India: Blocked by Caste?*, ECON. & POL. WKLY., Aug. 11, 2012, at 39, 41. Of the board members of the top 1000 businesses, 46% were Vaishyas and 44% were Brahmins. *Id.*

groups.[101] In a study conducted by the Savitribai Phule Pune University, Jawaharlal Nehru University, and Indian Institute of Dalit Studies from 2015 to 2017, high-caste Hindus "boast[ed] four times more wealth than those classified as Scheduled Castes."[102] The study also noted that high-caste Hindus held roughly 41% of the total wealth in the country, almost double their population size.[103] Another study found that a large percentage of mergers and acquisitions in India "occur between businesses where the directors belong to the same caste group."[104] The study looked at 1200 merger and acquisition deals in India that took place between the years 2000 and 2017.[105] When Brahmins had a maximum representation on the Board of the acquiring company, nearly half of the targeted firms had majority Brahmin boards.[106] For Vaishyas, the percentage was even higher. Where the acquiring firm had a Board controlled by Vaishyas, the targeted firm had a board dominated by Vaishyas 55% of the time.[107]

In contrast to the auspicious spiritual origins of the high-caste Hindus, Purusha's feet became the peasants and farmers.[108] This group, known as the Shudras, are commonly referred to as low-caste Hindus.[109] The legal term used for them is "Other Backwards Classes" (OBCs).[110] The religiously imposed duty of Shudras is to serve the high castes. They are also the largest population caste,

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101. Ammu Kannampilly, *Caste Discrimination Taints Corporate India*, YAHOO MONEY (Nov. 5, 2020), https://money.yahoo.com/caste-discrimination-taints-corporate-india-035606381.html ?soc_src=social-sh&soc_trk=ma [https://perma.cc/8JV9-HVR5].

102. *Upper Caste Hindus Own 41 Per Cent of India's Total Wealth: Study*, BUSINESSTODAY.IN (Feb. 14, 2019), https://www.businesstoday.in/current/economy-politics/upper-caste-hindus-own -41-per-cent-india-total-wealth-study/story/318727.html [https://perma.cc/4U6Q-6JD3].

103. *Id.* High-caste Hindus, or HHCs, make up about 22.28% of the total population in India. The next big chunk of the country's wealth is held by Hindu Other Backward Classes at 31%, Muslims own 8% of the country's wealth, and the two lowest castes own 11.3% combined of the total wealth, even though their population size is over 27% of the country. *Id.*

104. Manaswini Bhalla & Manisha Goel, *The Caste Is Alive and Kicking in Corporate India*, FORBES INDIA (Apr. 18, 2019), https://www.forbesindia.com/article/iim-bangalore/the-caste-is -alive-and-kicking-in-corpo-rate-india/53059/1 [https://perma.cc/5A2T-Q2YN]. The results of the study were published in a paper entitled *Firms of a Feather Merge Together: Cultural Proximity and Firms Outcome*. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* The study found the same for Kshatriya- and Shudra-dominated firms. *Id.*

108. B. R. AMBEDKAR, *Who Were the Shudras?*, *in* 7 BABASAHEB AMBEDKAR WRITING & SPEECHES 21, 22–24 (1979).

109. MANORANJAN MOHANTY, CLASS, CASTE, GENDER 20 (2004).

110. *Id.* at 209.

making up around 52% of India's population according to the Mandal Commission[111] and around 41% by National Sample Survey 2004-5.[112]

Beneath the four main castes are the Dalits. The origins of untouchability are lost in the long-ago past. Dalits are not mentioned in the Purusha Sukta, noted above.[113] The *Laws of Manu* is an ancient Hindu text that describes the caste duties and obligations a person has towards himself and to others, including moral and legal codes that govern caste order, but it does not mention Dalits either.[114] The legendary Dalit leader, Dr. B. R. Ambedkar, argues that untouchability was the consequence of a struggle between Buddhists and the Brahmins, which the latter won.[115] He places the origin of untouchability at around A.D. 400.[116]

These five broad castes can be broken down into thousands of subcastes or "jatis."[117] Every individual's social position in Indian society was, and, to a large extent—particularly in rural India—still is, defined by the jati into which he or she is born. Caste rankings and rules vary depending on the context and the region of India.[118] The hierarchy of the caste system places each of the thousands of subcastes into its appropriate relative position. As Ambedkar puts it, "Hindu society was just like a tower which had several storeys [sic] without a ladder or an entrance. One was to die in the storey [sic] in which one was born."[119] And, as pointed out by Clark Cunningham and Dr. Madhava Menon:

> The historic caste system in India was truly systemic: everyone had a place within it. As a result, the caste system not only drastically exploited and disadvantaged certain groups, such as the erstwhile untouchables; it also concentrated advantage in

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111. *See* Aparna Alluri & Zoya Mateen, *Caste Census: Clamour to Count India Social Groups Grows*, BBC NEWS (Aug. 24, 2021), https://www.bbc.com/news/world-asia-india-58141993 [https://perma.cc/E7P3-UAQC]. This is an estimate, independent India's decanal census only counts the castes of Dalits and Adivasis. *Id.* For caste percentage population estimates, see also Roshan Kishore, *Decoding the Purpose and Politics of Caste Census,* HINDUSTAN TIMES (Aug. 24, 2021, 5:47 AM), https://www.hindustantimes.com/india-news/decoding-the-purpose-and-politics-of-caste-census-101629741365130.html [https://perma.cc/9WRR-D8TY]. For percentages of school children by caste, see Rema Nagarajan, *School Enrolment Data Indicates 45% OBCs, 19% Dalits in India,* TIMES INDIA (July 30, 2021, 12:03 PM), https://timesofindia.indiatimes.com/india/school-enrolment-data-indicates-45-obcs-19-dalits-in-india/articleshow/84877162.cms [https://perma.cc/RF3U-Z3K6].

112. Sonalde Desai, *Caste and Census: A Forward-Looking Strategy*, ECON. & POL. WKLY., July 17, 2010, at 10.

113. *See supra* note 89 and accompanying text.

114. B. R. AMBEDKAR, *Why Lawlessness Is Lawful, in* 5 BABASAHEB AMBEDKAR WRITING & SPEECHES 62, 64 (1989).

115. B. R. AMBEDKAR, *Who Were They and Why They Became Untouchables*, *in* 7 BABASAHEB AMBEDKAR WRITING & SPEECHES 379 (1979).

116. *Id.*

117. *See* NESIAH, *supra* note 10, at 36–37.

118. *Id.* at 38.

119. S. D. Kapoor, *B. R. Ambedkar, W. E. B. DuBois and the Process of Liberation*, ECON. & POL. WKLY., Dec. 27, 2003, at 5344, 5346 (quoting DHANANJAYA KEER, DR. B. R. AMBEDKAR: LIFE AND MISSION 41 (3d ed. 1994)).

> other groups, such as the Brahmins. *Both* suffering and success were largely attributable to where one was born into the social hierarchy rather than individual effort and virtue.[120]

Caste ensured its continued viability through the practice of endogamy and social separation. In any hierarchical society, the social order is structured in terms of privileges and disabilities of groups rather than the rights of individuals. The common history and experience of being a member of a jati experiencing oppression by the subcastes higher in the hierarchy and oppressing the subcastes lower in the hierarchy generated a strong sense of group identity. Caste also ensured that there was little concern in Indian society for the rights of individuals. Thus, the functioning of the caste system excluded whole segments of society from positions of respect and responsibility, without consideration of individual talents, abilities, or interests.[121]

C. Discrimination Dalits Experience Under the Caste System

While low-caste Hindus suffered due to their position in the caste system, they did not suffer from oppression resulting from religious impurity, as Dalits did. Thus, Dalits experienced far worse forms of subordination than low-caste members. Caste Hindus maintained enough distance between themselves and Dalits to prevent the shadows of Dalits (six feet) from touching them.[122] Historically, Dalits were banned from Hindu temples, formal education, public wells (often ones the Dalits themselves had dug), walking on roads in broad daylight, and wearing clean clothes.[123] Caste Hindus not only refused to allow Dalits in their homes, but their communities too; Dalit housing was segregated, and they were relegated to the outskirts of towns.[124] Historically, the status of the Dalits was associated with occupations regarded as ritually impure. Dalits took care of trash and body disposal, maintained the sewage system, cleaned toilets, worked with dead animals, collected cow manure and turned it into cooking fuel,

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120. Clark D. Cunningham & N.R. Madhava Menon, *Race, Class, Caste? Rethinking Affirmative Action*, 97 MICH. L. REV. 1296, 1302 (1999).

121. SUKHADEO THORAT & KATHERINE NEUMAN, BLOCKED BY CASTE: ECONOMIC DISCRIMINATION IN MODERN INDIA 5 (2012).

122. B. R. AMBEDKAR, *From Millions to Fractions*, *in* 5 AMBEDKAR WRITING & SPEECHES 242 (1979).

123. Brown & Sitapati, *supra* note 99, at 4; *see also* B. R. AMBEDKAR, *Untouchables or The Children of India's Ghetto*, *in* 5 AMBEDKAR WRITING & SPEECHES 22, 59, 108 (1979); AMBEDKAR, *supra* note 122, at 242.

124. Brown & Sitapati, *supra* note 99, at 4. *See generally* Sukhadeo Thorat, Anuradha Banerjee, Vinod K Mishra, & Firdaus Rizvi, *Urban Rental Housing Market: Caste and Religion Matters in Access*, ECON. & POL. WKLY, June 27, 2015, at 47 (providing an empirical study of anti-Dalit bias in private home sales and rentals).

labored in the fields, worked on leather, and dug the wells for water.[125] Hindu religious caste practices also excluded Dalits from engaging in business activities, owning property and housing, attending educational institutions, and accessing healthcare.[126] If Dalits violated caste laws, they were subjected to violent punishments.[127]

While untouchability is a product of the Hindu religion, it is not strictly a problem for just Hindus. As Human Rights Watch notes, untouchability "is a characteristic determined by one's birth into a particular caste, irrespective of the faith practiced by the individual."[128] On the Indian sub-continent, distinctions and discrimination on the basis of caste have penetrated other religions, including Buddhism, Christianity, Islam and Sikhism, despite the fact that the doctrinal bases for these religions reject caste.[129] Thus, while Hindu religion may be the original source of Dalit oppression, conversion to other religions is not a solution.[130]

Perhaps the best example of demonstrating that changing religions does not eliminate discrimination based on untouchability is the mass conversion of Dalits to Buddhism led by Dr. Ambedkar. No one has done more to liberate Dalits and the Dalit mind from the oppressive mentality presented to it by the Hindu religion than Dr. Ambedkar. It may be impossible to convey to the average American how significant of a figure Dr. Ambedkar is in the Dalit struggle. As Dalit activist Anand Teltumbde put it, for the Dalit masses, Dr. Ambedkar is everything

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125. *See generally* B. R. AMBEDKAR, PERSPECTIVES ON SOCIAL EXCLUSION AND INCLUSIVE POLICIES (Sukhadeo Thorat & Narendra Kumar eds., 2008) (describing the historic treatment of Dalits); GHANSHYAM SHAH, HARSH MANDER, SUKHADEO THORAT, SATISH DESHPANDE, & AMITA BAVISKAR, UNTOUCHABILITY IN RURAL INDIA (2006); GOV'T OF INDIA, 1 REPORT OF THE INDIA BACKWARD CLASSES COMMISSION (1955).

126. Sukhadeo Thorat & Katherine Neuman, *Introduction* to BLOCKED BY CASTE: ECONOMIC DISCRIMINATION IN MODERN INDIA (2012).

127. A. Ramaiah, *Growing Crimes Against Dalits in India Despite Special Laws: Relevance of Ambedkar's Demand for 'Separate Settlement,'* 3 J. L. & CONFLICT RESOL. 151, 164 (2011), https://academicjournals.org/journal/JLCR/article-full-text-pdf/2F95A1F7733 [https://perma.cc/QKY2-VQG3].

128. HUMAN RIGHTS WATCH, HIDDEN APARTHEID: CASTE DISCRIMINATION AGAINST INDIA'S "UNTOUCHABLES" 2 (2007), https://www.hrw.org/sites/default/files/reports/india0207webwcover_0.pdf [https://perma.cc/6KBF-QCJE].

129. *See* J. Tharamangalam, *Caste Among Christians in India*, *in* CASTE: ITS TWENTIETH CENTURY AVATAR, 263 (M. N. Srinivas ed., 1996) (Christianity); DAVID G. MANDELBAUM, 2 SOCIETY IN INDIA: CHANGE & CONTINUITY 569, 571 (1970) (same); Roger Ballard, *Differentiation and Disjunction Among the Sikhs*, *in* DESK PARDESH: THE SOUTH ASIAN PRESENCE IN BRITAIN 88, 91 (Roger Ballard ed., 1994) (discussing the role of caste distinctions among some Sikhs); Marcus Banks, *Jain Ways of Being*, *in* PARDESH, *supra,* at 231, 250 (Jainism); John R. Hinnells, *Parsi Zoroastrians in London*, *in* PARDESH, *supra*, at 250–51, 271 (Parsis (Indian Zoroastrians) as a caste-like group). *See generally* CASTE AND SOCIAL STRATIFICATION AMONG MUSLIMS IN INDIA (Imtiaz Ahmad ed., 1978) (collecting studies about social stratification in some Islamic communities and how it is influenced by the Hindu concept of caste); Zarina Bhatty, *Social Stratification Among Muslims in India*, *in* CASTE: ITS TWENTIETH CENTURY AVATAR, *supra* (Islam).

130. D. Shyam Babu & Chandra Bhan Prasad, *Six Dalit Paradoxes*, ECON. & POL. WKLY., June 6, 2009, at 22, 23.

together: a first-rate scholar, a Moses who led his people out of bondage, a Bodhisattva in the Buddhist pantheon—he is like a god.[131] One important Dalit slogan epitomizes Ambedkar's significance: "We Are, Because He Was."[132] In 1935, Dr. Ambedkar famously declared, "Even though I was born in the Hindu religion, I will not die in the Hindu religion."[133] On October 14, 1956,[134] near the end of his life, Dr. Ambedkar led a mass conversion of over 500,000 Dalits to Buddhism.[135] Following this lead, millions of Dalits have converted to Buddhism.[136] While Buddhists make up only a small proportion of the overall population of India, only about 8.4 million in a population of 1.2 billion, 87% of them are Ambedkarites or new converts.[137] However, Caste Hindus continue to treat Dalits who convert to Buddhism the same way. Thus, this religious conversion did not allow them to escape caste discrimination, even if it allowed them to shift their personal mindset.

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131. ANAND TELTUMBDE, 'AMBEDKAR' IN AND FOR THE POST-AMBEDKAR DALIT MOVEMENT (1997). Teltumbde is the grandson-in-law of Dr. Ambedkar. *See* Parth MN, *India Arrests Activist Anand Teltumbde over 2018 Caste Violence*, AL JAZEERA (Apr. 14, 2020), https://www.aljazeera.com/news/2020/04/india-arrests-activist-anand-teltumbde-2018-dalit-event-200414112452191.html [https://perma.cc/7EVW-T3GA].

132. *See* Sanghapali Aruna Lohitakshi, *New Series: Dalit History Month—We Are Because He Was*, CRUNK FEMINIST COLLECTIVE, https://www.crunkfeministcollective.com/2015/04/21/new-series-dalit-history-month-we-are-because-he-was/ [https://perma.cc/JMX5-H83D]. One can purchase such a bumper sticker today from Amazon. *See PEACOCKRIDE Vinyl Dr. Ambedkar We Are Because He was Car Bumper Decal (Blue)*, AMAZON, https://www.amazon.in/Ambedkar-because-Bumper-Decal-Blue/dp/B06XBVJ2PK [https://perma.cc/2N4R-PT8X] (last visited Oct. 4, 2021).

133. Tarun Vijay, *An Ambedkar Speech No Hindu Should Ever Forget*, TIMES INDIA (Apr. 16, 2019), https://timesofindia.indiatimes.com/blogs/indus-calling/an-ambedkar-speech-every-hindu-must-not-forget/ [https://perma.cc/DL5B-3FW2].

134. As a strange coincidence or a matter of fate, if you adjust for the time difference between the U.S. and India, one of the authors of this article Kevin Brown was born on the very day that Dr. Ambedkar led this mass conversion and another author, Ken Dau-Schmidt, was born the day before.

135. AMBEDKAR, *supra* note 86, at 5; ELEANOR ZELLIOT, FROM UNTOUCHABLE TO DALIT: ESSAYS ON THE AMBEDKAR MOVEMENT 207–08 (3d ed. 2001) ("The following day he converted the half million of his followers who had responded to his call to convert."). *See also* OMVEDT, *supra* note 86, at 2–3.

136. Krithika Varagur, *Converting to Buddhism as a Form of Political Protest: Low-Caste Indians are Leaving Hinduism En Masse—Partly to Stick It to Their Prime Minister*, ATLANTIC (Apr. 11, 2018), https://www.theatlantic.com/international/archive/2018/04/dalit-buddhism-conversion-india-modi/557570/ [https://perma.cc/54KV-JGH4].

137. *Id. See also* Manu Moudgil, *Dalits Are Still Converting to Buddhism, but at a Dwindling Rate*, BUS. STANDARD (June 17, 2017), https://www.business-standard.com/article/current-affairs/dalits-are-still-converting-to-buddhism-but-at-a-dwindling-rate-117061700355_1.html#:~:text=After%201956%2C%20the%20number%20of,major%20Dalit%2Dcentric%20political%20party [https://perma.cc/B3NW-TU4S].

In 2018, Equality Labs conducted a first-of-its-kind survey of 1500 individuals from South Asia living in the U.S., 24% of whom were Dalits.[138] The study revealed the existence of significant caste discrimination in the U.S.[139] The survey exposed that while no Vaishyas, one percent of Brahmins, five percent of Kshatriyas, and 25% of Shudras worry about others finding out their castes, over half of the Dalits have this fear.[140] In addition, 41% of Dalit students surveyed reported facing discrimination in educational institutions.[141] The most striking result was that while high-caste Hindus experienced almost no discrimination in employment, over two-thirds of Dalits said they experienced unfair treatment in the workplace.[142]

III.
CASTE DISCRIMINATION CAN GENERATE RACE DISCRIMINATION EMPLOYMENT CLAIMS UNDER 42 U.S.C. § 1981

Title VII applies to five different protected traits.[143] In contrast, Section 1981, which originated with the Civil Rights Act of 1866, only forbids intentional "racial" discrimination in the making, enforcing, and carrying out of both private and public contracts.[144] However, courts analyze intentional employment discrimination claims under Section 1981 and race and national origin claims under Title VII in much the same way.[145] Thus, aggrieved individuals pursuing disparate treatment employment claims for race or national origin discrimination may[146] invoke both Section 1981 and Title VII.

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138. Maari Zwick-Maitreyi, Thenmozhi Soundararajan, Natasha Dar, Ralph F. Bheel, & Prathap Balakrishnan, CASTE IN THE UNITED STATES: A SURVEY OF CASTE AMONG SOUTH ASIAN AMERICANS 16 (2018), https://static1.squarespace.com/static/58347d04bebafbb1e66df84c/t/603ae9f4cfad7f515281e9bf/1614473732034/Caste_report_2018.pdf [https://perma.cc/RT47-AWFF].

139. *Id.* ("The results of our 2016 survey definitively find that all of the inequalities associated with Caste status, ritual purity, and social exclusion have become embedded within . . . American mainstream institutions.").

140. *Id.* at 17 fig.8.

141. *Id.* at 18.

142. *Id.* at 20 fig.10. For Shudras, 12% of Shudra respondents experienced discrimination in employment. *Id.*

143. 42 U.S.C. § 2000e–2(a)(1).

144. Runyon v. McCrary, 427 U.S. 160, 168 (1976). Although Section 1981 does not itself use the word "race," the Court has construed the section to forbid all "racial" discrimination in the making of private as well as public contracts.

145. *See* Caldwell v. Martin Marietta Corp., 632 F.2d 1184, 1186 (5th Cir. 1980) ("[T]he facts necessary to support a claim for relief under Title VII are nearly identical to the facts which support a claim under § 1981 . . . ."); *see also* Village of Freeport v. Barrella, 814 F.3d 594, 607 (2d Cir. 2016) ("[W]e analyze claims of racial discrimination identically under Title VII and § 1981 in [some] . . . respects.").

146. Eric Bachman, *5 Differences Between Title VII and Section 1981 That Can Help Your Employment Race Discrimination Case*, NAT'L L. REV. (June 12, 2017), https://www.natlawreview.com/article/5-differences-between-title-vii-and-section-1981-can-help-your-employment-race [https://perma.cc/MR9W-5X8R].

The first section of this part will discuss the broad application of Section 1981 to race discrimination claims. The second section addresses the question of whether caste discrimination based on untouchability is a form of race discrimination under Section 1981. Neither Section 1981 nor Title VII define race. However, for purposes of Section 1981, the Supreme Court has stated that the definition of race comes from how it was understood in the 19th.[147] Thus, this section will focus on how Americans of the 19th century understood caste discrimination to show that there are several arguments that they viewed it as a form of race discrimination.

A. Application of Section 1981 to Employment Discrimination

Though Section 1981 does not use the word "race," within a decade of the passage of the Civil Rights Act of 1866, the Supreme Court interpreted it to be "intended for the protection of citizens of the United States in the enjoyment of certain rights, without discrimination on account of race, color, or previous condition of servitude."[148] The Court's interpretation of the Act includes the prohibition of all "racial" discrimination in the making of both public and private contracts.[149] The Court has thus limited applications of Section 1981 to cases of racial discrimination. Title VII claims differ from Section 1981 claims in this way, as well as several others. Section 1981 claims can be brought against any employer, whereas Title VII claims must be brought against those who have at least 15 employees.[150] Title VII claims are limited to employers, but an aggrieved party raising a Section 1981 claim can also sue individuals, such as harassing supervisors. Whereas Title VII has damage caps that depend on the size of the employer, there are no damage caps under Section 1981.[151] Nor does a litigant have to exhaust administrative procedures, including filing an employment discrimination claim with the Equal Employment Opportunity Commission (EEOC), under Section 1981 in order to file a court claim.[152] And, for many types of suits, Section 1981 will have a longer statute of limitation. [153]

The current provisions of Section 1981 state in relevant part the following:

> (a) Statement of equal rights
>
> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be

147. Saint Francis Coll. v. Al-Khazraji, 481 U.S. 604, 613 (1987).
148. United States v. Cruikshank, 92 U.S. 542, 555 (1875).
149. Runyon v. McCrary, 427 U.S. 160, 168, 174–75 (1976).
150. Title VII of the Civil Rights Act (Title VII) of 1964 § 701, 42 U.S.C.A. § 2000e (b).
151. Bachman, *supra* note 146, at 3.
152. *Id.*
153. *Id.*

> subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
>
> (b) "Make and enforce contracts" defined
>
> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.[154]

The language of Section 1981 would seem to exclude white plaintiffs from its coverage. However, in *McDonald v. Santa Fe Trial Transp. Corp.*,[155] Justice Thurgood Marshall, writing for the Court, concluded that the section can protect white complainants who suffer racial discrimination as well:

> Unlikely as it might have appeared in 1866 that white citizens would encounter substantial racial discrimination of the sort proscribed under the Act, the statutory structure and legislative history persuade us that the 39th Congress was intent upon establishing in the federal law a broader principle than would have been necessary simply to meet the particular and immediate plight of the newly freed Negro slaves. And while the statutory language has been somewhat streamlined in re-enactment and codification, there is no indication that Section 1981 is intended to provide any less than the Congress enacted in 1866 regarding racial discrimination against white persons. Thus, we conclude that the District Court erred in dismissing petitioners' claims

154. 42 U.S.C. § 1981(a)–(b). Note that this is not the precise wording in the original Civil Rights Act. In response to concerns that it was not authorized by the Thirteenth Amendment, Congress reenacted the provision after the Fourteenth Amendment's ratification in the Enforcement Act of 1870, Ch. 114, §§ 16–18, 16 Stat. 140, 144. The 1870 reenactment differed from the original 1866 act in two important respects: it substituted the words "all persons" for "citizens, of every race and color," and it omitted the language about equal property rights, which was reenacted separately in what is now 42 U.S.C. § 1982. *See id.*; Doe v. Kamehameha Sch., 416 F.3d 1025, 1031 (9th Cir. 2005).

155. McDonald v. Santa Fe Trial Transp. Corp., 427 U.S. 273, 295–96 (1976).

> under Section 1981 on the ground that the protections of that provision are unavailable to white persons.[156]

B. Americans of the 19th Century Understood Caste Discrimination as Included Within Race Discrimination

Although Section 1981 does not define race, in *Saint Francis College v. Al Khazraji*, the Supreme Court relied on 19th century dictionaries & encyclopedias in an attempt to understand its meaning.[157] The Court noted that the concept of race was much broader then than it is today.[158] This section will focus on how, at that time, Americans understood caste discrimination as a form of race discrimination. The first subsection will first discuss the Court's decision in the *Saint Francis College* case and its significant inclusion of the Romani as a group considered to be a racial group in the 19th century. In order to fully comprehend how Americans viewed caste discrimination as a form of race discrimination in the 19th century, the second section will discuss the comparison of treatment of Black people in the U.S. to the caste system in India. The third subsection will discuss what is known as the "Aryan Origin Theory," a theory developed by scholars in the latter half of the 19th century which gained wide acceptance at that time. The fourth subsection will point to indications by the framers of the Civil Rights Act of 1866 that they viewed the measure as an anti-caste measure. If the framers of the Civil Rights Act of 1866 believed that outlawing discrimination against Black people was an anti-caste measure, *a fortiori*, they would have also felt their measure should prohibit caste discrimination on American soil practiced by those from the place in which caste originated.

1. Supreme Court's Opinion in Saint Francis College v. Al Khazraji

In the *Saint Francis College* case, the Supreme Court faced the question of whether an American citizen of Arabian ancestry was protected from racial discrimination under Section 1981.[159] The District Court concluded that the plaintiff's claim was one of national origin and, thus, outside the scope of Section

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156. *Id.* One constant question about § 1981 is: "Does it cover discrimination based on national origin?" In *Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011), the plaintiff was a Native American, but his complaint stated, "Defendant has discriminated . . . against Plaintiff in the formation of an employment contract on the basis of his *national origin*, in violation of 42 U.S.C. § 1981." *Id.* at 1053 (emphasis added). The Eighth Circuit noted that § 1981 protects "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." *Id.* at 1052 (quoting Saint Francis Coll. v. Al–Khazraji, 481 U.S. 604, 613 (1987)). Thus, the Eighth Circuit agreed that a claim of discrimination based on Native American status could be raised as a race claim. See Torgerson, at 1053 (citing Dawavendewa v. Salt River Project Agric. Improvement & Power Dist., 154 F.3d 1117, 1119 (9th Cir. 1198)). However, Torgerson never amended his complaint to include race discrimination and the Eighth Circuit in an *en banc* decision upheld the dismissal. *Id.*

157. Saint Francis Coll. v. Al-Khazraji, 481 U.S. 604 (1987).

158. *Id.*

159. *Id.* at 607.

1981.[160] The Court of Appeals held that the plaintiff had alleged a discrimination claim based on race even though under current racial classifications Arabs were viewed as Caucasians.[161] Congress had not limited Section 1981 claims to those filed by members of a different race from the defendant.[162]

The Supreme Court agreed with the Court of Appeals that Section 1981 was not limited to claims of racial discrimination by those of different races.[163] The Court went on to note that the defendant's argument rested on the assumption

> that all those who might be deemed Caucasians today were thought to be of the same race when Section 1981 became law in the 19th century; and it may be that a variety of ethnic groups, including Arabs, are now considered to be within the Caucasian race. The understanding of "race" in the 19th century, however, was different. Plainly, all those who might be deemed Caucasian today were not thought to be of the same race at the time § 1981 became law.[164]

The Court reviewed several 19th-century sources on the definition of race, and specifically listed several "races" from those sources including Finns, Romani, Basques, Hebrews, Swedes, Norwegians, Germans, Greeks, Italians, Spanish, Mongolians, Russians, and Jews.[165] The Court went on to note that "it is clear that [these 19th-century sources defining race] do not support the claim that for the purposes of §1981 that Arabs, Englishmen, Germans, and certain other ethnic groups are to be considered a single race."[166] To bolster its conclusion, the Court noted remarks by several Congressmen to the effect that their concept of race was broad.[167] The Court went on to hold that

> [b]ased on the history of § 1981, we have little trouble in concluding that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics. Such discrimination is racial discrimination that

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160. *Id.* at 606. The plaintiff's Title VII claim was dismissed because it was not timely filed.

161. *Id.* at 607. In a 2015 Census Bureau study, researchers found it may be beneficial to include a dedicated Middle Eastern or North African category in the 2020 census. *See* Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 81 Fed. Reg. 67,398 (Sept. 30, 2016). However, in 2018, officials in the Trump Administration decided not to add the category. Yousef H. Alshammari, *Why Is There No MENA Category on the 2020 US Census?*, AL JAZEERA (Apr. 1, 2020), https://www.aljazeera.com/news/2020/4/1/why-is-there-no-mena-category-on-the-2020-us-census [https://perma.cc/WF7X-2CA3]. They viewed the category as about ethnicity, not about race. *Id.*

162. Saint Francis Coll., 481 U.S. at 607.

163. *Id.* at 609–10.

164. *Id.* at 610.

165. *Id.* at 611.

166. *Id.* at 612.

167. These remarks will be discussed in detail later in this section. *See infra* notes 225–33 and accompanying text.

> Congress intended § 1981 to forbid, whether or not it would be classified as racial in terms of modern scientific theory.[168]

The Court's inclusion of Romani in its list of racial groups drawn from contemporary sources is particularly significant. The Romani are believed to be Dalits who migrated from India into Persia, the near East and, finally, into Eastern and Central Europe beginning around A.D. 600.[169] Thus, perhaps, the Supreme Court has already endorsed the notion that Dalits are a separate race under Section 1981.

2. Common Practice of Analogizing Racial Discrimination Against Black Americans to Caste Discrimination During the 19th Century

In order to fully comprehend the importance of caste discrimination in discussions during the enactment of Section 1981, it is necessary to understand the importance of the use of anti-caste legal arguments in American law and politics during the pre-Civil War period. That discussion will show that by analogizing race discrimination against Black people to the Indian caste system, Americans in the 19th century viewed caste as a form of race.

By the early 1830s, antislavery societies in New England had identified the clear connection between slavery and the denial of civil liberties in the North.[170] Even though only a few South Asians immigrated to the U.S. before 1870,[171] to help demonstrate that both slavery and discrimination against free blacks were contrary to core principals of American society, some abolitionist proponents of Black equality, including Frederick Douglass, Thomas Dalton, William Lloyd Garrison, Harriet Beecher Stowe, and Charles Sumner, compared the treatment of Black people to the Hindu caste system.[172]

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168. Saint Francis Coll., 481 U.S. at 613.

169. Palash Ghosh, *Centuries of Discrimination: European Roma Linked to India's "Untouchables,"* INT'L BUS. TIMES (Dec. 4, 2012), https://www.ibtimes.com/centuries-discrimination-european-roma-linked-indias-untouchables-917965 [https://perma.cc/8N6R-6DCN]; Niraj Rai, Gyaneshwer Chaubey, Rakesh Tamang, Ajai Kumar Pathak, Vipin Kumar Singh, Monika Karmin, Manvendra Singh, Deepa Selvi Rani, Sharath Anugula, Brijesh Kumar Yadav, Ashish Singh, Ramkumar Srinivasagan, Anita Yadav, Manjua Kashyap, Sapna Narvariya, Alla G. Reddy, George van Driem, Peter A. Underhill, Richard Villems, Toomas Kivisild, Lalji Singh, & Kumarasamy Thangaraj, *The Phylogeography of Y-Chromosome Haplogroup H1a1a-M82 Reveals the Likely Indian Origin of the European Romani Populations*, 7 PLOS ONE 1 (2012), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0048477 [https://perma.cc/CAL8-HT5C]; Horolma Pamjav, Andrea Zalán, Judit Béres, Melinda Nagy, & Yuet Meng Chang, *Genetic Structure of the Paternal Lineage of the Roma People*, 145 AM. J. PHYSICAL ANTHROPOLOGY 21–29 (2011), https://onlinelibrary.wiley.com/doi/full/10.1002/ajpa.21454 [https://perma.cc/SQV3-AY4Q].

170. *See, e.g.*, J. Morgan Kousser, *The Supremacy of Equal Rights: The Struggle Against Racial Discrimination in Antebellum Massachusetts and the Foundations of the Fourteenth Amendment*, 82 NW. U. L. REV. 941, 953–55 (1988).

171. *See supra* note 64 and accompanying text.

172. Daniel Immerwahr, *Caste or Colony? Indianizing Race in the United States*, 4 MOD. INTELL. 275, 277 (2007).

The *Anti-Slavery Record*, an abolitionist series published from 1835 to 1837 by the leading abolitionist organization, the American Anti-Slavery Movement, contained frequent references to the prevention of caste. For example, one article discussing the right to end slavery in the District of Columbia argued that

> By the most express sanctions of the [C]onstitution, [C]ongress has the power to abolish [slavery] at the seat of the national government, and in [C]ongress a majority of forty are from free states. . . To bring the North up to this work, it is necessary that the spirit of slavery at the North be met and conquered. The prejudice of *caste* must be killed and buried.[173]

An 1842 article in Garrison's *The Liberator*, another abolitionist publication, described a meeting of the British India Society where a free Black person spoke of race relations in the U.S.[174] The writer noted that even though the speaker was not a slave, the spirit of caste leads the white race to insult all of those of African descent.[175]

Perhaps the most thorough and complete discussion of the caste analogy to the condition of enslaved people during the antebellum period occurred as part of the legal arguments in the first major school segregation case in American history. In *Roberts v. Boston*,[176] Sarah Roberts sought to attend the nearest school to her home, which at the time excluded Black students. Sarah was represented by Robert Morris, one of the first Black attorneys in the U.S., and Charles Sumner, who would go on to become one of the most influential leaders of the Radical Republicans in the Senate during the Civil War and Reconstruction.[177] In his arguments before the Court, Sumner fully developed the analogy of the treatment of enslaved persons to the caste system in India, an analogy that he constantly repeated throughout his advocacy of the Civil Rights Act of 1866, as well as the Fourteenth Amendment.[178]

For Sumner, "[t]he separation of children in the Schools, on account of race or color, is in the nature of caste, and, on this account, a violation of Equality."[179] In his brief, Sumner drew a direct analogy of caste in India to the U.S. "This will be apparent from the very definition of Caste. This term is borrowed from the Portuguese word *casta*, which signifies family, breed, race. It has become

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173. *The Right of Northern Interference*, ANTI-SLAVERY REC. 6 (1837) (emphasis added).

174. *American Slavery and the Prejudice Against Color*, LIBERATOR 3 (Jan. 7, 1842).

175. *Id.* For more examples, *see* Scott Grinsell, *"The Prejudice of Caste": The Misreading of Justice Harlan and the Ascendency of Anticlassification*, 15 MICH. J. RACE & L. 317, 340–42 (2010).

176. Roberts v. Boston, 59 Mass. 198 (1849).

177. Charles Sumner, *1849 Charles Sumner, "Equality Before the Law: Unconstitutionality of Separate Colored Schools in Massachusetts,"* BLACKPAST, https://www.blackpast.org/african-american-history/1849-charles-sumner-equality-law-unconstitutionality-separate-colored-schools-massachusetts-2/ [https://perma.cc/WUF8-ZLGV].

178. *Id.*

179. Brief of Plaintiff, Roberts v. Boston, 59 Mass. 198 (1849), in ABOLITIONISTS IN THE NORTHERN COURTS: THE PAMPHLET LITERATURE 493, 508 (Paul Finkelman ed. 2007).

generally used to designate any hereditary distinction, particularly of race. It is in India that it is most often applied."[180] Sumner went on:

> In India, Brahmins and Sudras, from generation to generation, were kept apart. If a Sudra presumed to sit upon a Brahmin's carpet his punishment was banishment. With similar inhumanity here, the black child, who goes to sit on the same benches with the white child, is banished, not from the country, but from the school. In both cases it is the triumph of Caste. But the offense is greater with us, because, unlike the Hindoos, we acknowledge that *men are born equal*.[181]

Sumner concludes, "We abjure all inequality before law; but here is an inequality which touches not an individual, but a race. We revolt at the relation of caste; but here is a caste which is established under a Constitution, declaring that *all men are born equal*."[182]

The Massachusetts Supreme Judicial Court complimented Sumner on his advocacy.[183] However, the Court rejected the legal argument of the plaintiffs that the "maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste, founded in a deep-rooted prejudice in public opinion."[184]

As Gunnar Mrydal points out in his epic book about American race relations, the Emancipation Proclamation stopped the common practice of referring to Black Americans as "slaves."[185] Instead, the terms "freedmen" and "ex-slaves" came into popular use.[186] Americans sought a term to describe Black people whom, as a society, they continued to view as inferior.[187] As a result, the use of the term "caste" increased significantly.[188]

The caste analogy remained central to legal arguments regarding the treatment of Black people until the end of the century. Perhaps the best example of the legal importance of the caste analogy is in the arguments advanced by the plaintiff in the Supreme Court's 1896 decision in *Plessy v. Ferguson*.[189] The brief, filed on behalf of Homer Plessy by James Walker and Albion Tourgee, argued that slavery was a caste system because it tended "to reduce the colored people of the country to the condition of a subject race" and imposed upon them the inequality of rights.[190] Segregation has the same effect. The effect of the law that

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180. *Id.*
181. *Id.* at 509.
182. *Id.* at 512.
183. Roberts v. Boston, 59 Mass 198, 206 (1849).
184. *Id.* at 209.
185. GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 667 (1944).
186. *Id.*
187. *Id.*
188. *Id.*
189. Plessy v. Ferguson, 163 U.S. 537 (1896).
190. Brief for Plaintiff in Error at 23, Plessy v. Ferguson, 163 U.S. 537 (1896).

distinguishes citizens based on race is to legalize caste; as such, it is inconsistent with the concept of one equal citizenship for all of the United States and each state.[191] Their caste argument was endorsed by Justice John Marshall Harlan in his dissent. As virtually every American law student learns in Constitutional Law, Justice Harlan wrote a separate dissenting opinion in *Plessy*.[192] In what may very well be the most renowned passage from any opinion ever written by a justice of the US Supreme Court, Harlan wrote:

> [I]n view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. *There is no caste here*. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.[193]

3. Aryan Origin Theory and Race

The view of caste as a form of race derived in part from the "Aryan Origin Theory." Indian historian and Professor Emerita of Jawaharlal Nehru University, Romila Thapar, called the "Aryan question . . . probably the most complex, complicated question in the Indian history."[194] By the late 19th century, the Aryan Origin Theory had gained wide acceptance in India and become a foundational lens for interpreting Indian history.[195] The Aryan Origin Theory remains controversial today and has been refuted by a number of scholars.[196] However, for the purposes of determining whether caste was understood as a form of race in 19th-century America, the relevant question is not whether the Aryan Origin Theory is accepted today, but whether Americans then considered differences in caste to correspond with their broad definition of race.

There were different versions of the theory. One was developed primarily between 1849 and 1874 by German-born philologist and Orientalist Friedrich Max Müller.[197] According to Müller, a group of people of shared "Aryan" origin in Central Asia divided into two groups, one of which migrated to Europe while the other went to Iran.[198] From Iran, another group travelled into northern India, where they conquered the indigenous people there and brought the language of Sanskrit with them.[199] These Aryans fashioned the caste system to maintain their

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191. *Id.*

192. *Plessy*, 163 U.S. at 552 (Harlan, J., dissenting).

193. *Id*. at 559 (Harlan, J., dissenting) (emphasis added).

194. Romila Thapar, *The Aryan Question Revisited*, ACAD. STAFF C., JAWAHARLAL NEHRU U. (Oct. 11 1999), http://members.tripod.com/ascjnu/aryan.html [https://perma.cc/9TWW-R6ZY].

195. *See* Romila Thapar, *The Theory of Aryan Race and India: History and Politics*, 24 SOC. SCIENTIST 3, 7 (1996).

196. *See* T. R. S. Prasanna, *There Is No Scientific Basis for the Aryan Invasion Theory*, 103 CURRENT SCI. 216, 221 (2012).

197. *See* Thapar, *supra* note 195.

198. *Id*.

199. *Id*. at 5, 9.

dominance. As Müller developed the theory, the indigenous people were the Dravidian race and became the Shudras and Dalits.[200] Thus, high-caste Hindus, especially the Brahmins, descended from white foreign invaders who migrated from Central Asia and conquered the northern part of India. Müller referred to these two different groups using terms that included nation, people, blood, and race.[201]

Another version of the theory was endorsed by Bal Gangadhar Tilak, an influential Indian Freedom Fighter.[202] His version differed from Müller's, but due to Tilak's influence, his theory should be considered to have the same relevance to the question of whether Americans of the 19th century would have considered differences in caste to be differences in race. Rather than Müller's Central Asian origins, the theory Tilak endorsed traced the Aryans back to a Nordic homeland and suggested they had migrated from the Arctic regions in the post-glacial age.[203] One group branched off and went into Europe, but lapsed into barbarism, while a different group migrated into India and maintained their superior civilization.[204] Müller disagreed with this version of the theory, but he was supportive enough of Tilak to help in getting him released from jail when he was incarcerated by the British government for his nationalist activities.[205]

For decades, the Aryan Origin Theory was accepted by many upper-caste members of South Asia who used the theory "to argue the superiority of the upper castes and promote their self-esteem by maintaining that not only were the upper-castes the lineal descendants of the Aryans but that they were also racially related to the European Aryan."[206] The theory also allowed the upper-caste Hindus to argue not only that they were the creators of the Indian civilization, but as Keshab Chandra Sen noted, high-caste Indians could assert to their British colonizers that they were actually "parted cousins."[207]

The Aryan Origin Theory is no stranger to U.S. courts. Not long after the ratification of the U.S. Constitution, the First Congress passed a restrictive

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200. ROMILA THAPAR, THE ARYAN: RECASTING CONSTRUCTS 33–34 (2008).

201. *Id*. at 34.

202. *See* Thapar, *supra* note 195. *See also* Sukeshi Karma, *Bal Gangadhar Tilak* in OXFORD BIBLIOGRAPHIES, https://www.oxfordbibliographies.com/view/document/obo-9780195399318/obo-9780195399318-0214.xml [https://perma.cc/MZ2E-X433]. Bal Gangadhar Tilak (b. 1856–d. 1920) has been one of the Indian freedom movement's more contentious leaders.

203. *See* Thapar, *supra* note 195, at 4; *see also* LOKAMANYA BÂL GANGÂDHAR TILAK, THE ARCTIC HOME IN THE VEDAS: BEING ALSO A NEW KEY TO THE INTERPRETATION OF MANY VEDIC TEXTS AND LEGENDS vi–vii (1903).

204. Thapar, *supra* note 195, at 4.

205. *Id.*

206. *Id.* at 8. *See also* Varsha Ayyar & Lalit Khandare, *Mapping Color and Caste Discrimination in Indian Society, in* THE MELANIN MILLENNIUM: SKIN COLOR AS 21ST CENTURY INTERNATIONAL DISCOURSE 71, 79 (Ronald E. Hall ed., 2013).

207. THAPAR, *supra* note 200, at 7.

citizenship measure, the Naturalization Act of 1790.[208] This measure limited naturalized citizenship to "free white persons."[209] From 1909 to 1923, South Asian plaintiffs brought a series of naturalization cases asserting that they were Caucasian and, accordingly, eligible for naturalized U.S. citizenship.[210] Courts initially granted their petitions but were confused about how to handle the racial status of South Asians.[211]

For U.S. legal purposes, though, the Supreme Court delivered the final word to the Aryan Origin Theory in its unanimous 1923 decision in *U.S. v. Bhagat Singh Thind*.[212] Thind argued that, as a high-caste Hindu of full Indian blood, born at Amritsar, Punjab, India, he was an Aryan descendant and was therefore Caucasian and entitled to naturalized citizenship.[213] The Supreme Court rejected Thind's argument.[214] In doing so, the Court noted that to determine the meaning of the words "white persons," its meaning must be taken from what the original framers of the 1790 statute thought the words meant in common ordinary speech and not scientific origin.[215] Thus, the Court held, "[i]t may be true that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them to-day."[216] The Court went on to reject the notion that Indian people at the time had preserved their racial integrity, but had instead clearly intermarried with the local people.[217] The Court concluded its opinion by stating, "It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white."[218]

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208. *See* IAN F. HANEY-LOPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 42–46 (1996) (citing Naturalization Act, Ch. 3, 1 Stat. 103 (1790)). After the Civil War, Congress amended this Act to expand coverage to those of African nativity or African descent. *Id.*

209. *Id.*

210. For a discussion of these cases, *see* Taunya L. Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 ASIAN L. REV. 7, 19–20 (1998).

211. *Id.*

212. United States v. Bhagat Singh Thind, 261 U.S. 204 (1923).

213. *Id.* at 210. Interestingly, Dr. Bhagat Singh Thind was actually a Sikh. Doug Coulson, *British Imperialism, the Indian Independence Movement, and the Racial Eligibility Provisions of the Naturalization Act: United States v. Thind Revisited*, 7 GEO. J. L. MOD. CRIT. RACE PERSP. 1, 3 n.6 (2015).

214. *Thind*, 261 U.S. at 213.

215. *Id.*

216. *Id.* at 209.

217. *Id.* at 212–13.

218. *Id.* at 215.

4. Congressional Debates During the Passage of the Civil Rights Act of 1866

In discussing the legislative history of Section 1981, it is important to note that the Congress that adopted the Civil Rights Act of 1866 had to respond to claims that the Act exceeded legislative authority under the Thirteenth Amendment.[219] Scholars agree that one of the purposes of enacting the Fourteenth Amendment, adopted by the same Congress two months after overriding President Johnson's veto of the Civil Rights Act of 1866, was to constitutionalize the provisions of the Act.[220] After the Fourteenth Amendment was ratified, Congress re-enacted the Civil Rights Act of 1866 in the Enforcement Act of 1870, also known as the Voting Rights Act of 1870.[221] Thus, when thinking about the legislative history of Section 1981, not only is the Civil Rights Act of 1866 relevant, but so are the Congressional discussions regarding the enactment of the Fourteenth Amendment.

The ratification process of the Thirteenth Amendment banning slavery concluded on December 6, 1865. This was about the time that Congress was beginning its session. Section 2 of that Amendment provided, "Congress shall have power to enforce this article by appropriate legislation."[222]

Slavery was more than physical bondage. The U.S. legal system did not consider enslaved people to have legal personhood.[223] Thus, they did not have legal rights that would allow them to enter into contracts, own or lease property, be a witness in legal proceedings, sue or be sued in Court, or perform other legal functions.[224] The Supreme Court infamously affirmed this lack of legal status in *Dred Scott v. Sandford*,[225] decided four years before the start of the Civil War, which held that no Black person, enslaved or free, could be a citizen of the United States.[226]

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219. *See infra* notes 234–39 and accompanying text.

220. RAOUL BERGER, SELECTED WRITINGS ON THE CONSTITUTION 185 (1987) ("[T]he uncontroverted evidence, confirmed in these pages, is that the framers [of the Fourteenth Amendment] repeatedly stated that the amendment and the Civil Rights Act of 1866 were 'identical' . . . ."); *see also* ANDREW KULL, THE COLOR-BLIND CONSTITUTION 75 (1992) ("It was the demonstrable consensus of the Thirty-ninth Congress that section 1 of the Fourteenth Amendment 'constitutionalized' the Civil Rights Act of 1866."); MICHAEL J. PERRY, WE THE PEOPLE: THE FOURTEENTH AMENDMENT AND THE SUPREME COURT 72 (1999) ("Recall that whatever else it did, the second sentence of section one constitutionalized the 1866 Civil Rights Act."); RALPH A. ROSSUM & G. ALAN TARR, AMERICAN CONSTITUTIONAL LAW: THE BILL OF RIGHTS AND SUBSEQUENT AMENDMENTS 53 (8th ed. 2010) ("The Fourteenth Amendment was obviously designed to constitutionalize the Civil Rights Act of 1866.").

221. Enforcement Act of 1870, Ch. 114, 16 Stat. 140 (codified as amended at 42 U.S.C. §§ 1981–82 (2000)).

222. U.S. CONST. amend. XIII, § 2.

223. Dred Scott v. Sandford, 60 U.S. 393, 450 (1857) (holding that Scott, an enslaved Black man, was property).

224. *Id.* at 427 (holding that Scott, as a noncitizen, could not bring a suit in federal court).

225. *Id.*

226. *Id.*

As evidenced by the passage of the Civil Rights Act of 1866, most members of Congress believed that Section Two of the Thirteenth Amendment gave it the authority to legislate to eliminate not just physical bondage, but the badges and incidents of slavery as well. After Congress came back into session, Republicans began to work on measures that would protect the basic civil rights of all citizens, especially those who were Black.[227] Needless to say, Congress had never passed a measure to protect the rights of Black Americans in its history. Thus, the Act proved to be Congress' first anti-discrimination measure.

During one Senate debate, in response to the argument that the government was organized in the interest of the white race, Senator Justin Morrill argued that the Declaration of Independence's language precluded the idea of a country being based on any such distinction between races, colors, or castes.[228] Five days later, Sumner spoke during the Senate debate on the topic of the perpetual dominance of the white race.[229] He noted that this idea creates "nothing less than a Caste, which is at once irreligious and unrepublican. A Caste cannot exist except in defiance of the first principles of Christianity and the first principles of a Republic."[230] Sumner went on to note that Brahmins and Sudras had been separated generationally in India in the same way black and white people were separated in the U.S.[231] Agreeing with Sumner that a "caste exclusion is entirely contrary to the spirit of our Government," Senator William Fessenden nonetheless expressed the view that he felt such a measure eliminating all distinctions of color between people would not pass.[232] In March, Representative John Martin Broomall argued,

> [T]he government of the United States above all other duties owes it to itself and to humanity to guard the rights of those who in the midst of rebellion periled their lives and fortunes for its honor, of whatever caste or lineage they may be . . . and . . . no system of reconstruction ought to be considered unless it shall effectually guaranty [sic] the rights of Union men of the South.[233]

Framers of the Civil Rights Act of 1866 had to contend with detractors who claimed it was an unconstitutional intrusion on state sovereignty that went beyond the scope of the authority granted by the Thirteenth Amendment. Indeed, one of the criticisms that President Johnson leveled against the Act in his veto message

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227. ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863–1877, at 243 (2014).

228. CONG. GLOBE, 39th Cong., 1st Sess. 570–71 (1866).

229. *Id.* at 683.

230. *Id.*

231. *Id.*

232. *Id.* at 704.

233. *Id.* at 1262.

was that it exceeded Congress's powers under the Thirteenth Amendment.[234] John Bingham, a principal drafter of Section One of the Fourteenth Amendment, also believed that prior to the passage of the Amendment, Congress lacked power for the 1866 Act.[235] As the opponents put it, the power of Congress to legislate against slavery did not contain the power to provide equal civil rights or prohibit private acts of discrimination.[236] Passing the Fourteenth Amendment allowed the Act's proponents to defend against the possibility that the courts might agree with Johnson's conclusion and the risk that, even if the Act survived judicial scrutiny, a subsequent Congress could decide to repeal it.[237] Thus, Congress sought to ensure the validity and permanency of the rights granted in the Act by enacting the Fourteenth Amendment.[238] Congress passed the Fourteenth Amendment and sent it to the states for ratification on June 13, 1866, just two months after overriding Johnson's veto of the 1866 Act.[239]

Some Constitutional scholars have argued that the Fourteenth Amendment was intended to ban all systems of caste or class legislation.[240] Americans understood class and caste as nearly interchangeable terms[241] during these times, which were before the publication of *Das Kapital* that popularized the use of "class" conflicts in the writings of Karl Marx.[242] For example, in the debate on the Fourteenth Amendment on May 23, 1866, Senator Jacob Howard stated that

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234. President Andrew Johnson, *March 27, 1866: Veto Message on Civil Rights Legislation* (1866), https://millercenter.org/the-presidency/presidential-speeches/march-27-1866-veto-message-civil-rights-legislation [https://perma.cc/XC7U-R4W6] (last visited Sept. 10, 2021) (writing that "the bill undoubtedly comprehends cases and authorizes the exercise of powers that are not, by the Constitution, within the jurisdiction of the courts of the United States").

235. MICHAEL KENT CURTIS, NO STATE SHALL ABRIDGE: THE FOURTEENTH AMENDMENT AND THE BILL OF RIGHTS 80 (Duke Univ. Press, 1986). Bingham was one of a small group of Republicans who subscribed to this argument. *Id.*

236. *See* EDWARD MCPHERSON, THE POLITICAL HISTORY OF THE UNITED STATES OF AMERICA DURING THE PERIOD OF RECONSTRUCTION 75 (Washington, James J. Chapman, 3d ed. 1880).

237. *See* George Rutherglen, *The Improbable History of Section 1981: CLIO Still Bemused and Confused*, 9 SUP. CT. REV. 303, 312 (2003).

238. *See supra* note 220 and accompanying text. *See also* Hurd v. Hodge, 334 U.S. 24, 847, 852 (1948) ("Indeed, as the legislative debates reveal, one of the primary purposes of many members of Congress in supporting the adoption of the Fourteenth Amendment was to incorporate the guaranties of the Civil Rights Act of 1866 in the organic law of the land.").

239. FONER, *supra* note 227, at 247, 254.

240. Steven Calabresi & Julia T. Ricker, *Originalism and Sex Discrimination*, 90 TEX. L. REV. 1, 4. Professor Melissa L. Saunders has argued that the Amendment goes beyond just banning systems of caste based on hereditary and social stigmatization. Melissa L. Saunders, *Equal Protection, Class Legislation, and Colorblindness*, 96 MICH. L. REV. 245, 247–48 (1997). *See also* John Harrison, *Reconstructing the Privileges or Immunities Clause*, 101 YALE L.J. 1385, 1413 (1992) (arguing that the Fourteenth Amendment was specifically geared toward ending the injustice inherent in caste systems).

241. Calabresi & Ricker, *supra* note 240, at 17, 19. *See also* Slaughter-House Cases 83 U.S. 36, 410 (1872) (discussing the Equal Protection Clause) ("We doubt very much whether any action of a State not directed by way of discrimination against the *negroes as a class,* or on account of their race, will ever be held to come within the purview of this provision.") (emphasis added).

242. *Das Kapital* was published in 1867. 1 KARL MARX, DAS KAPITAL, DER PRODUKTIONSPROCESS DES KAPITALS (Hamburg, Meissner, 1867).

the Fourteenth Amendment would "abolish[] all class legislation in the States and do[] away with the injustice of subjecting one caste of persons to a code not applicable to another."[243] He acknowledged the caste-like system that existed between Black and white people in the U.S. and went on to note the different ways this amendment would end the legally sanctioned system as it existed then.[244] In explaining the meaning of Section One, Representative Thomas Eliot said:

> I support the first section because the doctrine it declares is right, and if, under the Constitution as it now stands, Congress has not the power to prohibit State legislation discriminating against classes of citizens or depriving any persons of life, liberty, or property without due process of law, or denying to any persons within the State the equal protection of the laws, then, in my judgment, such power should be distinctly conferred.[245]

After Congress passed the Fourteenth Amendment, the Republican National Party published a bulletin championing it as an anti-caste measure. Published in August of 1866, the bulletin read, "The Republicans in Congress tried to the extent of their powers to abolish throughout the bounds of the republic the evils of caste, as second only to those of slavery."[246]

The Fourteenth Amendment was ratified in July of 1868, followed 18 months later by the Fifteenth Amendment, which prohibited any state or the United States from denying or abridging the right of citizens to vote on account of race, color, or previous condition of servitude.[247] Two months before the ratification of the Fifteenth Amendment, Sumner published an essay entitled *The Question of Caste*, which was the substance of remarks he made at speeches he delivered in a dozen cities in the Northeast.[248] In his essay, Sumner once again fully discussed the caste analogy, making several of the same points that he first made in his arguments in *Roberts v. Boston*.[249] After the ratification by the states of the Fourteenth and Fifteenth Amendments, the Republican-controlled Congress reenacted the Civil

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243. CONG. GLOBE, 39th Cong., 1st Sess. 2766 (1866).

244. *Id.*

245. CONG. GLOBE, 39th Cong., 1st Sess. 2511 (1866).

246. Calabresi & Ricker, *supra* note 240, at 35 (quoting *Who Did It?*, PHILA. N. AM. & U.S. GAZETTE, Aug. 18, 1866, at 1).

247. U.S. CONST. amend. XIV; U.S. CONST. amend. XV. The Fifteenth Amendment was ratified on February 3, 1870.

248. HON. CHARLES SUMNER, QUESTION OF CASTE 3, 9 (1869), https://ia800901.us.archive.org/29/items/questionofcaste00sumn/questionofcaste00sumn_bw.pdf [https://perma.cc/7NQK-EZV3].

249. Sumner connects the caste system to the feudal system in Europe where the son was to engage in the same occupation as his father. He describes the four major Hindu castes, which he notes have their origins in the Laws of Manu and are called "varnas" in Sanskrit, which translates to "colors." Sumner says the Brahmins proceed from the mouth of the Creator, the Kshatriya from the arm, the Vaishya from the thigh, and the Shudra from the foot. Summer points out that below the Shudra is the Pariah (Dalit). *See id.*

Rights Act of 1866 in 1870.[250] Congress would also split parts of Section One of the Act into Sections 1981 and 1982. However, both Sections used nearly identical language, and the Supreme Court has construed them similarly.[251] The former section dealt primarily with most of the rights covered under the original act, while the latter section dealt with property rights.[252]

The purpose of discussing the history of the Civil Rights Act of 1866 and the Fourteenth Amendment is not to resolve the jurisprudential dispute regarding the proper interpretation of these measures. Rather, it is to demonstrate that as Congress considered enacting Section 1981, it also had in mind that the measure could combat the maintenance of a caste system on American soil. Thus, the caste system on the Indian subcontinent was in the background of the anti-caste thinking in pursuit of eliminating discrimination suffered by Black people in the U.S.

5. Conclusion

The Supreme Court has interpreted the meaning of race within the context of Section 1981 based upon its understanding in the 19th century.[253] Since, in the 19th century, caste differences were viewed as race differences, it could very well be that courts will view caste discrimination based on untouchability as a form of racial discrimination under Section 1981.

IV.
IS CASTE DISCRIMINATION COVERED BY ONE OF THE PROTECTED TRAITS OF TITLE VII?

Title VII applies to employers with 15 or more employees, and it operates during hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment.[254] As the Supreme Court has interpreted the law, "[w]hat is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classifications."[255]

Employers may be held liable under Title VII based on several theories including disparate treatment, which is likely to be the most applicable to an

250. Enforcement Act of 1870, Ch. 114, 16 Stat. 140 (codified as amended at 42 U.S.C. §§ 1981–82 (2000)). Congress revised and codified the United States Code in 1874.

251. *Id.*; CBOCS W., Inc. v. Humphries, 553 U.S. 442, 447 (2008) (noting that the Court's precedents have long "construe[d] §§ 1981 and 1982 similarly").

252. Congress also enacted its first codification of federal law in 1874. Runyon v. McCrary, 427 U.S. 160, 168 n.8 (1975) ("The commissioners who prepared the 1874 draft revision were . . . given authority to 'revise, simplify, arrange, and consolidate all statutes of the United States.").

253. Saint Francis Coll. v. Al-Khazraji, 481 U.S. 604, 610 (1987). *See supra* note 147 and accompanying text.

254. 42 U.S.C.A. § 2000e-2(a)(1) (Westlaw through P.L. 116-259).

255. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801 (1973) (citing Griggs v. Duke Power Co., 401 U.S. 424, 429 (1971)).

individual Dalit employee. Disparate treatment discrimination includes harassment claims and occurs when an employer is motivated to treat one employee differently because of a protected trait. Title VII also provides for retaliation claims that apply when the employer discriminates against an employee for engaging in protected activities. Thus, if caste discrimination based on untouchability is covered by Title VII, employees who suffer adverse employment actions because they complain, either internally or externally, would have retaliation claims to pursue distinct from their underlying employment discrimination claim. Protection from retaliation is also critical for Dalits and could encourage more of them to come forward and reveal the discrimination they suffer on the job.

Dalits are vulnerable to discrimination by employers on several bases: their Asian ethnicity, their color, the religion they practice, their sex, or their country of origin. However, if the discrimination is based on these characteristics, their caste is irrelevant to their claim. Thus, instead of focusing on any of those claims, this part will address the question of whether caste discrimination based on untouchability fits within any of the protected traits.

It is clear that caste discrimination does not fit into the protected trait of sex. Many South Asians feel that there is a correlation between color and caste.[256] In addition, the Sanskrit term of "varna" translates to color. But this refers to spiritual color as opposed to physical color.[257] Like people of all races and ethnicities, Dalits come in a large array of skin colors. The experiences of Asian, Black, and Latinx individuals in the U.S. demonstrate that discrimination based on color is separate from discrimination based on race or national origin. For caste discrimination based on untouchability, the source is not color, it is caste.[258]

There is the possibility that a Dalit claimant could assert a "religious non-adherence discrimination claim," also referred to as a "reverse religious discrimination claim," that would fit within the protected trait of religion. The first section will address whether caste discrimination fits as a form of religious discrimination. The second section will discuss whether caste discrimination fits within the concept of race discrimination. In doing so, the second section will present four different legal analyses. The third subsection will address whether courts could recognize caste discrimination based on untouchability as a form of national origin discrimination. In doing so it discusses four different legal arguments that caste discrimination fits within national origin discrimination.

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256. For a discussion of colorism among South Asians, see Taunya Lovell Banks, *Colorism Among South Asians: Title VII and Skin Tone Discrimination*, 14 WASH. U. GLOB. STUD. L. REV. 665 (2014); Varsha Ayyar & Lalit Khandare, *Mapping Color and Caste Discrimination in Indian Society*, *in* THE MELANIN MILLENNIUM: SKIN COLOR AS 21ST CENTURY INTERNATIONAL DISCOURSE 71–95 (Ronald E. Hall ed. 2013).

257. Ayyar & Khandare, *supra* note 256, at 74; *See also* MOHANTY, *supra* note 109, at 151.

258. *See* Smita Narula, *supra* note 9, at 259 ("To begin, the visual cues that accompanied apartheid in South Africa, or racial discrimination in other parts of the world, are lacking in India. Caste is like oxygen—it is both invisible and indispensable.").

A. Is Caste Discrimination Based on Untouchability a Form of Religious Discrimination?

Title VII provides a definition of religion that includes "all aspects of religious observance and practice, as well as belief."[259] The EEOC "define[s] religious practices to include moral or ethical beliefs about what is right and wrong which are sincerely held with the strength of traditional religious views."[260] Employers are required to accommodate their employees' religious beliefs, unless the employer demonstrates that they are unable to reasonably do so without undue hardship on the conduct of their business.[261] The problem with arguing that caste fits within this definition of religious discrimination is that being a Dalit is determined at birth.[262] Thus, the discrimination that Dalits face is not the result of what they believe or the practices of their beliefs. On the contrary, the discrimination tends to stem from the discriminators' own religious beliefs which include negative views about Dalits. Discriminating against someone due to their caste does not appear to fit neatly within this aspect of discriminating against a Dalit because of the Dalit's religion.[263]

Several courts, however, have recognized the validity of religious non-adherence discrimination claims.[264] In a religious non-adherence claim, an employee argues that their employer discriminated against them because the employee did not share the employer's religious beliefs.[265] Thus, the employee's specific religious beliefs do not matter as much as the employer's religious beliefs in motivating the taking of adverse employment action beyond the simple fact that they diverge.[266] In the case of *Noyes v. Kelley Services, Inc.*, the plaintiff's supervisor and recently promoted co-worker belonged to a small religious sect known as the Fellowship that had around 2000 members.[267] A third of the Fellowship members lived together in a compound in Apollo, California.[268] The

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259. 42 U.S.C. § 2000e(j).

260. 29 C.F.R. § 1605.1.

261. 42 U.S.C. § 2000e.

262. *See supra* notes 128–130 and accompanying text.

263. As was discussed earlier (*see supra* notes 135–37, and accompanying text), many Dalits have become Ambedkarite Buddhists. While there may be a plausible argument that religion is a motivating factor, generally speaking, it is not that they practice Buddhism, but that they are Dalits that motivates the discriminator. A discriminator against an Ambedkarite Buddhist is not likely to manifest the same discriminating motives regarding a Buddhist who was born into a high caste or a Japanese Buddhist, for example. *See* Waughray, *supra* note 49, at 214 (2009).

264. Alex Reed, *Religious Nonadherence Claims as a Means of Contesting LGB-Related Employment Bias*, 40 BERKLEY J. EMP. & LAB. L. 340 (2020). *See, e.g.*, Shapolia v. Los Alamos Nat'l Lab'y, 992 F.2d 1033, 1038 (10th Cir. 1993); Venters v. City of Delphi, 123 F.3d 956 (7th Cir. 1997); Noyes v. Kelly Servs., 488 F.3d 1163 (9th Cir. 2007); Magden v. Easterday Farms, No. 2:16-CV-00068-JLQ, 2017 WL 1731705, at *6–7 (E.D. Wash. May 3, 2017).

265. Harold M. Brody & Catherine Brito, *Reversing Claims of Reverse Religious Discrimination*, 34 EMP. REL. TODAY 77, 77 (2007).

266. *Venters*, 123 F.3d at 972.

267. *Noyes*, 488 F.3d at 1166.

268. *Id.*

sect members abided by strict rules that governed their way of life.[269] The plaintiff believed her supervisor passed her over for a promotion in order to give it to a co-Fellowship member and perceived a general pattern at work of Fellowship members receiving favorable treatment.[270] The Ninth Circuit found that the plaintiff established triable issues of fact.[271] Interpreting an earlier decision by the Tenth Circuit in *Shapolia v. Los Alamos National Laboratories*,[272] the Ninth Circuit in *Noyes* stated,

> The court reasoned that the "protected class" showing required in a traditional race or sex discrimination claim does not apply to this type of non-adherence or reverse religious discrimination claim because "it is the religious beliefs of the employer, and the fact that [the employee] does not share them, that constitute the basis of the [religious discrimination] claim."[273]

The Seventh Circuit also addressed a religious non-adherence claim decision in *Venters v. City of Delphi*.[274] The plaintiff, Jennifer Venters, was appointed the head dispatcher for the City of Delphi police department by an outgoing Chief of Police.[275] The new Chief of Police, Larry Ives, made it clear from the beginning that "he was a born-again Christian who believed that his decisions as police chief should be guided by the principles of his faith, and that he had been sent by God to Delphi to save as many people from damnation as possible." [276] Venters did not share the Chief's religious beliefs, but took a while to tell him so because she was afraid.[277] After suffering through a number of efforts by the Chief to "save her soul" over the next three years, Venters was fired by Ives, who claimed that Venters had demonstrated poor work performance.[278] Venters believed she was terminated for failing to "measure up to [Ives'] religious expectations."[279] In concluding that Venters had successfully raised a Title VII claim, the Court noted that Venters "need only show that her perceived religious shortcomings (her unwillingness to strive for salvation as Ives understood it, for example) played a motivating role in her discharge."[280] In response to Ives's claim that he had provided non-discriminatory reasons for the decision to fire Venters, the Court

269. *Id.*
270. *Id.* at 1171.
271. *Id.* at 1172.
272. Shapolia v. Los Alamos Nat'l Lab'y, 992 F.2d 1033, 1038 (10th Cir. 1993).
273. *Noyes*, 488 F.3d at 1168–69 (citing *Shapolia*, 992 F.2d at 1038).
274. Venters v. City of Delphi, 123 F.3d 956 (7th Cir. 1997).
275. *Id.* at 962.
276. *Id.*
277. *Id.* at 963.
278. *Id.* at 963–64.
279. *Id.* at 970.
280. *Id.* at 972; *see also* Blalock v. Metals Trades, Inc., 775 F.2d 703, 708–09 (6th Cir. 1985) (explaining that employer's willingness to give special consideration to those who shared his religious views and his withholding of same consideration from those who did not constitutes direct evidence that religion played role in plaintiff's discharge).

held that, when there is direct evidence of discrimination, the "pertinent question is whether the city's evidence as to the legitimate reasons for terminating Venters eliminates any doubt as to whether religion played at least a motivation role in her discharge."[281]

The focus of religious non-adherence claims is the discriminator's beliefs. Thus, a Dalit victim of caste discrimination based on untouchability may be able to establish a question of triable fact. Effectively, what the Dalit victim would assert is that, by not following the discriminator's religious beliefs that Dalits should act and behave in certain ways, they are refusing to share the perpetrator's religious beliefs.

B. Is Caste Discrimination Based on Untouchability Covered Under the Protected Trait of Race?

Is caste discrimination race discrimination? This is a perplexing question that has received significant attention in the international legal context.[282] Title VII does not define the term "race" and the EEOC has not done so either.[283] Courts, too, are uncertain about its definition for the purposes of Title VII claims.[284] The claims based on race and national origin "may substantially overlap or even be indistinguishable depending on the specific facts of a case."[285]

There seem to be four available legal analyses to consider in determining if the definition of "race" includes caste. One is to look to the definitions of the various racial groups adopted by the federal government to determine if caste fits in the definition of a racial category. The second starts with the recognition that the federal courts have generally treated race discrimination under Section 1981 the same as under Title VII, meaning they have applied a definition of race as understood in the 19th century.[286] The third route is based on the legislative history of the Civil Rights Act of 1964. The fourth is looking at contemporary sources of the 1960s to see how race was defined.

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281. *Venters*, 123 F.3d at 972.

282. *See supra* notes 49–51 and accompanying text.

283. Equal Emp. Opportunity Comm'n v. Catastrophe Mgmt. Sols., 852 F.3d 1018, 1026 (11th Cir. 2016). *See also* 42 U.S.C.A. § 2000e (West 2021).

284. Salas v. Wis. Dep't of Corrs., 493 F.3d 913, 923 (7th Cir. 2007) ("In the federal courts, there is uncertainty about what constitutes race versus national origin discrimination under Title VII.")

285. Deravin v. Kerik, 335 F.3d 195, 201 (2d Cir. 2003). *See also* Garcia v. Hatch City Pub. Schs., 458 P.3d 378, 385 (N.M. 2018) ("[T]he takeaway from these cases is that terms like race and national origin, as well as related terms like ancestry and ethnicity, often overlap, even to the point of being factually indistinguishable.")

286. *See, e.g.*, Walker v. Sec. of the Treasury, Internal Revenue Serv., 713 F. Supp. 403, 405 (N.D. Ga. 1989); Village of Freeport v. Barrella, 814 F.3d 594, 607 (2d Cir. 2016). *See also supra* notes 145–47 and accompanying text.

1. Determining Whether Caste Discrimination is Race Discrimination Using the Federal Government's Definitions of Race

Each year, certain employers subject to Title VII are required to submit an EEO-1 Report to the Joint Reporting Committee, which consists of the EEOC and Office of Federal Contract Compliance Programs.[287] Data requested on the EEO-1 Report tracks employees by race, ethnicity, sex, and job classification.[288] The EEO-1 Reports provide useful data on the race and ethnicity of employees, using the definitions mandated by the federal government, which first became required for employers in 1980.[289]

Even though the federal government has collected racial data for over 200 years as part of the census process, no federal standards for the collection of data on race and ethnicity applied across all federal agencies until the 1970s.[290] Federal agencies were increasingly collecting racial and ethnic data at the time because of civil rights laws enacted in the 1960s.[291] In 1976, Congress passed Public Law 94-311, which required federal agencies to provide a separate count of the Latinx population.[292]

On May 12, 1977, the Race and Ethnic Standards for Federal Statistics and Administrative Reporting ("Directive 15") became effective for all federal government agencies, including the EEOC.[293] The federal government undertook a review of Directive 15 from 1993 to 1997.[294] The 1997 Revisions also provided that other federal programs adopt its standards.[295] The 1997 Revisions were first

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287. *See* U.S. Equal Emp. Opportunity Comm'n, *EEO-1 Data Collection*, https://www.eeoc.gov/employers/eeo-1-data-collection [https://perma.cc/6PFK-KET5] (last visited Mar. 27, 2022). Employers who must file include those with at least one hundred employees and federal government contractors with at least fifty employees and meeting certain criteria. *Id.*

288. See U.S. Equal Emp. Opportunity Comm'n, *EEO-1 Component 1 Fact Sheet: Report Types*, https://www.eeocdata.org/pdfs/EEO-1_Fact_Sheet.pdf [https://perma.cc/Q468-3S6N] (last visited Mar. 27, 2022).

289. For a discussion of the history of the creation of the federal government's definitions for race and ethnicity, see KEVIN BROWN, BECAUSE OF OUR SUCCESS: THE CHANGING RACIAL AND ETHNIC ANCESTRY OF BLACKS ON AFFIRMATIVE ACTION 43–60 (2014).

290. *See* Katherine K. Wallman, Suzann Evinger, & Susan Schechter, *Measuring Our Nation's Diversity: Developing a Common Language for Data on Race/Ethnicity,* 90 AM. J. PUB. HEALTH 1704, 1704 (2000).

291. *Id.*

292. *Id.*

293. OFFICE OF MGMT. & BUDGET, DIRECTIVE NO. 15, RACE AND ETHNIC STANDARDS FOR FEDERAL STATISTICS AND ADMINISTRATIVE REPORTING (as adopted on May 12, 1977). In 1978, the standards were renamed "Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting," or Directive 15. For a more complete retelling of the change of the name of Directive No. 15, see RAINER SPENCER, SPURIOUS ISSUES: RACE AND MULTIRACIAL IDENTITY POLITICS IN THE UNITED STATES 70–71 (1999).

294. For a list of the steps taken, see Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. No. 210 58,782–83 (Oct. 30, 1997), https://www.govinfo.gov/content/pkg/FR-1997-10-30/pdf/97-28653.pdf [https://perma.cc/SE5B-4SGD].

295. *Id.* at 58,789.

utilized for the 2000 census and were incorporated into the EEOC's regulations in time for the 2007 EEO-1 Reports.[296]

The 1997 Revisions, as well as the EEOC regulations, which are still currently in use, classified Hispanic or Latinx status as an ethnicity, not a race.[297] The term Hispanic or Latinx "refers to persons who trace their origin or descent to Mexico, Puerto Rico, Cuba, Central or South American or some other Spanish culture."[298] The definitions for the five racial categories contained in the 1997 Revisions are as follows:

> a. American Indian or Alaska Native—A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
>
> b. Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
>
> c. Black or African American—A person having origins in any of the black racial groups of Africa.
>
> d. Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
>
> e. White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.[299]

While South Asians have started to spread throughout the world, adherents of the caste system originally hail from Bangladesh, Bhutan, India, Maldives, Nepal,

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296. For a discussion of this process, *see* BROWN, *supra* note 289, at 43–60.

297. Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. No. 210 58,789 (Oct. 30, 1997), https://www.govinfo.gov/content/pkg/FR-1997-10-30/pdf/97-28653.pdf [https://perma.cc/V9GA-VVJB]. For the EEO-1 reports, the ethnicity issue is limited to whether a person is Hispanic or not. Thus, they are of no help in determining a person's ethnic origin for purposes of a Title VII claim.

298. Agency Information Collection Activities, Notice of Submission for OMB Review; Final Comment Request to the Equal Employment Opportunity Commission, 70 Fed. Reg. 71,295, 71,301 (Nov. 28, 2005). The definition of Asian from Directive 15 was "Asian or Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa." The 1997 Revisions removed Pacific Islanders from this category and combined them with Native Hawaiians into a new racial category of "Native Hawaiian or Other Pacific Islander." *Id.* at 58,786; OFFICE OF MGMT. & BUDGET, DIRECTIVE NO. 15, RACE AND ETHNIC STANDARDS FOR FEDERAL STATISTICS AND ADMINISTRATIVE REPORTING (as adopted on May 12, 1977). For a discussion of the EEOC guidelines, see BROWN, *supra* note 296.

299. *Id.*

Pakistan, Sri Lanka, Tibet, and other countries in Asia.[300] Although the racial categories listed in the 1997 Revisions would consider all of those with a caste to be Asian, since caste alone would not be considered a race, caste discrimination would not equate to race discrimination.

2. Defining Race for Purposes of Title VII as it Was Defined by Section 1981

Although employers must use the above racial categories when reporting their employees to the EEOC, this definition of race should not necessarily be used to determine what is "race discrimination" under Title VII. Section 1981 is the historical predecessor of Title VII with regard to recognizing claims of race discrimination in employment.[301] Courts have also treated race discrimination under Section 1981 the same as under Title VII.[302]

The Second Circuit's decision in *Village of Freeport v Barrella*,[303] which recently addressed the issue of whether Hispanics are a race or a national origin group under Title VII, is particularly instructive.[304] The Second Circuit noted that the District Court had struggled to determine whether the term "Hispanic" fell within the legal definition of race, partly due to the federal government's "less-than-straightforward use of those terms."[305] The Court noted that, considering merely those federal definitions discussed above, Hispanic/Latinx is considered an ethnicity, not a race.[306]

From the standpoint of Title VII, the issue of whether Hispanic status is considered a race has long been controversial.[307] But, in Section 1981 claims, courts have a history of finding that it fits within the definition of race discrimination.[308] Many courts assumed that people who were Hispanic formed a

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300. *See, e.g.*, OMVEDT, *supra* note 46, at 31 ("Caste system exists in South Asian subcontinent and there only.")

301. *See, e.g.*, Walker v. Fulton Cnty. Sch. Dist., 713 F. Supp. 403, 405 (N.D. Ga. 1989).

302. *See, e.g.*, *id*. ("[T]he legal elements and facts necessary to support a claim for relief under Title VII are identical to the facts which support a claim under § 1981."); Village of Freeport v. Barrella, 814 F.3d 594 (2d Cir. 2016) ("[W]e analyze claims of racial discrimination identically under Title VII and § 1981 in other respects, and we see no reason why we should not do the same with respect to how we define race for purposes of those statutes.").

303. *Barrella*, 814 F.3d 594

304. The case may be particularly instructive given the Court's characterization of the correct definition of "Hispanic" as a "vexed question." *Id.* at 602. This may provide a helpful parallel to the difficulty in characterizing "caste" within anti-discrimination laws.

305. *Id.*

306. *Id.* See also *supra* note 297 and accompanying text.

307. *Barrella*, 814 F.3d at 606.

308. *Id.* at 607. *See also* Albert v. Carovano, 851 F.2d 561, 572 (2d Cir. 1988) (en banc); Rivera v. United States, 928 F.2d 592, 607 (2d Cir. 1991) (noting that § 1981 "protect[s] against discrimination on the basis not only of race, but also of 'ancestry or ethnic characteristics'" (quoting Memphis v. Greene, 451 U.S. 100, 128 (1981))); Lopez v. S.B. Thomas, Inc., 831 F.2d 1184, 1188 (2d Cir.1987) ("There can be no question that [§ 1981's ban on racial discrimination] includes persons . . . who are of Puerto Rican descent.").

protected class under Title VII without clarifying whether it was race or national origin, while others have found the underlying intent to be irrelevant.[309] Repeatedly, though, courts have "assumed that claims of ethnicity-based discrimination, including discrimination based on Hispanicity, are cognizable as claims of racial discrimination under Title VII, albeit without holding so explicitly."[310]

Before the *Village of Freeport* case, the Second Circuit had determined that Hispanic or Latino status was a national origin group under Title VII.[311] In *Freeport*, though, the Second Circuit considered that if it excluded Hispanic status from Title VII's definition of race, plaintiffs pursuing both Section 1981 and Title VII claims might in some circumstances need to present two different factual arguments in order to invoke the distinct remedies of these two statutes that apply to employment discrimination.[312] The Second Circuit concluded "race" in Title VII claims encompassed ethnicity to avoid this result. [313]

Courts' pattern of equating the definitions of race under Section 1981 and Title VII suggests that the discussion earlier in the Article of Section 1981's applicability to caste discrimination based on untouchability as race discrimination will also apply to the application of Title VII.[314] However, the Supreme Court has concluded that the definition of "race" for purposes of Section 1981 is to be drawn from its understanding in the 19th century. One could argue that this definition is not appropriate for Title VII, which was enacted almost 100 years later. But the Second Circuits decision points to how a considered decision to do so would create a huge legal problem.

3. Congressional Debates During Passage of the Civil Rights Act of 1964

During deliberations that led to the passage of the Civil Rights Act of 1964, several members of Congress discussed their desire not to recognize a caste system

309. *Barrella*, 814 F.3d at 606.

310. *Id.* at 607 ("In *Malave v. Potter*, for instance, we implicitly acknowledged the viability of a Title VII race-discrimination claim based on Hispanic ethnicity.") (citing 320 F.3d 321, 324 (2d Cir. 2003)).

311. *See* Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 19 (2d Cir.1995) (describing requirements for showing "an inference of ethnic discrimination" under Title VII).

312. 814 F.3d at 606.

313. *Id.*

314. *See supra* note 301 and accompanying text.

in the U.S.[315] The most significant discussion of the South Asian caste system during the debates of the Act came from Paul Douglas, a Democratic senator from Illinois, when he addressed the issue of school segregation. He argued that

> [t]he caste system still endures in India and is a great disgrace upon India; but at least the Government of India has had the courage and the foresight to make it illegal; at least it is not sanctified by law; and, at least in theory and law, the temples are open to members of all castes-both the high castes and the low castes.[316]

The references to caste were not as numerous during the Congressional debates that led to the passage of Civil Rights Act of 1964 as they were during the passage of the Civil Rights Act of 1866. Nevertheless, these Congressional references to caste suggest that Congress continued with the view that caste differences were equivalent to race differences into the 1960s.

4. Contemporary Sources Defining Race

Looking to contemporary sources of encyclopedias and dictionary definitions of race may not, alone, be helpful in determining whether caste discrimination fits within these definitions. The edition of Black's Law Dictionary published in 1951 did not include a definition of race.[317] The 1964 Concise Oxford Dictionary defined race as the following:

> Group of Persons . . . connected by common descent posterity of (person); house, family, tribe or nation regarded as of common stock; distinct ethnical stock (the Caucasian, Mongolian, etc.) . . .;
>
> Descent, kindred, (of noble, oriental, etc.)
>
> Class of persons with some common feature . . . .[318]

The 1964 Webster's New World Dictionary defined race as follows:

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315. During the House debates, a Republican Representative from Minnesota argued that "this country did not develop a caste system whereby we would have first- and second-class citizens." 110 CONG. REC. 1582, 1646 (1964). On February 10, 1964, Representative William St. Onge (D-Connecticut) noted, "We must not recognize any caste system in the United States, or the supremacy of one race over another. Such practices can never be justified in the light of our moral and democratic principles, because there is no moral justification for racial or religious discrimination." 110 CONG. REC. 2705, 2783 (1964). In discussing Title VI during the Senate debate on April 7, 1964, Senator John Pastore of Rhode Island acknowledged that segregation was "a caste system that imposed an inferior status on the Negro citizen from cradle to grave." 110 CONG. REC. 7051, 7055 (1964).

316. 110 CONG. REC. 6812, 6823 (1964). There were a few other mentions of caste during the debates of the Civil Rights Act of 1964. For example, Representative Abernathy, who opposed the Act because, in his words, the bill ignored the discrimination by African Americans against each other, referred to caste. *See* 110 CONG. REC. 2548, 2555 (1964).

317. BLACK'S LAW DICTIONARY (4th ed. 1951).

318. *Race*, THE CONCISE OXFORD DICTIONARY (5th ed. 1964).

> Any of the major biological divisions of mankind, distinguished by color and texture of hair, color of skin and eyes, stature, bodily proportions, etc.: many ethnologists now consider that there are only three primary divisions, the Caucasian (loosely, *white race)*, Negroid (loosely, *black race)*, and Mongoloid (loosely, *yellow race)*, each with various subdivisions: the term has acquired so many unscientific connotations that in this sense it is often replaced in scientific usage by *ethnic stock* or *group*. . .
>
> A population that differs from others in the relative frequency of some gene or genes: a modern scientific usage
>
> Any geographical, national, or tribal ethnic grouping
>
> a) the state of belonging to a certain ethnic stock, group, etc. b) the qualities, traits, etc. belonging, or supposedly belonging, to such a division
>
> Any group of people having the same ancestry; family; clan; lineage
>
> Any group of people having the same activities, habits, ideas, etc.: as, the *race* of dramatists.[319]

These definitions may not lead to conclusive results. Arguably, some of the above definitions would include Dalits as a race. For example, the definition of "any group of people having the same ancestry; family; clan; linage." Others would not include Dalits as a race.[320]

C. Is Caste Discrimination Based on Untouchability Covered Under the Protected Trait of National Origin Discrimination?

Title VII[321] does not define national origin. In *Espinoza v. Farah Manufacturing Company,*[322] the Supreme Court discussed whether failing to hire a permanent resident because they were not a U.S. citizen constituted national origin discrimination. The Court understood the term "national origin" to "refer[] to the country where a person was born, or, more broadly, the country from which his or her ancestors came."[323] The Court went on to note that, while "an earlier version of § 703 had referred to discrimination because of 'race, color, religion, national origin, or *ancestry*,'" the removal of the word ancestry was not supposed to be a material change, but was rather considered to be synonymous with

319. *Race*, WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE: COLLEGE EDITION (1964).

320. *See, e.g.*, *supra* note 319, noting that many ethnologists now consider that there are only three primary divisions.

321. 42 U.S.C. § 2000e. *et seq*.

322. Espinoza v. Farah Mfg. Co. Inc., 414 U.S. 86 (1973).

323. *Id.* at 88.

"national origin."[324] Further, in considering a situation in which an employer required prospective employees to have an Anglo-Saxon background, the Court affirmed that such a condition would be clearly illegal.[325]

Following the same reasoning, the Ninth Circuit has held that a Serbian complainant could bring a national origin employment discrimination claim even though, at the time, Serbia no longer existed as a nation.[326] The EEOC's guidance on discrimination based on national origin also defines it as the "denial of equal employment opportunity because of an individual's, or his or her ancestor's, *place of origin*; or because an individual has the physical, cultural or linguistic characteristics of a national origin group."[327]

While physical and linguistic characteristics may not differentiate Dalits from other South Asians, the membership of a group presumed by discriminators to be religiously polluted could constitute a cultural group.[328] One Third Circuit opinion addressing a national origin claim provides language that may be particularly applicable to the type of caste discrimination that Dalits encounter:

> Discrimination stems from a reliance on immaterial outward appearances that stereotype an individual with imagined, usually undesirable, characteristics thought to be common to members of the group that shares these superficial traits. It results in a stubborn refusal to judge a person on his merits as a human being. Our various statutes against discrimination express the policy that this refusal to judge people who belong to various, particularly disadvantaged, groups is too costly to be tolerated in a society committed to equal individual liberty and opportunity.[329]

Given the above discussions about the definition of national origin, the Dalits could assert at least four different legal theories that they constitute a national origin group.

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324. *Id.* at 89.

325. *Id.* at 95. *See also* Kanaji v. Children's Hosp. of Phila., 276 F. Supp. 2d 399, 401–02 (E.D. Pa. 2003) (finding it "clear that the Supreme Court would not require that one's national origin be linked directly to a specific country or nation" but rather embraces "a broader class of people" and refers to "certain traits or characteristics that can be linked to one's place of origin").

326. Pejic v. Hughes Helicopters, Inc., 840 F.2d 667, 673 (9th Cir. 1988). *See also* Roach v. Dressler Industrial Valve & Instrument Division, 494 F. Supp. 215, 218 (W.D. La. 1980) (recognizing discrimination against Cajun employees as national origin discrimination under Title VII even though the colony of Acadia no longer existed). National origin also encompasses discrimination based on foreign accents. *See* Fragante v. City & Cnty. of Honolulu, 888 F.2d 591, 595 (9th Cir. 1989), *cert. denied*, 494 U.S. 1081 (1990) (addressing appellant's argument that "national origin" under Title VII also encompasses discrimination based on foreign accents).

327. 29 C.F.R. § 1606.1 (emphasis added).

328. *See supra* notes 108–15 and accompanying text.

329. Bennun v. Rutgers State Univ., 941 F.2d 154, 173 (3d Cir. 1991).

1. Dalits as a National Origin Group Due to Stigmatization by Caste Members

The cultural experience of Dalits that is the basis of a caste discrimination claim based on untouchability is the idea that Dalits possess some sort of religious pollution.[330] Like the Third Circuit acknowledged, this prevents Dalits from being judged based on their individual merit; they are instead stereotyped with imagined undesirable characteristics. Their history in South Asia was one of being set apart from Caste Hindus and non-Dalit members of other religions and compelled to practice endogamy. Remedying this historical injustice is consistent with Title VII's stated purpose of removing "artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification."[331]

2. Dalits as a National Origin Group Based on Ancestry Analogy to U.K. Treatment of Caste Discrimination

The Supreme Court has noted that the deletion of the term "ancestry" from an earlier list of protected traits by Congress was not a material change because "national origin" was considered synonymous.[332] A Dalit complainant could argue that discrimination against them is the product of common descent as a form of ancestry, an argument that has had success in the United Kingdom.

The Equality Act, passed in the U.K. in 2010, prohibits discrimination on nine grounds, including race, defined by statute as including color, nationality, and ethnic or national origins.[333] "Ethnic origins" has been interpreted as a "wide and flexible"[334] phrase which also includes questions of birth, lineage, descent, and ancestry.[335] In *Tirkey v. Chandhok*, the U.K.'s first and to date only successful caste discrimination case, the claimant was a domestic servant trafficked from India to work in a private home in the U.K.[336] She alleged egregious violations of employment rights and unlawful discrimination contrary to the Equality Act.[337] Since she had no access to an explicit statutory prohibition of caste discrimination, she alleged her discrimination had occurred for reasons related to her ethnic origins including her status in the caste system as perceived by the respondents.[338] The Employment Tribunal found that she was mistreated by the respondents

330. *See supra* notes 122–30 and accompanying text.

331. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800–01 (1973) (quoting Griggs v. Duke Power Co., 401 U.S. 424, 430–31 (1971)).

332. *See supra* note 324 and accompanying text.

333. *See* Nat'l Archives, *Equality Act 2010, Part II, Chapter I*, LEGISLATION.GOV.UK, https://www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/1 [https://perma.cc/4JTV-ZJ83].

334. *Chandhok & Anor v. Tirkey*, Appeal No. UKEAT/0190/14/KN, ¶ 44 (Emp. Appeal Trib. Dec. 19, 2014).

335. *R (E) v Governing Body of JFS* [2009] UKSC 15, [28].

336. Tirkey v. Chandhok [2015] EAT 3400174/2015, [205]–[210].

337. *Id.* at ¶ 1.

338. *Id.* at ¶ 205–10.

because of race, specifically because of her ethnic origins—defined as her birth, her *descent*, her inherited position in society or caste, and her background and upbringing.[339] The concept of descent or ancestry in the U.K. is thus far broader than the concept of the land of one's ancestors. Descent was relied on by the tribunals in the *Tirkey* litigation as the legal source of a prohibition of caste discrimination, albeit with the proviso that this finding was case-specific and not intended to establish a general proposition.[340]

Dalit complainants in the U.S., too, could make the argument that discrimination based on untouchability is derived from their ancestry in the sense that it is derived from the descent or inherited position due to their caste. Given a broad definition of national origin, it is possible that this form of discrimination would fit within that category.

3. Aryan Origin Theory and National Origin Discrimination

A third argument derives from the Aryan Origin Theory discussed earlier.[341] As protests increased for Indian independence from Great Britain, many South Asian scholars increasingly criticized the Aryan Origin Theory, noting that it was the product of a biased view of Western thinkers.[342] A new explanation asserted that the Aryans were actually the initial inhabitants of India. According to this theory, original Hindus were the Aryans, a distinctive people indigenous to India. Caste Hindus or Hindu Aryans are their descendants. Thus, there was no Aryan invasion, since the Aryans were indigenous to India, and, therefore, no confrontation between them and the original people of India occurred.[343]

Despite the criticisms of the Aryan Origin Theory, however, recent research may be bringing it back into societal good graces. A 2018 DNA study provides

339. *Id.* The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines racial discrimination as discrimination on grounds of race, color, descent, or national or ethnic origin. The Committee on the Elimination of Racial Discrimination (CERD)—ICERD's monitoring body—has affirmed that the term descent in ICERD includes the concept of caste; *see* Annapurna Waughray and David Keane, *CERD and caste-based discrimination*, *in* FIFTY YEARS OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: A LIVING INSTRUMENT (Waughray & Keane eds., 2017).

340. *Chandhok & Anor v. Tirkey*, Appeal No. UKEAT/0190/14/KN, ¶ 55 (Emp. Appeal Trib. Dec. 19, 2014).

341. *See supra* notes 195–218 and accompanying text.

342. For a more recent criticism by a professor at the Indian Institute of Technology Bombay, see Prasanna, *supra* note 196 (discussing the evidence that scientists must consider in order to form an opinion on the Aryan Invasion Theory).

343. *Id.*

genetic evidence for the Aryan Origin Theory.[344] The study documents "a southward spread of genetic ancestry from the Eurasian Steppe, correlating with the archaeologically known expansion of pastoralist sites from the Steppe to Turan in the Middle Bronze Age (2300–1500 BCE)."[345] It genetically links ancestry from the Steppe to Europe and South Asia in the Bronze Age and identifies the populations that almost certainly were responsible for spreading Indo-European languages across much of Eurasia.[346] Another genetic study concluded that:

> [T]he upper castes have a higher affinity to Europeans than to Asians, and the upper castes are significantly more similar to Europeans than are the lower castes. Collectively, all five datasets show a trend toward upper castes being more similar to Europeans, whereas lower castes are more similar to Asians.[347]

If the Aryan Origin Theory continues to regain widespread acceptance, discrimination based on untouchability could be recognized as a form of national origin discrimination under Title VII. If Dalits are descendants of the indigenous people, and the high-caste Hindus are descendants of the Aryans, then they have different national origins.

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344. VAGHEESH M. NARASIMHAN, NICK PATTERSON, PRIYA MOORJANI, IOSIF LAZARIDIS, MARK LIPSON, SWAPAN MALLICK, NADIN ROHLAND, REBECCA BERNARDOS, ALEXANDER M. KIM, NATHAN NAKATSUKA, IÑIGO OLALDE, ALFREDO COPPA, JAMES MALLORY, VYACHESLAV MOISEYEV, JANET MONGE, LUCA M. OLIVIERI, NICOLE ADAMSKI, NASREEN BROOMANDKHOSHBACHT, FRANCESCA CANDILIO, OLIVIA CHERONET, BRENDAN J. CULLETON, MATTHEW FERRY, DANIEL FERNANDES, BEATRIZ GAMARRA, DANIEL GAUDIO, MATEJA HAJDINJAK, ÉADAOIN HARNEY, THOMAS K. HARPER, DENISE KEATING, ANN MARIE LAWSON, MEGAN MICHEL, MARIO NOVAK, JONAS OPPENHEIMER, NIRAJ RAI, KENDRA SIRAK, VIVIANE SLON, KRISTIN STEWARDSON, ZHAO ZHANG, GAZIZ AKHATOV, ANATOLY N. BAGASHEV, BAURYZHAN BAITANAYEV, GIAN LUCA BONORA, TATIANA CHIKISHEVA, ANATOLY DEREVIANKO, ENSHIN DMITRY, KATERINA DOUKA, NADEZHDA DUBOVA, ANDREY EPIMAKHOV, SUZANNE FREILICH, DORIAN FULLER, ALEXANDER GORYACHEV, ANDREY GROMOV, BRYAN HANKS, MARGARET JUDD, ERLAN KAZIZOV, ALEKSANDER KHOKHLOV, EGOR KITOV, ELENA KUPRIYANOVA, PAVEL KUZNETSOV, DONATA LUISELLI, FARHOD MAKSUDOV, CHRISTOPHER MEIKLEJOHN, DEBORAH MERRETT, ROBERTO MICHELI, OLEG MOCHALOV, ZAHIR MUHAMMED, SAMARIDDIN MUSTAFOKULOV, AYUSHI NAYAK, RYKUN M. PETROVNA, DAVIDE PETTENER, RICHARD POTTS, DMITRY RAZHEV, STEFANIA SARNO, KULYAN SIKHYMBAEVA, SERGEY M. SLEPCHENKO, NADEZHDA STEPANOVA, SVETLANA SVYATKO, SERGEY VASILYEV, MASSIMO VIDALE, DMITRIY VOYAKIN, ANTONINA YERMOLAYEVA, ALISA ZUBOVA, VASANT S. SHINDE, CARLES LALUEZA-FOX, MATTHIAS MEYER, DAVID ANTHONY, NICOLE BOIVIN, KUMARASAMY THANGARAJ, DOUGLAS J. KENNETT, MICHAEL FRACHETTI, RON PINHASI, & DAVID REICH, THE GENOMIC FORMATION OF SOUTH AND CENTRAL ASIA, BIORXIV (2018), https://www.biorxiv.org/content/10.1101/292581v1 [https://perma.cc/BV4H-WAZ6].

345. *Id.* at 4.

346. *Id.* According to the authors, "this work sheds new light on the spread of Indo-European languages and parallels between the genetic history of two sub-continents, Europe and South Asia." *Id.*

347. Michael Bamshad, Toomas Kivisild, W. Scott Watkins, Mary E. Dixon, Chris E. Ricker, Baskara B. Rao, J. Mastan Naidu, B.V. Ravi Prasad, P. Govinda Reddy, Arani Rasanayagam, Surinder S. Papiha, Richard Villems, Alan J. Redd, Michael F. Hammer, Son V. Nguyen, Marion L. Carroll, Mark A. Batzer, & Lynn B. Jorde, *Genetic Evidence on the Origins of Indian Caste Populations*, 11 GENOME RES. 994, 994 (2001).

Whether this would be a strong argument for Dalits, however, can be doubted. In *Roach v. Dressler Industrial Valve & Instrument Division*, a Louisiana District Court addressed a Title VII national origin discrimination claim brought by a Cajun plaintiff, who was a native-born American of Acadian descent.[348] Although Acadia was never a country but instead a French colony founded in the early 1600s that the British conquered in 1713, the Court recognized that a national origin claim was available to the plaintiff.[349] Following the rationale of the *Roach* court, it would be irrelevant that the Indus Valley Civilization was not a country. What matters is that Dalits comprised a group of people sharing a common culture, ancestry, land, and other social characteristics. However, this argument is fraught with more difficulty and less certainty than the recognition of a national origin claim for an Acadian. A court would have to accept a theory of the origin of the caste system that has been contested for decades.[350] In order to find that the plaintiff had stated a claim, a court would need to define national origin based on events that occurred thousands of years ago as opposed to hundreds of years ago. Courts may simply find this ancestry too remote to support the claim that Dalits' ancestors and their descendants constitute a separate national origin group.

4. Dalits as a National Origin Group Based on Applying Section 1981's Definition

As noted in the discussion of courts using the definition of Section 1981 to apply to race discrimination under Title VII, the same argument can be made about national origin discrimination. The definition of race discrimination in Section 1981 has also been interpreted by courts to be broad enough to also cover national origin discrimination. Thus, the recognition of caste discrimination as a form of race discrimination under Section 1981 could also lead to a conclusion that it is national origin discrimination under Title VII.

V.
CHANGE THE PROTECTED TRAIT APPROACH ARTICULATED IN *BOSTOCK*

There are evidently several strong arguments that caste discrimination based on untouchability is included in race discrimination under Section 1981 and within a number of protected traits under Title VII. The arguments about whether caste discrimination is a form of race or national origin discrimination depend upon how those terms are interpreted. However, if the arguments already discussed above do not succeed, then the legal analysis adopted by the Supreme Court in its opinion in *Bostock v. Clayton County* may be of assistance.[351] The approach the Court

348. Roach v. Dressler Indus. Valve & Instrument Div., 494 F. Supp. 215, 218 (W.D. La. 1980).

349. *Id.* at 217.

350. Prasanna, *supra* note 196, at 216 (noting that the Aryan Invasion Theory "has always been controversial").

351. Bostock v. Clayton County, 140 S. Ct. 1731 (2020).

takes in *Bostock* would avoid the question of whether caste fits in a race or national origin category. Instead, it would recognize that caste is intertwined with being a member of the Asian race and, as such, caste discrimination involves the protected category of race. This part will discuss the application of the *Bostock* approach to the issue of whether caste discrimination is recognized under Title VII or Section 1981. The first section will discuss the Court's decision in *Bostock v. Clayton County*. The second section will apply the *Bostock* approach to caste discrimination based on untouchability under Title VII. The third section will apply it to Section 1981.

A. Bostock v. Clayton County

In June 2020, the Supreme Court delivered its 6 to 3 opinion in *Bostock v. Clayton County*.[352] Justice Gorsuch, writing for the Court, answered the question of whether termination of an employee for the sole reason of their homosexuality or transgender status violates Title VII's prohibition against sex discrimination.[353] The Court noted that the test to determine whether such discrimination involves sex discrimination is to change the person's sex and see if it would yield a different choice by the employer.[354] If so, then the discrimination is also sex discrimination.[355]

Bostock involved three different employment discrimination claims brought by long-time employees.[356] Two of the plaintiffs, Gerald Bostock and Donald Zarda, were terminated by their employers soon after they revealed they were homosexuals. The third, Aimee Stephens, who had lived as a man for the first six years of employment, was fired when she revealed that she would start to live as a woman.[357] These three individuals brought employment discrimination claims against their former employers contending that they were victims of sex discrimination under Title VII.[358]

The Court noted that, over the years, Title VII has been applied to aspects of discrimination that may not have been in the Congressional drafters' imaginations when they enacted the Civil Rights Act of 1964.[359]Justice Samuel Alito's dissent, joined by Justice Clarence Thomas, goes to great lengths to point this out.[360] Not only does Alito point out that Congress did not intend to provide such protection,

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352. *Id.* Justices Roberts, Ginsburg, Breyer, Sotomayor and Kagan joined the opinion written by Justice Gorsuch. Justice Alito filed a dissenting opinion, joined by Thomas and Kavanaugh. *Id.*

353. *Id.* at 1737.

354. *Id*. at 1741.

355. *Id.*

356. *Id.* at 1737–38.

357. *Id.*

358. *Id.*

359. *Id.* For example, Title VII now bans discrimination based on motherhood and sexual harassment of male employees regardless of the lack of Congressional intent behind the application of the law. *Id.*

360. *Bostock*, 140 S. Ct. at 1754 (Alito, J., dissenting).

but also that "ordinary Americans reading the text of Title VII in 1964 would not have dreamed that discrimination because of sex meant discrimination because of sexual orientation, much less gender identity."[361] Alito goes on to note that "[w]hile Americans in 1964 would have been shocked to learn that Congress had enacted a law prohibiting sexual orientation discrimination, they would have been bewildered to hear that this law also forbids discrimination on the basis of 'transgender status' or 'gender identity.'"[362] He points out that the term "gender identity" did not appear in academic circles until 1964, doctors in the U.S. did not perform the first sex change operations until 1966, and the term "transgender" was not coined until the early 1970s.[363]

Justice Gorsuch, in the majority opinion, notes that Congress enacted other statutes since the 1964 Civil Rights Act that did address sexual orientation.[364] Over the years, it also considered amending Title VII to include protection for sexual orientation, but never did.[365] Gorsuch does not find the failure of Congress to include explicit sanctions for discrimination on the basis of sexual orientation or gender identity relevant:

> [A]pplying protective laws to groups that were politically unpopular at the time of the law's passage—whether prisoners in the 1990s or homosexual and transgender employees in the 1960s—often may be seen as unexpected. But to refuse enforcement just because of that, because the parties before us happened to be unpopular at the time of the law's passage, would not only require us to abandon our role as interpreters of statutes; it would tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the law's terms.[366]

Gorsuch also makes the relevant point that, in a disparate treatment case, the employer's discriminatory actions are determined by focusing on their negative impact on the individual victim and not the group of which the victim is a member.[367] In other words, in a disparate treatment case, the issue is not whether the employer treats women differently than men, but whether the employer discriminates against any individual because of that individual's sex.[368] Thus, if the employer would fire a gay man the same as a lesbian woman, it might be said

361. *Id.* at 1767 (Alito, J., dissenting).

362. *Id.* at 1772. (Alito, J., dissenting).

363. *Id.* at 1772–73. (Alito, J., dissenting).

364. *Id.* at 1747.

365. H.R. 5, 116th Cong., 1st Sess. (2019). Some attempts have failed. As recently as 2019, for example, the House of Representatives passed a bill which would have defined sex discrimination to include both sexual orientation and gender identity; however, the measure stalled in the Senate. *Bostock*, 140 S. Ct. at 1750.

366. *Bostock*, 140 S. Ct. at 1751.

367. *Id.* at 1740.

368. *Id.* at 1740-41.

that the employer is treating men and women alike. However, the relevant question relates to the employer discriminating against the individual employee based on sex, not on whether the employer discriminates against men or women.[369]

Much of Gorsuch's opinion for the Court addresses the issue of what it means for an employer to discriminate against a person "because of" a person's sex.[370] In answering the question of the meaning of "because of," the Court applies the "simple and traditional" standard of but-for causation typically used in tort cases and set forth in *University of Texas Southwestern Medical Center v. Nassar*, a Title VII retaliation case.[371] But-for causation exists whenever a particular outcome would not have happened without the purported cause.[372]

The ordinary meaning of the language of Title VII leads to the following conclusion: "If the employer intentionally relies in part on an individual employee's sex when deciding to discharge the employee—put differently, if changing the employee's sex would have yielded a different choice by the employer—a statutory violation has occurred."[373] Even if an employer's goal is only to discriminate against a person because they are gay, lesbian, or transgender, that is not possible without also discriminating against the person because of their sex.[374] While being gay or lesbian is distinct from a person's sex, an individual's homosexuality or transgender status is tied inextricably to their sex.[375] Thus, when an employer fires a gay, lesbian, or transgender person, there are two causal factors involved: both the person's sex and something else (attraction to others of the same sex or identifying with a different gender than the one received at birth).[376]

To illustrate what he means, Gorsuch works through a couple of examples. First, he discusses an employer who has two employees that are attracted to men, but one is a woman and the other is a man.[377] If the employer would fire the man because he is attracted to another man, but not the woman attracted to a man, then the employer's decision to fire the male employee reveals that the employer is firing the male employee for actions that the employer tolerates in a female

369. *Id.* at 1740–41, 1748.

370. *Id.* at 1740. Gorsuch notes that Congress could have used other causation tests such as "solely" or "primarily because of," which would have indicated the prohibited factor was the main cause of the defendant's employment decision. *Id.* at 1739. He also noted that Congress amended Title VII in 1991 to allow a plaintiff to prevail merely by showing that a protected trait was a "motivating factor" in an adverse employment action. *Id.* Thus, "under this more forgiving standard, liability can sometimes follow even if sex wasn't a but-for cause of the employer's challenged decision." *Id*. However, the motivating factor test is not the issue in *Bostock*.

371. Univ. of Tex. SW Med. Ctr. v. Nassar, 570 U.S. 338, 339 (2013).

372. *Bostock*, 140 S. Ct. at 1739. Gorsuch notes that "a but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause." *Id.* The Court also notes that multiple but-for causes can exist.

373. *Id.*

374. *Id.* at 1745–46.

375. *Id.*

376. *Id.* at 1741–42.

377. *Id.* at 1741.

employee.[378] The same logic applies to transgender individuals. Take an employer who would fire a person that was assigned male at birth because the person decides now to identify as a female. If that employer would retain an otherwise identical employee who was assigned female at birth, then the employer is penalizing the person who was assigned male at birth for actions that he tolerates with regard to an employee who was assigned female at birth.[379]

The Court addresses the counterargument that, if you change the sex of a homosexual or a transgender individual, but not their sexual orientation or gender identification, then you eliminate the characteristic of the individual—being gay, lesbian or transgender—that motivated the employer to take the discriminatory action. [380] Gorsuch notes that this argument might work if Title VII only ensured equal treatment of men and women or if the statute applied only when sex was the sole or primary reason for the employer's actions, but it goes beyond that—even if sex was not the main factor, it was a but-for factor.[381]

B. Application of the Bostock Approach to Caste Discrimination Under Title VII

While Gorsuch applied the change the protected trait approach in *Bostock* to sex discrimination,[382] there is no reason to think that such a test would not also apply to the other protected traits mentioned in Title VII where the discrimination victim's protected trait is inextricably linked to another immutable characteristic from birth they possess. Like sexual orientation and gender identity, a person's caste is also an immutable characteristic originating with birth that others may use to identify a person.[383] Thus, in discussing whether Title VII applies to caste discrimination based on untouchability, Justice Gorsuch's opening salvo in *Bostock* appears an appropriate introduction:

> Those who adopted the Civil Rights Act [of 1964] might not have anticipated their work would lead to this particular result. Likely, they weren't thinking about many of the Act's consequences that have become apparent over the years, including its prohibition against discrimination on the basis of motherhood or its ban on the sexual harassment of male employees. But the limits of the drafters' imagination supply no reason to ignore the law's demands. When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit.[384]

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378. *Id.*
379. *Id.*
380. *Id.* at 1747–48.
381. *Id.* at 1748.
382. *See supra* notes 373–79 and accompanying text.
383. *See supra* notes 117–19 and accompanying text.
384. *Bostock*, 140 S. Ct. at 1737.

Applying the *Bostock* approach to discrimination against Dalits, the motivation for the adverse employment decision will not be eliminated by changing the sex or color of the employee. Whether a Dalit is male or female, dark complexion or light complexion, they are still a Dalit.

1. Does the Bostock *Approach Using Religion Work for Dalits?*

With respect to religion, as discussed in the third part,[385] there is the possibility that a victim of intentional caste discrimination based on untouchability who suffered an adverse employment action could succeed on a reverse religious discrimination claim. However, under the *Bostock* approach, a Dalit is not likely to succeed by asserting discrimination based on religion because changing the religion of a Dalit is unlikely to change the discrimination. As noted earlier, caste is a product of Hinduism; however, it has permeated the other religions in South Asia, including Buddhism, Christianity, Islam, and Sikhism.[386] Thus, while the Hindu religion may be the original source of caste oppression, conversion to other religions is not a solution.[387] Given that South Asians bring their religious beliefs with them when they immigrate to the U.S., it is unlikely that changing the religion of a Dalit would lead the employer to a different choice regarding the adverse employment action.

2. Does the Bostock *Approach Using National Origin Work for Dalits?*

Earlier, this article discussed a number of different arguments that a Dalit victim of caste discrimination could assert for the conclusion that caste based on untouchability could be considered national origin under Title VII.[388] If Dalits are considered a national origin group using any of these approaches, however, then the *Bostock* approach is unnecessary. If Dalits are not a national origin group, then there is no national origin to change. Thus, the Bostock approach would not be applicable to national origin.

3. Does the Bostock *Approach Using Race Work for Dalits?*

The *Bostock* approach may be most effective for a claim within the protected trait of race. Using the federal definitions of race, which were first adopted in 1977, then, as already noted, all of those who have a caste would fit under the definition of who is Asian.[389] As with plaintiffs who have been discriminated against on the basis of their gender identity or sexual orientation, which are inextricably entwined with their sex, Dalits' status is inextricably entwined with their race. Applying the Bostock approach means that if we change the race of a

385. *See supra* notes 259–81 and accompanying text.
386. *See supra* note 129 and accompanying text.
387. Babu & Prasad, *supra* note 130.
388. *See supra* notes 322–50 and accompanying text.
389. *See supra* notes 287–350 and accompanying text.

particular Dalit victimized by caste discrimination based on untouchability from Asian to, say, Black or white, then the person would no longer be a Dalit. For employers whose adverse employment actions are motivated by a desire to engage in caste discrimination based on untouchability, changing individuals' race would lead to different decisions because such individuals would no longer be Dalits.

B. Application of the Bostock *Approach to Caste Discrimination Under Section 1981*

If a court rejects the argument that caste discrimination is a form of race discrimination under Section 1981,[390] Dalits can also assert the *Bostock* approach in a Section 1981 claim. Even though Section 1981 does not contain the "because of" language found in Title VII,[391] in order to establish causation, the Supreme Court recently reiterated that a successful Section 1981 plaintiff must demonstrate that "but for race," the defendant would not have taken the discriminatory action the defendant took.[392]

Because we are dealing with the same "but for" test for race discrimination under Section 1981 as discussed in *Bostock* for Title VII,[393] it would follow that the change in the protected trait approach that Gorsuch specifically mentions would also apply for Section 1981 claims. As a result, for a disparate treatment claim under Section 1981, like Title VII, the question to ask, once again, would be, if we changed the race of an aggrieved Dalit who is a victim of caste discrimination from Asian to white, would the employer have made a different choice? Like when we discussed the application of the Bostock approach to Title VII,[394] the answer is yes, because there are no white Dalits. Thus, caste

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390. *See supra* notes 144–253 and accompanying text.

391. *See supra* note 31 and accompanying text

392. Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media, 140 S. Ct. 1009 (2020). Justice Gorsuch delivered the opinion of the Court in this case as well. The Court restated its embrace of the "but-for" test for the application of § 1981 to race discrimination, holding that

> [t]he guarantee that each person is entitled to the "same right . . . as is enjoyed by white citizens" directs our attention to the counterfactual—what would have happened if the plaintiff had been white? This focus fits naturally with the ordinary rule that a plaintiff must prove but-for causation. If the defendant would have responded the same way to the plaintiff even if he had been white, an ordinary speaker of English would say that the plaintiff received the 'same' legally protected right as a white person. Conversely, if the defendant would have responded differently but for the plaintiff's race, it follows that the plaintiff has not received the same right as a white person.

Id. at 1015. *See also The Supreme Court 2019 Term*, 134 HARV. L.R. 580, 588 (2020) (arguing that the "but-for" test applied to § 1981 in *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media* adopted a narrow causation standard in contravention of the purpose of § 1981, while going on to note in footnote 78 that "one might argue that in light of *Bostock v. Clayton County*, in which the Court recognized the possibility of multiple but-for causes, it is not precisely true that the Court is requiring something meaningfully more difficult to satisfy in requiring that a plaintiff show a but-for cause").

393. *See supra* notes 389–392 and accompanying text.

394. *See supra* notes 389–90 and accompanying text.

discrimination based on untouchability would also be actionable as race discrimination under Section 1981.

VI.
CONCLUSION

In this Article, we have discussed the question of whether a victim of caste discrimination based on untouchability can argue that it is a form of employment discrimination under the federal employment discrimination law under Title VII or Section 1981. This Article contends that there are legitimate arguments that caste discrimination based on untouchability is a form of religious discrimination under Title VII. The question of whether caste discrimination is a form of race or national origin discrimination under Title VII or Section 1981 is complex. The argument comes down to whether this form of discrimination fits within the definitions of those protected traits under the respective statutory frameworks. There are legitimate arguments that caste discrimination based on untouchability is a form of national origin or race discrimination recognized by federal employment discrimination law. However, if courts reject the notion that caste discrimination based on untouchability is a form of national origin and/or racial discrimination, the *Bostock* approach would provide another potent legal argument for recognizing such discrimination. The *Bostock* approach avoids the question of whether caste discrimination based on untouchability is a form of national origin or racial discrimination and instead recognizes that the "but-for" causation standard applies under both Section 1981 and Title VII. But-for causation exists whenever a particular outcome would not have happened without the purported cause. Thus, the but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause; further, multiple but-for causes can exist. Under this approach, because all of those who are victims of caste discrimination based on untouchability are from Asia, their caste is inextricably intertwined with their race. Thus, when Dalits are victims of intentional discrimination based on untouchability, the discriminator is motivated to discriminate against them because of their caste, which is not a protected trait, and their race, which is. Thus, caste discrimination inevitably also involves race discrimination.

boundary line as described in said report and as delineated on said map, and now marked by cedar posts, be permanently marked as recommended in said report, with all convenient speed, and that said commission be continued for that purpose, and make report thereon to this court, and that this cause be retained until such report is made.

It is further ordered, adjudged, and decreed that the compensation and expenses of the commissioners and the expenses attendant on the discharge of their duties, up to this time, be, and they are hereby, allowed at the sum of two thousand two hundred and thirty-six dollars and sixty cents in accordance with their report, and that said charges and expenses and the costs of this suit to be taxed be equally divided between the parties hereto.

And it is further ordered, adjudged, and decreed that this decree is without prejudice to further proceedings as either of the parties may be advised for the determination of such part of the boundary line between said States as may not have been settled by this decree under the pleadings in this case.

And it is further ordered, adjudged, and decreed that the clerk of this court do forthwith transmit to the chief magistrates of the States of Kentucky and Indiana copies of this decree duly authenticated under the seal of this court.

per Mr. Chief Justice Fuller.

May 18, 1896.

PLESSY v. FERGUSON.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 210. Argued April 13, 1896.—Decided May 18, 1896.

The statute of Louisiana, acts of 1890, No. 111, requiring railway companies carrying passengers in their coaches in that State, to provide equal, but separate, accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations; and providing that no person shall be permitted to occupy seats in coaches other than the ones assigned to them, on account

of the race they belong to; and requiring the officers of the passenger trains to assign each passenger to the coach or compartment assigned for the race to which he or she belongs; and imposing fines or imprisonment upon passengers insisting on going into a coach or compartment other than the one set aside for the race to which he or she belongs; and conferring upon officers of the trains power to refuse to carry on the train passengers refusing to occupy the coach or compartment assigned to them, and exempting the railway company from liability for such refusal, are not in conflict with the provisions either of the Thirteenth Amendment or of the Fourteenth Amendment to the Constitution of the United States.

THIS was a petition for writs of prohibition and certiorari, originally filed in the Supreme Court of the State by Plessy, the plaintiff in error, against the Hon. John H. Ferguson, judge of the criminal District Court for the parish of Orleans, and setting forth in substance the following facts:

That petitioner was a citizen of the United States and a resident of the State of Louisiana, of mixed descent, in the proportion of seven eighths Caucasian and one eighth African blood; that the mixture of colored blood was not discernible in him, and that he was entitled to every recognition, right, privilege and immunity secured to the citizens of the United States of the white race by its Constitution and laws; that on June 7, 1892, he engaged and paid for a first class passage on the East Louisiana Railway from New Orleans to Covington, in the same State, and thereupon entered a passenger train, and took possession of a vacant seat in a coach where passengers of the white race were accommodated; that such railroad company was incorporated by the laws of Louisiana as a common carrier, and was not authorized to distinguish between citizens according to their race. But, notwithstanding this, petitioner was required by the conductor, under penalty of ejection from said train and imprisonment, to vacate said coach and occupy another seat in a coach assigned by said company for persons not of the white race, and for no other reason than that petitioner was of the colored race; that upon petitioner's refusal to comply with such order, he was, with the aid of a police officer, forcibly ejected from said coach and hurried off to and imprisoned in the parish jail of

New Orleans, and there held to answer a charge made by such officer to the effect that he was guilty of having criminally violated an act of the General Assembly of the State, approved July 10, 1890, in such case made and provided.

That petitioner was subsequently brought before the recorder of the city for preliminary examination and committed for trial to the criminal District Court for the parish of Orleans, where an information was filed against him in the matter above set forth, for a violation of the above act, which act the petitioner affirmed to be null and void, because in conflict with the Constitution of the United States; that petitioner interposed a plea to such information, based upon the unconstitutionality of the act of the General Assembly, to which the district attorney, on behalf of the State, filed a demurrer; that, upon issue being joined upon such demurrer and plea, the court sustained the demurrer, overruled the plea, and ordered petitioner to plead over to the facts set forth in the information, and that, unless the judge of the said court be enjoined by a writ of prohibition from further proceeding in such case, the court will proceed to fine and sentence petitioner to imprisonment, and thus deprive him of his constitutional rights set forth in his said plea, notwithstanding the unconstitutionality of the act under which he was being prosecuted; that no appeal lay from such sentence, and petitioner was without relief or remedy except by writs of prohibition and certiorari. Copies of the information and other proceedings in the criminal District Court were annexed to the petition as an exhibit.

Upon the filing of this petition, an order was issued upon the respondent to show cause why a writ of prohibition should not issue and be made perpetual, and a further order that the record of the proceedings had in the criminal cause be certified and transmitted to the Supreme Court.

To this order the respondent made answer, transmitting a certified copy of the proceedings, asserting the constitutionality of the law, and averring that, instead of pleading or admitting that he belonged to the colored race, the said Plessy declined and refused, either by pleading or otherwise, to ad-

mit that he was in any sense or in any proportion a colored man.

The case coming on for a hearing before the Supreme Court, that court was of opinion that the law under which the prosecution was had was constitutional, and denied the relief prayed for by the petitioner. *Ex parte Plessy*, 45 La. Ann. 80. Whereupon petitioner prayed for a writ of error from this court which was allowed by the Chief Justice of the Supreme Court of Louisiana.

Mr. A. W. Tourgee and *Mr. S. F. Phillips* for plaintiff in error. *Mr. F. D. McKenney* was on *Mr. Phillips's* brief.

Mr. James C. Walker filed a brief for plaintiff in error.

Mr. Alexander Porter Morse for defendant in error. *Mr. M. J. Cunningham*, Attorney General of the State of Louisiana, and *Mr. Lional Adams* were on his brief.

Mr. Justice Brown, after stating the case, delivered the opinion of the court.

This case turns upon the constitutionality of an act of the General Assembly of the State of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. Acts 1890, No. 111, p. 152.

The first section of the statute enacts "that all railway companies carrying passengers in their coaches in this State, shall provide equal but separate accommodations for the white, and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations: *Provided*, That this section shall not be construed to apply to street railroads. No person or persons, shall be admitted to occupy seats in coaches, other than, the ones, assigned, to them on account of the race they belong to."

By the second section it was enacted "that the officers of such passenger trains shall have power and are hereby required

to assign each passenger to the coach or compartment used for the race to which such passenger belongs; any passenger insisting on going into a coach or compartment to which by race he does not belong, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison, and any officer of any railroad insisting on assigning a passenger to a coach or compartment other than the one set aside for the race to which said passenger belongs, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison; and should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway, said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable for damages in any of the courts of this State."

The third section provides penalties for the refusal or neglect of the officers, directors, conductors and employés of railway companies to comply with the act, with a proviso that "nothing in this act shall be construed as applying to nurses attending children of the other race." The fourth section is immaterial.

The information filed in the criminal District Court charged in substance that Plessy, being a passenger between two stations within the State of Louisiana, was assigned by officers of the company to the coach used for the race to which he belonged, but he insisted upon going into a coach used by the race to which he did not belong. Neither in the information nor plea was his particular race or color averred.

The petition for the writ of prohibition averred that petitioner was seven eighths Caucasian and one eighth African blood; that the mixture of colored blood was not discernible in him, and that he was entitled to every right, privilege and immunity secured to citizens of the United States of the white race; and that, upon such theory, he took possession of a vacant seat in a coach where passengers of the white race were accommodated, and was ordered by the conductor to vacate

said coach and take a seat in another assigned to persons of the colored race, and having refused to comply with such demand he was forcibly ejected with the aid of a police officer, and imprisoned in the parish jail to answer a charge of having violated the above act.

The constitutionality of this act is attacked upon the ground that it conflicts both with the Thirteenth Amendment of the Constitution, abolishing slavery, and the Fourteenth Amendment, which prohibits certain restrictive legislation on the part of the States.

1. That it does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. Slavery implies involuntary servitude—a state of bondage; the ownership of mankind as a chattel, or at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property and services. This amendment was said in the *Slaughter-house cases*, 16 Wall. 36, to have been intended primarily to abolish slavery, as it had been previously known in this country, and that it equally forbade Mexican peonage or the Chinese coolie trade, when they amounted to slavery or involuntary servitude, and that the use of the word "servitude" was intended to prohibit the use of all forms of involuntary slavery, of whatever class or name. It was intimated, however, in that case that this amendment was regarded by the statesmen of that day as insufficient to protect the colored race from certain laws which had been enacted in the Southern States, imposing upon the colored race onerous disabilities and burdens, and curtailing their rights in the pursuit of life, liberty and property to such an extent that their freedom was of little value; and that the Fourteenth Amendment was devised to meet this exigency.

So, too, in the *Civil Rights cases*, 109 U. S. 3, 24, it was said that the act of a mere individual, the owner of an inn, a public conveyance or place of amusement, refusing accommodations to colored people, cannot be justly regarded as imposing any badge of slavery or servitude upon the applicant, but

only as involving an ordinary civil injury, properly cognizable by the laws of the State, and presumably subject to redress by those laws until the contrary appears. "It would be running the slavery argument into the ground," said Mr. Justice Bradley, "to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theatre, or deal with in other matters of intercourse or business."

A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or reëstablish a state of involuntary servitude. Indeed, we do not understand that the Thirteenth Amendment is strenuously relied upon by the plaintiff in error in this connection.

2. By the Fourteenth Amendment, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are made citizens of the United States and of the State wherein they reside; and the States are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws.

The proper construction of this amendment was first called to the attention of this court in the *Slaughter-house cases*, 16 Wall. 36, which involved, however, not a question of race, but one of exclusive privileges. The case did not call for any expression of opinion as to the exact rights it was intended to secure to the colored race, but it was said generally that its main purpose was to establish the citizenship of the negro; to give definitions of citizenship of the United States and of the States, and to protect from the hostile legislation of the States the privileges and immunities of citizens of the United States, as distinguished from those of citizens of the States.

The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.

One of the earliest of these cases is that of *Roberts* v. *City of Boston*, 5 Cush. 198, in which the Supreme Judicial Court of Massachusetts held that the general school committee of Boston had power to make provision for the instruction of colored children in separate schools established exclusively for them, and to prohibit their attendance upon the other schools. "The great principle," said Chief Justice Shaw, p. 206, "advanced by the learned and eloquent advocate for the plaintiff," (Mr. Charles Sumner,) "is, that by the constitution and laws of Massachusetts, all persons without distinction of age or sex, birth or color, origin or condition, are equal before the law. . . . But, when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion, that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions and be subject to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law for their maintenance and security." It was held that the powers of the committee extended to the establish-

ment of separate schools for children of different ages, sexes and colors, and that they might also establish special schools for poor and neglected children, who have become too old to attend the primary school, and yet have not acquired the rudiments of learning, to enable them to enter the ordinary schools. Similar laws have been enacted by Congress under its general power of legislation over the District of Columbia, Rev. Stat. D. C. §§ 281, 282, 283, 310, 319, as well as by the legislatures of many of the States, and have been generally, if not uniformly, sustained by the courts. *State* v. *McCann*, 21 Ohio St. 198; *Lehew* v. *Brummell*, 15 S. W. Rep. 765; *Ward* v. *Flood*, 48 California, 36; *Bertonneau* v. *School Directors*, 3 Woods, 177; *People* v. *Gallagher*, 93 N. Y. 438; *Cory* v. *Carter*, 48 Indiana, 327; *Dawson* v. *Lee*, 83 Kentucky, 49.

Laws forbidding the intermarriage of the two races may be said in a technical sense to interfere with the freedom of contract, and yet have been universally recognized as within the police power of the State. *State* v. *Gibson*, 36 Indiana, 389.

The distinction between laws interfering with the political equality of the negro and those requiring the separation of the two races in schools, theatres and railway carriages has been frequently drawn by this court. Thus in *Strauder* v. *West Virginia*, 100 U. S. 303, it was held that a law of West Virginia limiting to white male persons, 21 years of age and citizens of the State, the right to sit upon juries, was a discrimination which implied a legal inferiority in civil society, which lessened the security of the right of the colored race, and was a step toward reducing them to a condition of servility. Indeed, the right of a colored man that, in the selection of jurors to pass upon his life, liberty and property, there shall be no exclusion of his race, and no discrimination against them because of color, has been asserted in a number of cases. *Virginia* v. *Rives*, 100 U. S. 313; *Neal* v. *Delaware*, 103 U. S. 370; *Bush* v. *Kentucky*, 107 U. S. 110; *Gibson* v. *Mississippi*, 162 U. S. 565. So, where the laws of a particular locality or the charter of a particular railway corporation has provided that no person shall be excluded from the cars on account of

color, we have held that this meant that persons of color should travel in the same car as white ones, and that the enactment was not satisfied by the company's providing cars assigned exclusively to people of color, though they were as good as those which they assigned exclusively to white persons. *Railroad Company* v. *Brown*, 17 Wall. 445.

Upon the other hand, where a statute of Louisiana required those engaged in the transportation of passengers among the States to give to all persons travelling within that State, upon vessels employed in that business, equal rights and privileges in all parts of the vessel, without distinction on account of race or color, and subjected to an action for damages the owner of such a vessel, who excluded colored passengers on account of their color from the cabin set aside by him for the use of whites, it was held to be so far as it applied to interstate commerce, unconstitutional and void. *Hall* v. *De Cuir*, 95 U. S. 485. The court in this case, however, expressly disclaimed that it had anything whatever to do with the statute as a regulation of internal commerce, or affecting anything else than commerce among the States.

In the *Civil Rights case*, 109 U. S. 3, it was held that an act of Congress, entitling all persons within the jurisdiction of the United States to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances, on land or water, theatres and other places of public amusement, and made applicable to citizens of every race and color, regardless of any previous condition of servitude, was unconstitutional and void, upon the ground that the Fourteenth Amendment was prohibitory upon the States only, and the legislation authorized to be adopted by Congress for enforcing it was not direct legislation on matters respecting which the States were prohibited from making or enforcing certain laws, or doing certain acts, but was corrective legislation, such as might be necessary or proper for counteracting and redressing the effect of such laws or acts. In delivering the opinion of the court Mr. Justice Bradley observed that the Fourteenth Amendment " does not invest Congress with power to legislate upon subjects that are within the

domain of state legislation; but to provide modes of relief against state legislation, or state action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of state laws, and the action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against state laws and state proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed state laws or state proceedings, and be directed to the correction of their operation and effect."

Much nearer, and, indeed, almost directly in point, is the case of the *Louisville, New Orleans &c. Railway* v. *Mississippi*, 133 U. S. 587, wherein the railway company was indicted for a violation of a statute of Mississippi, enacting that all railroads carrying passengers should provide equal, but separate, accommodations for the white and colored races, by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition, so as to secure separate accommodations. The case was presented in a different aspect from the one under consideration, inasmuch as it was an indictment against the railway company for failing to provide the separate accommodations, but the question considered was the constitutionality of the law. In that case, the Supreme Court of Mississippi, 66 Mississippi, 662, had held that the statute applied solely to commerce within the State, and, that being the construction of the state statute by its highest court, was accepted as conclusive. "If it be a matter," said the court, p. 591, "respecting commerce wholly within a State, and not interfering with commerce between the States, then, obviously, there is no violation of the commerce clause of the Federal Constitution. . . . No question arises under this section, as to the power of the State to separate in different compartments interstate pas-

sengers, or affect, in any manner, the privileges and rights of such passengers. All that we can consider is, whether the State has the power to require that railroad trains within her limits shall have separate accommodations for the two races; that affecting only commerce within the State is no invasion of the power given to Congress by the commerce clause."

A like course of reasoning applies to the case under consideration, since the Supreme Court of Louisiana in the case of the *State ex rel. Abbott* v. *Hicks, Judge, et al.*, 44 La. Ann. 770, held that the statute in question did not apply to interstate passengers, but was confined in its application to passengers travelling exclusively within the borders of the State. The case was decided largely upon the authority of *Railway Co.* v. *State*, 66 Mississippi, 662, and affirmed by this court in 133 U. S. 587. In the present case no question of interference with interstate commerce can possibly arise, since the East Louisiana Railway appears to have been purely a local line, with both its termini within the State of Louisiana. Similar statutes for the separation of the two races upon public conveyances were held to be constitutional in *West Chester &c. Railroad* v. *Miles*, 55 Penn. St. 209; *Day* v. *Owen*, 5 Michigan, 520; *Chicago &c. Railway* v. *Williams*, 55 Illinois, 185; *Chesapeake &c. Railroad* v. *Wells*, 85 Tennessee, 613; *Memphis &c. Railroad* v. *Benson*, 85 Tennessee, 627; *The Sue*, 22 Fed. Rep. 843; *Logwood* v. *Memphis &c. Railroad*, 23 Fed. Rep. 318; *McGuinn* v. *Forbes*, 37 Fed. Rep. 639; *People* v. *King*, 18 N. E. Rep. 245; *Houck* v. *South Pac. Railway*, 38 Fed. Rep. 226; *Heard* v. *Georgia Railroad Co.*, 3 Int. Com. Com'n, 111; *S. C.*, 1 Ibid. 428.

While we think the enforced separation of the races, as applied to the internal commerce of the State, neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws, within the meaning of the Fourteenth Amendment, we are not prepared to say that the conductor, in assigning passengers to the coaches according to their race, does not act at his peril, or that the provision of the second section of the act, that denies to the passenger compensa-

tion in damages for a refusal to receive him into the coach in which he properly belongs, is a valid exercise of the legislative power. Indeed, we understand it to be conceded by the State's attorney, that such part of the act as exempts from liability the railway company and its officers is unconstitutional. The power to assign to a particular coach obviously implies the power to determine to which race the passenger belongs, as well as the power to determine who, under the laws of the particular State, is to be deemed a white, and who a colored person. This question, though indicated in the brief of the plaintiff in error, does not properly arise upon the record in this case, since the only issue made is as to the unconstitutionality of the act, so far as it requires the railway to provide separate accommodations, and the conductor to assign passengers according to their race.

It is claimed by the plaintiff in error that, in any mixed community, the reputation of belonging to the dominant race, in this instance the white race, is *property*, in the same sense that a right of action, or of inheritance, is property. Conceding this to be so, for the purposes of this case, we are unable to see how this statute deprives him of, or in any way affects his right to, such property. If he be a white man and assigned to a colored coach, he may have his action for damages against the company for being deprived of his so called property. Upon the other hand, if he be a colored man and be so assigned, he has been deprived of no property, since he is not lawfully entitled to the reputation of being a white man.

In this connection, it is also suggested by the learned counsel for the plaintiff in error that the same argument that will justify the state legislature in requiring railways to provide separate accommodations for the two races will also authorize them to require separate cars to be provided for people whose hair is of a certain color, or who are aliens, or who belong to certain nationalities, or to enact laws requiring colored people to walk upon one side of the street, and white people upon the other, or requiring white men's houses to be painted white, and colored men's black, or their vehicles or business signs to be of different colors, upon the theory that one side

of the street is as good as the other, or that a house or vehicle of one color is as good as one of another color. The reply to all this is that every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion for the public good, and not for the annoyance or oppression of a particular class. Thus in *Yick Wo* v. *Hopkins*, 118 U. S. 356, it was held by this court that a municipal ordinance of the city of San Francisco, to regulate the carrying on of public laundries within the limits of the municipality, violated the provisions of the Constitution of the United States, if it conferred upon the municipal authorities arbitrary power, at their own will, and without regard to discretion, in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying, or the propriety of the places selected for the carrying on of the business. It was held to be a covert attempt on the part of the municipality to make an arbitrary and unjust discrimination against the Chinese race. While this was the case of a municipal ordinance, a like principle has been held to apply to acts of a state legislature passed in the exercise of the police power. *Railroad Company* v. *Husen*, 95 U. S. 465; *Louisville & Nashville Railroad* v. *Kentucky*, 161 U. S. 677, and cases cited on p. 700; *Daggett* v. *Hudson*, 43 Ohio St. 548; *Capen* v. *Foster*, 12 Pick. 485; *State ex rel. Wood* v. *Baker*, 38 Wisconsin, 71; *Monroe* v. *Collins*, 17 Ohio St. 665; *Hulseman* v. *Rems*, 41 Penn. St. 396; *Orman* v. *Riley*, 15 California, 48.

So far, then, as a conflict with the Fourteenth Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances

is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. As was said by the Court of Appeals of New York in *People* v. *Gallagher*, 93 N. Y. 438, 448, "this end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized and performed all of the functions respecting social advantages with which it is endowed." Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly

or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

It is true that the question of the proportion of colored blood necessary to constitute a colored person, as distinguished from a white person, is one upon which there is a difference of opinion in the different States, some holding that any visible admixture of black blood stamps the person as belonging to the colored race, (*State* v. *Chavers*, 5 Jones, [N. C.] 1, p. 11); others that it depends upon the preponderance of blood, (*Gray* v. *State*, 4 Ohio, 354; *Monroe* v. *Collins*, 17 Ohio St. 665); and still others that the predominance of white blood must only be in the proportion of three fourths. (*People* v. *Dean*, 14 Michigan, 406; *Jones* v. *Commonwealth*, 80 Virginia, 538.) But these are questions to be determined under the laws of each State and are not properly put in issue in this case. Under the allegations of his petition it may undoubtedly become a question of importance whether, under the laws of Louisiana, the petitioner belongs to the white or colored race.

The judgment of the court below is, therefore,

Affirmed.

MR. JUSTICE HARLAN dissenting.

By the Louisiana statute, the validity of which is here involved, all railway companies (other than street railroad companies) carrying passengers in that State are required to have separate but equal accommodations for white and colored persons, "by providing two or more passenger coaches for each passenger train, *or* by dividing the passenger coaches by a *partition* so as to secure separate accommodations." Under this statute, no colored person is permitted to occupy a seat in a coach assigned to white persons; nor any white person, to occupy a seat in a coach assigned to colored persons. The managers of the railroad are not allowed to exercise any discretion in the premises, but are required to assign each passenger to some coach or compartment set apart for the exclusive use of his race. If a passenger insists upon going into a coach or compartment not set apart for persons of his race,

he is subject to be fined, or to be imprisoned in the parish jail. Penalties are prescribed for the refusal or neglect of the officers, directors, conductors and employés of railroad companies to comply with the provisions of the act.

Only "nurses attending children of the other race" are excepted from the operation of the statute. No exception is made of colored attendants travelling with adults. A white man is not permitted to have his colored servant with him in the same coach, even if his condition of health requires the constant, personal assistance of such servant. If a colored maid insists upon riding in the same coach with a white woman whom she has been employed to serve, and who may need her personal attention while travelling, she is subject to be fined or imprisoned for such an exhibition of zeal in the discharge of duty.

While there may be in Louisiana persons of different races who are not citizens of the United States, the words in the act, "white and colored races," necessarily include all citizens of the United States of both races residing in that State. So that we have before us a state enactment that compels, under penalties, the separation of the two races in railroad passenger coaches, and makes it a crime for a citizen of either race to enter a coach that has been assigned to citizens of the other race.

Thus the State regulates the use of a public highway by citizens of the United States solely upon the basis of race.

However apparent the injustice of such legislation may be, we have only to consider whether it is consistent with the Constitution of the United States.

That a railroad is a public highway, and that the corporation which owns or operates it is in the exercise of public functions, is not, at this day, to be disputed. Mr. Justice Nelson, speaking for this court in *New Jersey Steam Navigation Co.* v. *Merchants' Bank*, 6 How. 344, 382, said that a common carrier was in the exercise "of a sort of public office, and has public duties to perform, from which he should not be permitted to exonerate himself without the assent of the parties concerned." Mr. Justice Strong, delivering the judgment of

this court in *Olcott* v. *The Supervisors*, 16 Wall. 678, 694, said: "That railroads, though constructed by private corporations and owned by them, are public highways, has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence. Very early the question arose whether a State's right of eminent domain could be exercised by a private corporation created for the purpose of constructing a railroad. Clearly it could not, unless taking land for such a purpose by such an agency is taking land for public use. The right of eminent domain nowhere justifies taking property for a private use. Yet it is a doctrine universally accepted that a state legislature may authorize a private corporation to take land for the construction of such a road, making compensation to the owner. What else does this doctrine mean if not that building a railroad, though it be built by a private corporation, is an act done for a public use?" So, in *Township of Pine Grove* v. *Talcott*, 19 Wall. 666, 676: "Though the corporation [a railroad company] was private, its work was public, as much so as if it were to be constructed by the State." So, in *Inhabitants of Worcester* v. *Western Railroad Corporation*, 4 Met. 564: "The establishment of that great thoroughfare is regarded as a public work, established by public authority, intended for the public use and benefit, the use of which is secured to the whole community, and constitutes, therefore, like a canal, turnpike or highway, a public easement." It is true that the real and personal property, necessary to the establishment and management of the railroad, is vested in the corporation; but it is in trust for the public."

In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. Every true man has pride of race, and under appropriate circumstances when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the

race of citizens when the civil rights of those citizens are involved. Indeed, such legislation, as that here in question, is inconsistent not only with that equality of rights which pertains to citizenship, National and State, but with the personal liberty enjoyed by every one within the United States.

The Thirteenth Amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude. It decreed universal civil freedom in this country. This court has so adjudged. But that amendment having been found inadequate to the protection of the rights of those who had been in slavery, it was followed by the Fourteenth Amendment, which added greatly to the dignity and glory of American citizenship, and to the security of personal liberty, by declaring that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," and that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." These two amendments, if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship. Finally, and to the end that no citizen should be denied, on account of his race, the privilege of participating in the political control of his country, it was declared by the Fifteenth Amendment that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

These notable additions to the fundamental law were welcomed by the friends of liberty throughout the world. They removed the race line from our governmental systems. They had, as this court has said, a common purpose, namely, to secure "to a race recently emancipated, a race that through

many generations have been held in slavery, all the civil rights that the superior race enjoy." They declared, in legal effect, this court has further said, "that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color." We also said: "The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race—the right to exemption from unfriendly legislation against them distinctively as colored—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race." It was, consequently, adjudged that a state law that excluded citizens of the colored race from juries, because of their race and however well qualified in other respects to discharge the duties of jurymen, was repugnant to the Fourteenth Amendment. *Strauder* v. *West Virginia*, 100 U. S. 303, 306, 307; *Virginia* v. *Rives*, 100 U. S. 313; *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370, 386; *Bush* v. *Kentucky*, 107 U. S. 110, 116. At the present term, referring to the previous adjudications, this court declared that "underlying all of those decisions is the principle that the Constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the General Government or the States against any citizen because of his race. All citizens are equal before the law." *Gibson* v. *Mississippi*, 162 U. S. 565.

The decisions referred to show the scope of the recent amendments of the Constitution. They also show that it is not within the power of a State to prohibit colored citizens, because of their race, from participating as jurors in the administration of justice.

It was said in argument that the statute of Louisiana does

not discriminate against either race, but prescribes a rule applicable alike to white and colored citizens. But this argument does not meet the difficulty. Every one knows that the statute in question had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied by or assigned to white persons. Railroad corporations of Louisiana did not make discrimination among whites in the matter of accommodation for travellers. The thing to accomplish was, under the guise of giving equal accommodation for whites and blacks, to compel the latter to keep to themselves while travelling in railroad passenger coaches. No one would be so wanting in candor as to assert the contrary. The fundamental objection, therefore, to the statute is that it interferes with the personal freedom of citizens. "Personal liberty," it has been well said, "consists in the power of locomotion, of changing situation, or removing one's person to whatsoever places one's own inclination may direct, without imprisonment or restraint, unless by due course of law." 1 Bl. Com. *134. If a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right to do so, and no government, proceeding alone on grounds of race, can prevent it without infringing the personal liberty of each.

It is one thing for railroad carriers to furnish, or to be required by law to furnish, equal accommodations for all whom they are under a legal duty to carry. It is quite another thing for government to forbid citizens of the white and black races from travelling in the same public conveyance, and to punish officers of railroad companies for permitting persons of the two races to occupy the same passenger coach. If a State can prescribe, as a rule of civil conduct, that whites and blacks shall not travel as passengers in the same railroad coach, why may it not so regulate the use of the streets of its cities and towns as to compel white citizens to keep on one side of a street and black citizens to keep on the other? Why may it not, upon like grounds, punish whites and blacks who ride together in street cars or in open vehicles on a public road

or street? Why may it not require sheriffs to assign whites to one side of a court-room and blacks to the other? And why may it not also prohibit the commingling of the two races in the galleries of legislative halls or in public assemblages convened for the consideration of the political questions of the day? Further, if this statute of Louisiana is consistent with the personal liberty of citizens, why may not the State require the separation in railroad coaches of native and naturalized citizens of the United States, or of Protestants and Roman Catholics?

The answer given at the argument to these questions was that regulations of the kind they suggest would be unreasonable, and could not, therefore, stand before the law. Is it meant that the determination of questions of legislative power depends upon the inquiry whether the statute whose validity is questioned is, in the judgment of the courts, a reasonable one, taking all the circumstances into consideration? A statute may be unreasonable merely because a sound public policy forbade its enactment. But I do not understand that the courts have anything to do with the policy or expediency of legislation. A statute may be valid, and yet, upon grounds of public policy, may well be characterized as unreasonable. Mr. Sedgwick correctly states the rule when he says that the legislative intention being clearly ascertained, "the courts have no other duty to perform than to execute the legislative will, without any regard to their views as to the wisdom or justice of the particular enactment." Stat. & Const. Constr. 324. There is a dangerous tendency in these latter days to enlarge the functions of the courts, by means of judicial interference with the will of the people as expressed by the legislature. Our institutions have the distinguishing characteristic that the three departments of government are coördinate and separate. Each must keep within the limits defined by the Constitution. And the courts best discharge their duty by executing the will of the law-making power, constitutionally expressed, leaving the results of legislation to be dealt with by the people through their representatives. Statutes must always have a reasonable construction. Sometimes they are to be construed strictly; sometimes, liberally, in order to carry out the legisla-

tive will. But however construed, the intent of the legislature is to be respected, if the particular statute in question is valid, although the courts, looking at the public interests, may conceive the statute to be both unreasonable and impolitic. If the power exists to enact a statute, that ends the matter so far as the courts are concerned. The adjudged cases in which statutes have been held to be void, because unreasonable, are those in which the means employed by the legislature were not at all germane to the end to which the legislature was competent.

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty. But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott case.* It was adjudged in that case that the descendants of Africans who were imported into this country and sold as slaves were not included nor intended to be included under the word "citizens" in the Constitution, and could not claim any of the rights and privileges which that instrument provided for and secured to citizens of the United States; that at the time of the adoption of the Constitution they were "considered as a subordinate and inferior class of beings, who had been subjugated by the dominant

race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them." 19 How. 393, 404. The recent amendments of the Constitution, it was supposed, had eradicated these principles from our institutions. But it seems that we have yet, in some of the States, a dominant race — a superior class of citizens, which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race. The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution, by one of which the blacks of this country were made citizens of the United States and of the States in which they respectively reside, and whose privileges and immunities, as citizens, the States are forbidden to abridge. Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana.

The sure guarantee of the peace and security of each race is the clear, distinct, unconditional recognition by our governments, National and State, of every right that inheres in civil freedom, and of the equality before the law of all citizens of the United States without regard to race. State enactments, regulating the enjoyment of civil rights, upon the basis of race, and cunningly devised to defeat legitimate results of the

war, under the pretence of recognizing equality of rights, can have no other result than to render permanent peace impossible, and to keep alive a conflict of races, the continuance of which must do harm to all concerned. This question is not met by the suggestion that social equality cannot exist between the white and black races in this country. That argument, if it can be properly regarded as one, is scarcely worthy of consideration; for social equality no more exists between two races when travelling in a passenger coach or a public highway than when members of the same races sit by each other in a street car or in the jury box, or stand or sit with each other in a political assembly, or when they use in common the streets of a city or town, or when they are in the same room for the purpose of having their names placed on the registry of voters, or when they approach the ballot-box in order to exercise the high privilege of voting.

There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the State and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race. It is scarcely just to say that a colored citizen should not object to occupying a public coach assigned to his own race. He does not object, nor, perhaps, would he object to separate coaches for his race, if his rights under the law were recognized. But he objects, and ought never to cease objecting to the proposition, that citizens of the white and black races can be adjudged criminals because they sit, or claim the right to sit, in the same public coach on a public highway.

The arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution. It cannot be justified upon any legal grounds.

If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. The thin disguise of "equal" accommodations for passengers in railroad coaches will not mislead any one, nor atone for the wrong this day done.

The result of the whole matter is, that while this court has frequently adjudged, and at the present term has recognized the doctrine, that a State cannot, consistently with the Constitution of the United States, prevent white and black citizens, having the required qualifications for jury service, from sitting in the same jury box, it is now solemnly held that a State may prohibit white and black citizens from sitting in the same passenger coach on a public highway, or may require that they be separated by a "partition," when in the same passenger coach. May it not now be reasonably expected that astute men of the dominant race, who affect to be disturbed at the possibility that the integrity of the white race may be corrupted, or that its supremacy will be imperilled, by contact on public highways with black people, will endeavor to procure statutes requiring white and black jurors to be separated in the jury box by a "partition," and that, upon retiring from the court room to consult as to their verdict, such partition, if it be a moveable one, shall be taken to their consultation room, and set up in such way as to prevent black jurors from coming too close to their brother jurors of the white race. If the "partition" used in the court room happens to be stationary, provision could be made for screens with openings through

which jurors of the two races could confer as to their verdict without coming into personal contact with each other. I cannot see but that, according to the principles this day announced, such state legislation, although conceived in hostility to, and enacted for the purpose of humiliating citizens of the United States of a particular race, would be held to be consistent with the Constitution.

I do not deem it necessary to review the decisions of state courts to which reference was made in argument. Some, and the most important, of them are wholly inapplicable, because rendered prior to the adoption of the last amendments of the Constitution, when colored people had very few rights which the dominant race felt obliged to respect. Others were made at a time when public opinion, in many localities, was dominated by the institution of slavery; when it would not have been safe to do justice to the black man; and when, so far as the rights of blacks were concerned, race prejudice was, practically, the supreme law of the land. Those decisions cannot be guides in the era introduced by the recent amendments of the supreme law, which established universal civil freedom, gave citizenship to all born or naturalized in the United States and residing here, obliterated the race line from our systems of governments, National and State, and placed our free institutions upon the broad and sure foundation of the equality of all men before the law.

I am of opinion that the statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the spirit and letter of the Constitution of the United States. If laws of like character should be enacted in the several States of the Union, the effect would be in the highest degree mischievous. Slavery, as an institution tolerated by law would, it is true, have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom; to regulate civil rights, common to all citizens, upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens, now constituting a part of the political community called the

People of the United States, for whom, and by whom through representatives, our government is administered. Such a system is inconsistent with the guarantee given by the Constitution to each State of a republican form of government, and may be stricken down by Congressional action, or by the courts in the discharge of their solemn duty to maintain the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

For the reasons stated, I am constrained to withhold my assent from the opinion and judgment of the majority.

MR. JUSTICE BREWER did not hear the argument or participate in the decision of this case.

UNION PACIFIC RAILWAY COMPANY *et al.*[1] *v.* CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

UNION PACIFIC RAILWAY COMPANY *v.* CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

APPEALS FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Nos. 157, 158. Argued April 21, 22, 1896.—Decided May 25, 1896.

Railroad corporations possess the powers which are expressly conferred by their charters, together with such powers as are fairly incidental thereto; and they cannot, except with the consent of the State, disable themselves from the discharge of the functions, duties and obligations which they have assumed.

The general rule is that a contract by which a railroad company renders itself incapable of performing its duties to the public or attempts to absolve itself from those obligations without the consent of the State,

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[1] The other party was *The Omaha and Republican Valley Railway Company.*

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, an agency of the State of California,

Plaintiff,

vs.

CISCO SYSTEMS, INC., a California Corporation; SUNDAR IYER, an individual; RAMANA KOMPELLA, an individual,

Defendants.

Case No. 20CV372366

PLAINTIFF CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S OPPOSITION TO DEFENDANT CISCO SYSTEMS, INC.'S MOTION TO STRIKE

Date: March 9, 2020
Time: 9:00 a.m.
Department 6
Judge: Hon. Drew C. Takaichi

Action Filed: October 16, 2020
Trial Date: TBD

[*Filed concurrently with Pl. DFEH's Opp. to Def. Cisco's Demurrer; Pl. DFEH's Opp to Defs. Iyer & Kompella's Demurrer; Pl. DFEH's Objections to Def. Cisco's Request for Judicial Notice; Declaration of Melanie Proctor ISO Oppositions to Demurrers and Motion to Strike*]

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I. INTRODUCTION

Once again, in its motion to strike, defendant Cisco Systems, Inc.'s ("Cisco") mischaracterizes this case.[1] It is *not* about a single employee. It is a government enforcement action brought on behalf of the state of California. It is also *not* about a discrete act of discrimination. It challenges, *inter alia,* defendant Cisco's unlawful *and continuing* companywide practices, including its ongoing failure to prevent and promptly correct discriminatory, harassing, and retaliatory conduct in violation of the California Fair Employment and Housing Act, Government Code section 12900 et seq. ("FEHA") and its regulations.[2] The government's allegations speak for themselves, and no legal basis exists to strike them. As alleged in the complaint, Cisco not only engaged in caste discrimination and other unlawful conduct, it also fails to recognize, much less take, any affirmative or culturally competent steps necessary to prevent further caste bias in its predominantly South Asian Indian and newly-immigrated H-1B workforce.[3] Striking the government's allegations will only perpetuate discrimination in Cisco's workplace where the evidence shows the centuries-old South Asian Indian caste hierarchy has taken hold in California.[4]

John Doe illustrates Cisco's unlawful practices. As a Dalit Indian, John Doe was born into the bottom of India's caste system—a strict hierarchy that defines persons' caste status at birth on the bases

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[1] Defendants repeatedly misrepresent or disregard the government's prosecutorial role and the unlawful *companywide* practices at issue in this case. (See, e.g., Mtn. to Strike, p. 6:25, 10:13, 11:21, 12:10.) The Court recently acknowledged that "DFEH's claims include system wide violations of the FEHA by Cisco beyond those specific to Doe, and the request for injunctive relief in the public interest is broader than relief specific to Doe." (Order Denying Motions to Compel Arbitration (Feb. 16, 2021) ("Arbitration Order"), pp. 6-7.)

[2] See, e.g., Gov. Code, § 12940, subd. (k); Cal. Code Regs., tit. 2, § 11023, subd. (a) ["Employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct. [citation omitted] (1) A determination as to whether an employer has complied with [Gov. Code §] 12940(k) includes an individualized assessment, depending upon numerous factors sometimes *unique to the particular employer* including, but not limited to, its workforce size, budget, and nature of its business, as well as upon the facts of a particular case… (3) [I]n an exercise of its police powers, the Department may independently seek non-monetary preventative remedies for a violation of [Gov. Code §] 12940(k) whether or not the Department prevails on an underlying claim of discrimination, harassment, or retaliation."].

[3] Well-over 50% of Cisco's workforce is South Asian Indian, according to EEO-1 records and public information. (Compl., pp. 2:14-17, 3:16-4:6, 4 fns. 8, 9, 10.) However, Cisco has no culturally competent policies tailored to its workforce. By comparison, "Any employer whose workforce at any facility or establishment contains 10% or more of persons who speak a language other than English as their spoken language shall translate the policy into every language that is spoken by at least *10% of the workforce*." (Cal. Code Regs., tit. 2, § 11023, subd. (e).)

[4] Compl., p. 2:10-13 ["Although *de jure* segregation ended in India, oppressed caste persons like Dalits continue to face *de facto* segregation and discrimination in all spheres."].

of protected characteristics under state civil rights law, such as his national origin/ethnicity (Indian and Dalit), religion (Hindu and Dalit), ancestry (Indian and Dalit), and race/color (South Asian and Dalit). John Doe immigrated to California and joined Cisco. Consistent with its unlawful practices, Cisco assigned John Doe to a South Asian Indian team where the centuries-old caste hierarchy was firmly intact. John Doe faced discrimination and other unlawful conduct, and then asked that Cisco promptly remedy and prevent it. The company disregarded his complaints. John Doe informed the government and, after unsuccessful efforts to resolve the unlawful conduct, Plaintiff Department of Fair Employment and Housing ("DFEH") brought this civil rights action on behalf of the state seeking to remedy and deter unlawful employment practices in California.

In an apparent effort to evade any accountability for its unlawful practices, Cisco improperly moves to strike relevant portions of DFEH's complaint on two grounds. First, Cisco seeks to strike any portion of the complaint mentioning discrimination on the bases of caste, ethnicity, religion, national origin, and race/color. Cisco incorrectly argues that any such allegations should be removed because caste and ethnicity are not specifically included in the list of protected groups under FEHA and because John Doe allegedly did not exhaust his administrative claims on the bases of religion, national origin/ethnicity, and race/color. Cisco is wrong on both points. DFEH pled allegations sufficient to show that caste and ethnicity are protected under FEHA and that John Doe exhausted his administrative claims regarding religion, national origin, and color.

Second, Cisco seeks to improperly narrow the case at the pleadings stage and avoid discovery by moving to strike as "immaterial, impertinent, and unduly prejudicial" credible and material information about Cisco's policies, practices and workforce (Cal. Code Regs., tit. 2, § 11023, subd. (a) [A determination as to whether an employer has complied with Government Code section 12940(k) includes an individualized assessment, depending upon numerous factors sometimes *unique to the particular employer*…].) DFEH has properly alleged relevant and pertinent facts, including essential information about Cisco that, when read as a whole, show that: (i) Cisco lacked policies or other affirmative steps necessary to prevent unlawful conduct against employees in its predominantly South Asian Indian and newly-immigrated H-1B workforce, and failed to promptly remedy such conduct when it occurred against John Doe, a Dalit Indian; (ii) caste discrimination is pervasive against Dalits and it

occurs outside India, including at Cisco and similar companies with a large Indian workforce; (iii) caste discrimination is a form of discrimination on the bases of national origin/ethnicity, religion, ancestry, and race/color; (iv) Cisco does not prohibit caste discrimination in its workplace; and (v) Cisco continues to fail to take reasonable steps to prevent unlawful practices in its workplace. The court should deny Cisco's motion to strike because it is overbroad and seeks to strike relevant allegations, avoid relevant discovery, narrow viable claims, and evade accountability at the pleadings stage.

II. FACTS

As California's civil rights enforcement agency, the DFEH filed the instant case in its own name[5] and on behalf of the Real Party in Interest John Doe ("Doe")[6] against defendants Cisco, Sundar Iyer, and Ramana Kompella, alleging discrimination, harassment, retaliation on the bases of his religion, ancestry, national origin/ethnicity, and race/color in violation of FEHA. (Compl., *passim*.) John Doe is Dalit Indian, the population most disadvantaged under India's caste system. (Compl., ¶ 1.) India's caste system defines a person's status based on their religion, ancestry, national origin/ethnicity, and race/color. (*Ibid*.) Because they are considered the bottom caste, Dalits have historically experienced severe discrimination, including in the workplace. (*Ibid*.)

At Cisco's headquarters, Doe worked with a team of all Indian employees, who, except for Doe, are from high castes in India. (*Id*.,¶ 3.) Doe's higher caste supervisors and co-workers were aware that he is Dalit and harassed him on that basis. (*Id*., ¶¶ 3-4, 31.) After Doe filed a complaint with Cisco's human resources and employee relations, Doe's co-workers and supervisors, including defendants Iyer and Kompella, harassed and retaliated against him by placing him in the lowest position on the team, giving him inferior assignments, isolating him from all his colleagues, and disparaging him. (Compl., ¶¶ 33-37, 40, 42.) Cisco's investigation, though incomplete, confirmed Doe's complaints. (Compl., ¶¶ 38-39, 41-43.) Even so, despite having a large Indian workforce, Cisco concluded that it could not substantiate Doe's discrimination complaint and failed to recognize caste as a protected category.

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[5] Gov. Code, § 12965 [DFEH "…bring[s] a civil action in the name of the department"]; *Dept. Fair Empl. & Hous. v. Cathy's Creations, Inc*. (2020) 54 Cal.App.5th 404, 410 ["the DFEH's task is to represent the interests of the state and to effectuate the declared public policy of the state"].

[6] The Court's February 11, 2021 Order denying DFEH's motion to allow Doe to proceed under a fictitious name is stayed at this time.

(Compl., ¶¶ 39, 43-44.) As a result, Doe continues to endure discrimination, harassment, and retaliation. (Compl., ¶¶ 45-47.)

III. PROCEDURAL HISTORY

On July 30, 2018, Doe filed a verified administrative complaint against defendant Cisco under the FEHA and related authorities. (Compl., ¶ 11.) On or around October 9, 2018, Doe filed an amended administrative complaint against defendants Cisco, Sundar Iyer ("Iyer"), and Ramana Kompella ("Kompella"). (*Ibid.*) The DFEH determined there was merit to Doe's complaint, and the parties attempted to resolve the complaint through mediation, but efforts were unsuccessful. (Compl., ¶ 13.) The parties entered consecutive tolling agreements to toll the statutory deadline for DFEH to file a civil action to June 30, 2020. (*Ibid.*) DFEH initially filed an action in federal court on that date. (Compl., ¶ 14.) On October 16, 2020, DFEH voluntarily dismissed the federal complaint without prejudice pursuant to Federal Rules of Civil Procedure 41, subdivision (a)(1) and nearly simultaneously filed its state-court complaint pursuant to Government Code section 12965. (*Id.*,¶ 9; Declaration of Joseph Liburt, ¶ 3, Exh. C.)

The complaint alleges that Cisco, Iyer, and Kompella discriminated, harassed, and retaliated against Doe based on his caste-based characteristics of religion, ancestry, national origin/ethnicity, and race/color. Plaintiff DFEH alleges five causes of action, all violations of the FEHA. (Compl., ¶¶ 51-99.) The DFEH seeks both injunctive and monetary relief. (*Id.*, Prayer for Relief.)

IV. LEGAL STANDARD

A motion to strike is not a "procedural 'line item veto' for the defendant." (*PH II, Inc. v. Super. Ct.* (1995) 33 Cal.App.4th 1680, 1683 ("*PH II, Inc.*").) While "the court may, upon a motion made pursuant to section 435 . . . [s]trike out" allegations from the complaint, it should do so only if the challenged allegations are "irrelevant, false or improper." (Code Civ. Proc., § 436, subd. (a).) In considering motions to strike, "judges read allegations … as a whole, all parts in their context, and assume their truth." (*Kaiser Found. Health Plan, Inc. v. Super. Ct.* (2012) 203 Cal.App.4th 696, 704.) A court may only consider evidence that either appears on the face of the challenged pleading or evidence that is judicially noticeable. (Code Civ. Proc., § 437, subd. (a); *Velez v. Smith* (2006) 142 Cal.App.4th 1154, 1161 [stating that "the purpose of the motion [to strike] is to test the sufficiency of

the pleadings, so the court does not consider testimonial evidence or information extraneous to the complaint and judicially noticed matters."].) The allegations of the complaint "must be liberally construed, with a view to substantial justice between the parties." (Code Civ. Proc., § 452.) Moreover, the FEHA requires its provisions be "construed liberally for the accomplishment of [its] purposes[.]." (Gov. Code, § 12993, subd. (a).) If the motion to strike is "so broad as to include relevant matter," the Court should deny it in its entirety. (*Allerton v. King* (1929) 96 Cal.App. 230, 235 ("*Allerton*").) Indeed, "[t]he court should never strike out matter which will leave the complaint defective, and thus lead to a dismissal of the action." (*Ibid.*)

V. ARGUMENT

A. CISCO FAILED TO MEET AND CONFER

The Code of Civil Procedure requires a moving party to meet and confer in person or by telephone "at least five days before the date a motion to strike must be filed." (Code Civ. Proc., § 435.5, subd. (a).) A motion to strike a complaint must be filed within 30 days *after* service of the summons. (Code Civ. Proc., §§ 412.20, subd. (a)(3), 435.5, subd. (b)(1).) If the parties are unable to meet and confer at least five days *before the deadline*, the moving party will be granted an automatic 30-day extension if it files and serves a declaration explaining the parties could not do so. (Code Civ. Proc., § 435.5, subd. (a)(2).) Defendants failed to meet the meet and confer obligation. More than once, DFEH provided several dates for a call, but the parties were unable to identify a mutually agreeable date and time. Within three hours after the complaint was publicly docketed on November 2, 2020, DFEH proposed a call, but received no response to this offer. (Declaration of Melanie Proctor ISO Pl. DFEH's Opposition to Defs. Demurrers and Motion to Strike ("Proctor Decl."), ¶ 5.) Instead, on November 3, 2020, defendants served their demurrers, motion to strike, and motions to compel arbitration. (*Id.*, ¶ 6.)

B. THE COURT SHOULD DENY CISCO'S MOTION TO STRIKE BECAUSE IT IS OVERBROAD

As discussed further below, Cisco improperly moves to strike relevant allegations. Such allegations, which are essential to a cause of action, should not be stricken. (*Clements v. T.R. Bechtel Company* (1954) 43 Cal.2d 227, 242 [reversing the lower court's decision to strike various factual portions of complaint that plaintiffs relied upon to prove their claims].) In overturning the lower court's

decision, the California Supreme Court held that "[w]hile a motion to strike is addressed to the sound discretion of the trial court [citation], a matter which is essential to a cause of action should not be stricken [citation] and it is error to do so." (*Ibid.*, citing *Menzies v. Geophysical Service, Inc.* (1953) 116 Cal.App.2d 419, 422, 424; *Allerton*, *supra*, 96 Cal.App. at p. 234.) Moreover, a motion to strike that seeks to strike ***both*** relevant and irrelevant matters is overbroad and should be denied in its entirety. (*Allerton*, supra, 96 Cal.App. at p. 235; see also *Triodyne, Inc. v. Super. Ct.* (1966) 240 Cal.App.2d 536, 542-43.) "The court should *never* strike out matter which will leave the complaint defective, and thus lead to a dismissal of the action." (*Allerton, supra*, 96 Cal.App. at p. 234, emphasis added.)

Cisco seeks to strike broad portions of DFEH's complaint, including all paragraphs and phrases containing relevant and necessary allegations related to caste that are essential to DFEH's claims under FEHA. (See Cisco's Memorandum of Points and Authorities in support of Motion to Strike ("Mtn. to Strike"), pp. 4, fn. 3, 7-8, 10-11.) Cisco argues the allegations are immaterial and impertinent. (Mtn. to Strike, pp. 4-10.) However, the motion actually improperly targets allegations regarding Cisco's unlawful company-wide practices and caste to leave the DFEH complaint defective and subject to a demurrer. The Court should deny the motion to strike in its entirety because it is overbroad.

C. DFEH PROPERLY PLED ALLEGATIONS RELATED TO ITS CLAIMS

1. DFEH Pled Facts Sufficient to Show that Caste Is Protected Under FEHA

Cisco moves to strike all portions of DFEH's complaint alleging discrimination, harassment, or retaliation based on caste. (Mtn. to Strike, p. 4, fn. 3.) Cisco's sole argument for striking these allegations is that caste is not one of the *specifically* enumerated protected categories under FEHA. (Mtn. to Strike, p. 4-8.) Cisco's argument ignores the fact that discrimination can occur under the guise of something purportedly unprotected. (*Bostock v. Clayton County* (2020) 140 S.Ct. 1731, 1739 ("*Bostock*").)[7] Indeed, "it's irrelevant what an employer might call its discriminatory practice, [and] how others might label it[.]" (*Bostock*, 140 S.Ct. at p. 1744.) The Supreme Court noted that employers

[7] California courts have long relied on federal Title VII jurisprudence when interpreting the FEHA. (See *Levy v. Regents of University of California* (1988) 199 Cal.App.3d 1334, 1343 [examining how Title VII claims are broached to guide court's analysis of FEHA claims].)

tried to justify discriminatory treatment of women by calling the basis of the differential treatment a "life expectancy" adjustment or "motherhood," only to have the Supreme Court hold that they had indeed discriminated based on sex. (*Id*. at p. 1744 [citing *Los Angeles Dept. of Water and Power v. Manhart* (1978) 435 U.S. 702; *Phillips v. Martin Marietta Corp*. (1971) 400 U.S. 542].) "Title VII prohibits all forms of discrimination because of sex, ***however they may manifest themselves or whatever other labels might attach to them***." (*Bostock*, *supra*, 140 S.Ct. at pp. 1746-1747, emphasis added.) Indeed "the fact that [a statute] … applie[s] in situations not expressly anticipated by Congress" does not demonstrate ambiguity; instead, it simply "demonstrates [the] breadth" of a legislative command. (*Id*., at p. 1749 [internal citation omitted].) The same is true here.

Cisco also incorrectly suggests DFEH's allegations regarding caste are immaterial. (Mtn. to Strike, p. 4:4-8.) The factual allegations in DFEH's complaint support DFEH's claims challenging Cisco's unlawful practices that lack any cultural competency or other affirmative steps aimed at preventing caste bias in its predominantly South Asian Indian and newly-immigrated H-1B workforce. (Compl., ¶¶ 38-41.) DFEH also alleges how caste is linked to national origin/ethnicity religion, ancestry, and race/color.[8] For example, Doe's caste depends on his personal characteristics protected under state law -- such as his birthplace in India and his Dalit ethnic group (national origin/ethnicity), his Hindu religion and heritage (religion), his Dalit line of decent (ancestry), and his ancestry, physical and cultural characteristics associated with South Asian Dalits (race/color). (*Id*., ¶¶ 1, 2; p. 2, fns. 2-6.) The facts also support DFEH's allegations that Cisco engaged in unlawful conduct against Doe on the basis of his caste. (*Id.*, ¶¶ 85-86, 96-97.) As proper general allegations supported by specific factual allegations in the complaint, these portions of the complaint should not be stricken. (*Kaiser Found. Hospitals v. California Nurses Assoc.* (N.D.Cal., Feb. 10, 2012, Case No. 11-5588 SC) 2012 WL 440634 at *4 ("*Kaiser Found. Hospitals*") [denying motion to strike background facts included in complaint that provide court with a fuller understanding of the dispute because defendant will have an opportunity to challenge allegations as the case proceeds"].) Cisco's motion to strike should be denied.

[8] Accordingly, contrary to Cisco's claims, DFEH does not seek to create a new protection. (Cisco's Mtn. to Strike, p. 4:4-8.)

2. Ethnicity is Protected Under FEHA

Cisco improperly seeks to strike all allegations of discrimination, harassment, or retaliation based on "ethnicity." In support of its contention, Cisco incorrectly asserts that the FEHA does not protect ethnicity. (Mtn. to Strike, pp. 4, 6.) *It absolutely does*. Cisco again either misleads the Court or simply lacks cultural competency and understanding of civil rights jurisprudence.

FEHA expressly prohibits discrimination, harassment, and retaliation based on "national origin," which is defined to include "the individual's or ancestors' actual or perceived…physical, cultural, or linguistic characteristics associated with a *national origin group*." (Gov. Code, § 12940, subd. (a); Cal. Code Regs., tit. 2, § 11027.1, subd. (a)(1); 29 C.F.R. § 1606.1.) Furthermore, under the same FEHA regulation, "national origin group" is defined to include "**ethnic groups**, geographic places of origin, and countries that are not presently in existence." (Cal. Code Regs., tit. 2, § 11027.1, subd. (b).)

Courts have repeatedly recognized the same overlapping characteristics in civil rights cases. (*Bostock*, *supra*, 140 S.Ct. at p. 1743; see also *Saint Francis College v. Al-Khazraji* (1987) 481 U.S. 604, 614 (Brennan, J., concurring) [stating "that the line between discrimination based on 'ancestry or **ethnic** characteristics,' . . . and discrimination based on 'place or nation of . . . origin,' . . . is not a bright one" because "[o]ften . . . the two are identical as a factual matter"; thus, "national origin claims have been treated as ancestry or **ethnicity** claims in some circumstances"]; *Chellen v. John Pickle Co.* (N.D.Okla. 2006) 446 F.Supp.2d 1247, 1284 [concluding in a case filed by EEOC and workers, who were recruited from India, that the workers established disparate treatment discrimination claims based on race and national origin where the defendants "made numerous discriminatory comments about their ancestry, **ethnic** background, culture, and country"]; *Koehler v. Infosys Techs. Ltd. Inc*. (E.D.Wis. 2015) 107 F.Supp.3d 940, 949 [recognizing South Asian heritage as a national origin]; *Sharma v. D.C.* (D.D.C. 2014) 65 F.Supp.3d 108, 120 [same].) Thus, Cisco's motion to strike allegations of ethnicity is improper and should be denied.

3. California Law Requires DFEH Administrative Charges to be Liberally Construed

Cisco argues that Doe did not specifically allege discrimination based on religion, national

origin, and color in his charge to DFEH, and that thus, DFEH cannot bring claims on these bases.[9] As an initial matter, Doe's administrative charges are not subject to judicial notice. (DFEH's Objection to Cisco's Request for Judicial Notice, p. 1, citing *People v. Thacker* (1985) 175 Ca1.App.3d 594, 597-598; see *Skrbina v. Fleming Companies* (1996) 45 Cal.App.4th 1353, 1361, fn. 5 [noting in dicta that the trial court, in ruling on demurrer, refused to grant defendant's request for judicial notice of plaintiff's DFEH filings]; see also *Fremont Indem. Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114-115 [finding that the trial court erred in taking "judicial notice of a document submitted by the demurring party based on the document alone, without allowing the parties an opportunity to present extrinsic evidence of the meaning of the document"].)

Regardless, courts have made clear that "[i]n determining whether the exhaustion requirement has been met, California law dictates that FEHA provisions are to be *liberally construed* to accomplish its purposes, including the resolution of potentially meritorious claims on the merits." (*Achal v. Gate Gourmet, Inc.* (N.D.Cal. 2015) 114 F.Supp.3d 781, 794, emphasis added [citing *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 819].) The FEHA requires a complainant to file a verified administrative charge with DFEH at the start of the administrative process. (Gov. Code, § 12960.) The purpose of filing the DFEH charge is "to trigger the investigatory and conciliatory procedures of the DFEH, not to limit a person's access to the courts." (*Brown v. City of Sacramento* (2019) 37 Cal.App.5th 587, 600 ("*Brown*"); see also *Soldinger v. Northwest Airlines* (1996) 51 Cal.App.4th 345, 381 ("*Soldinger*") ["The purpose of filing a charge with an administrative agency prior to filing a civil lawsuit is to enable that agency to investigate the charges and attempt to obtain voluntary compliance with the law."]; *Nazir v. United Airlines* (2009) 178 Cal.App.4th 243, 267-68 ("*Nazir*") ["A charge of discrimination is not filed as a preliminary to a lawsuit. On the contrary, the purpose of a charge of discrimination is to trigger the investigatory and conciliatory procedures of the EEOC."]; *Watson v. Dept. of Rehabilitation* (1989) 212 Cal.App.3d 1271, 1288 ["The charge provides the basis for the DFEH to investigate the aggrieved employee's claims of discrimination. It is not intended as a limiting device."].)

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[9] In the administrative process, the FEHA refers to "complaints" being filed by the complaining party. For the sake of clarity, in this brief, the DFEH will call the administrative complaint the "DFEH charge."

Thus, "[w]hen submitting the charge, claimants are not held to specify the charges with literary exactitude." (*Soldinger*, supra, 51 Cal.App.4th at p. 381.) Courts have held that the administrative exhaustion requirement under FEHA is satisfied if the claims in the civil complaint are "like and reasonably related to" those in the DFEH charge or were "likely to be uncovered in the course of DFEH investigation." (*Brown*, *supra*, 37 Cal.App.5th at p. 600 [citing and quoting *Willis v. Super. Ct.* (2011) 195 Cal.App.4th 143, 154-155 and *Okoli v. Lockheed Technical Operations Co.* (1995) 36 Cal.App.4th 1607, 1615].) In determining whether administrative remedies have been exhausted, the DFEH charge "must not only be construed liberally in favor of plaintiff, it must be construed in light of what might be uncovered by a reasonable investigation." (*Nazir*, *supra*, 178 Cal.App.4th at p. 318.)

The Sixth District Court of Appeal has held that a trial court improperly sustained a demurrer on the grounds that the plaintiff had not included "national origin" in his administrative charge. (*Sandhu v. Lockheed Missiles & Space Co* (1996) 26 Cal.App.4th 846 ("*Sandhu*").) There, the plaintiff filed a civil complaint claiming both race and national origin discrimination. (*Id.* at p. 851.) The plaintiff was from the Asian country of India. (*Ibid.*) In his DFEH charge, plaintiff claimed that he was discriminated against only based on his race, Asian. (*Id.* at p. 858.) The defendant demurred with respect to national origin on the ground that the plaintiff had failed to exhaust his administrative remedies under FEHA because he had not included a national origin allegation in his DFEH charge. (*Ibid.*) The trial court agreed and sustained the demurrer as to the national origin claim. (*Ibid.*) The appellate court reversed the trial court's order, holding that plaintiff's claim for national origin discrimination was viable since DFEH's investigation into plaintiff's charge of race discrimination would likely also have encompassed national origin. (*Id.* at p. 859.)

Given that a DFEH charge simply starts an investigation, allowing allegations and claims in the civil complaint beyond those in the DFEH charge make sense: the primary purpose of an investigation, after all, is to uncover facts. As in *Sandhu*, DFEH's reasonable investigation into Doe's factual allegations related to caste encompassed other protected categories beyond those presented to DFEH. As alleged in the complaint, caste is inextricably linked with characteristics of race, religion, ancestry, national origin, ethnicity, and color. (Compl., ¶¶ 1, 2; *id.*, p. 2, fns. 2-6.) As a result, DFEH's investigation uncovered that Doe was subjected to discrimination, harassment, and retaliation. Because

the DFEH charge must be construed liberally in favor of plaintiff and considering what might be uncovered by a reasonable investigation, the Court should deny Cisco's motion to strike allegations related to religion, national origin, and color.[10]

D. THE ALLEGATIONS IN THE COMPLAINT PROVIDING BACKGROUND INFORMATION ARE RELEVANT, PROPER, AND SUPPORTED BY SUFFICIENT CLAIMS

Cisco improperly seeks to strike relevant and pertinent background information on the Indian caste system, Dalits, and discrimination against Dalits. (Mtn. to Strike, pp. 7, 10-11.) A motion to strike may be used to cut out any "irrelevant, false or improper" matters asserted in a pleading. (Code Civ. Proc., § 436, subd. (a).) "Irrelevant matter" means an "immaterial allegation," including allegations that are not essential to the claim or those not pertinent to or supported by an otherwise sufficient claim. (Code Civ. Proc., § 431.1, subd. (b).) Nevertheless, a motion to strike is not a "procedural 'line item veto'" and should be used sparingly and with caution. (*PH II, Inc.*, *supra*, 33 Cal.App.4th at p. 1683.) The purpose of a motion to strike is to "authorize the excision of superfluous or abusive allegations. (*Ferraro v. Camarlinghi* (2006) 161 Cal.App.4th 509, 528.) "Matter that is essential to a cause of action should not be struck and it is error to do so." (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281.) Furthermore, "[t]he court should never strike out matter which will leave the complaint defective, and thus lead to a dismissal of the action." (*Allerton*, *supra*, 96 Cal.App. at p. 235.)

Here, the allegations containing background information regarding caste and the historical status of Dalits provide relevant information of why deeply ingrained caste discrimination against Dalits is a form of religious, ancestry, national origin/ethnicity, and race/color discrimination under FEHA. Similarly, background information on Cisco's workforce composition is relevant in explaining that Cisco was aware of potential caste discrimination because it has a large South Asian Indian workforce and that Dalits, like John Doe, are part of the minority group. It also provides relevant information about what affirmative steps are necessary to prevent and remedy such discrimination in Cisco's workforce under FEHA. Lastly, DFEH's allegations on behalf of similarly situated workers is

[10] Furthermore, a motion to strike is not the proper method for attacking a pleading for failure to state a cause of action where the objection may be reached by demurrer, which is essentially what Cisco argues here by asking the Court to strike all of these allegations. (*Allerton*, *supra*, 96 Cal.App. at pp. 233-245; see Mtn. to Strike, pp. 5-6.)

proper under its statutory authority. (Arbitration Order, pp. 6-7.)

1. Background and Historical Information on the Indian Caste System, Dalits, and Discrimination Against Dalits Is Relevant and Supported by DFEH's FEHA Claims

Cisco improperly seeks to strike relevant and pertinent background information on the Indian Caste System and Dalits. (Mtn. to Strike, p. 7.) The portions of the complaint that Cisco wants to strike provide material factual background information and context explaining that caste is inextricably linked with characteristics of race, religion, ancestry, national origin, and ethnicity, and color. (*Ibid.*) These portions of the complaint are also relevant to DFEH's claims because they provide context demonstrating that disparities between Dalits and higher caste Indians and discrimination against Dalits do not just occur in India. (*Ibid.*) Discrimination against Dalits is pervasive and continues in the workplace even after Indians immigrate to the United States. (*Ibid.*)

Cisco's main argument against background information on the Indian caste system, Dalits, and discrimination against Dalits in DFEH's complaint is that these allegations are "immaterial and impertinent" because they involve "non-parties against non-parties." (Mtn. to Strike, pp. 6-10.) Cisco mischaracterizes DFEH's purpose for including these allegations. DFEH's purpose was to provide relevant background and historical information on the Indian Caste System, Dalits, and discrimination against Dalits essential to its claims.

Contrary to Cisco's argument, there is no legal basis for striking allegations only because they involve non-parties. Cisco improperly misconstrues and narrows the definition of "immaterial allegation" in California Civil Procedure Code section 431.10, subdivision (b). (Mtn. to Strike, pp. 8-10.) As provided by the plain language of the Code of Civil Procedure, DFEH can allege *any* facts essential and pertinent to its claims. (Code Civ. Proc., § 431.10.) In support of its argument, Cisco cites one case in which the court excluded ***at trial*** evidence related to non-parties. (*Kelly-Zurian v. Wohl Shoe Co*. (1994) 22 Cal.App.4th 397, emphasis added). A court's ruling on motions in limine does not shed light on whether facts should be stricken from the *complaint* at this early stage of litigation. (*Id*. at pp. 410-411.) The law does not support Cisco's argument that DFEH cannot allege any background facts in its complaint.

Even when background information is not absolutely necessary in a complaint, courts have

refused to strike such information. (*California Farm & Fruit Co. v. Schiappa-Pietra* (1907) 151 Cal. 732, 745.) There, the California Supreme Court held that the trial court erred in striking allegations of the general history of the parties' transactions because the information was material and was "proper, though not absolutely necessary subjects of averment to lay the foundation for that part of the relief." (*Ibid.*; see also *Kaiser Found. Hospitals*, *supra*, 2012 WL 440634 at *4; *B.M. v. Wyndham Hotels and Resorts, Inc.* (N.D.Cal. July 30, 2020, Case No. 20-cv-00656) 2020 WL 4368214 at *8 [finding that "while many of the challenged paragraphs are not directly relevant to B.M.'s claims against Defendants, they nonetheless supply information regarding the general issue of sex trafficking and the role of the hospitality industry."]; *Sec. & Exch. Comm. v. Strong Inv. Mgmt.* (C.D.Cal. Aug. 9, 2018, Case No. 8:18-cv-00293) 2018 WL 8731559, at *7 [denying motion to strike because the challenged allegations provide some historical background and context to the claims at issue and give a full understanding when read with the complaint as a whole].)

Courts have also recognized the role and importance of background information and history in our legal tradition, particularly in cases involving discrimination. (See, e.g., *Saint Francis College v. Al-Khazraji*, *supra*,481 U.S. at p. 613 [in holding that Section 1981's protections against race discrimination extends to ancestry or ethnic characteristic, the Supreme Court observed that "[m]any modern biologists and anthropologists...criticize racial classifications as arbitrary" and that "[c]lear-cut categories do not exist....These observations and others have led some, but not all, scientists to conclude that racial classifications are for the most part sociopolitical, rather than biological, in nature."]; see also *Frontiero v. Richardson* (1973) 411 U.S. 677, 684-85 ["There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination… As a result of notions such as these, our statute books gradually became laden with gross, stereotyped distinctions between the sexes…"].)

Cisco also argues that the background information is unduly prejudicial because it would confuse issues at trial and cause the jury to draw unwarranted inferences and complicate the issues. (Mtn. to Strike, p. 4-14.) However, a court's refusal to strike allegedly immaterial matter as irrelevant is not the end of the dispute. (See *Higgins v. San Diego Sav. Bank* (1900) 129 Cal. 184, 186.) Cisco will have opportunities to challenge the allegations by evidence at later stages in the proceedings before trial. (*Kaiser Found. Hospitals*, *supra*, 2012 WL 440634 at *4.) Pleadings are also not generally

admissible as evidence at trial. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) ¶ 7:181.)

Contrary to Cisco's arguments, if the Court strikes these allegations, DFEH will be prejudiced. These allegations are essential to DFEH's claims that Cisco failed to prevent and remedy unlawful practices in its predominantly South Asian Indian workforce. They are also essential to DFEH's claims that discrimination and harassment against Dalits implicates discrimination and harassment based on religion, race/color, and national origin/ethnicity. (Compl., *passim*.) These allegations are also essential in defending against Cisco's argument that the FEHA does not prohibit discrimination or harassment based on caste. (Mtn. to Strike, pp. 9:21-10:8.) For these reasons, the Court should deny Cisco's motion to strike relevant background information from the complaint.

2. Background Information on Cisco's Workforce Composition is Relevant

Cisco improperly seeks to strike material background information on Cisco's workforce composition. Background information based on credible data from EEO reports and H1-B worker statistics showing that Cisco's workforce has a high percentage of South Asian Indians compared to other companies in the area and that Dalits, including John Doe, are members of a small minority group at Cisco is relevant to DFEH's claim under Government Code section 12940, subdivision (k). To state a claim under this subdivision, a plaintiff must show three elements: "1) plaintiff was subjected to discrimination, harassment or retaliation; 2) defendant failed to take all reasonable steps to prevent discrimination, harassment or retaliation; and 3) this failure caused plaintiff to suffer injury, damage, loss or harm." (*Lelaind v. City & Cty. of San Francisco* (N.D.Cal. 2008) 576 F.Supp.2d 1079, 1103); see also, Cal. Code Regs., tit. 2, § 11023, subd. (a) ["A determination as to whether an employer has complied with Government Code section 12940(k) includes an individualized assessment, depending upon numerous factors sometimes unique to the particular employer including, but not limited to, its workforce size, budget, and nature of its business, as well as upon the facts of a particular case."].)

Furthermore, a claim under Government Code section 12940(k) applies to "an employer who knew or should have known of discrimination and harassment" and "fail[s] to take prompt remedial action." (*Alejandro v. ST Micro Elecs., Inc*. (N.D.Cal. 2015) 129 F.Supp.3d 898, 913, quoting *Vierria v. Cal. Highway Patrol* (E.D.Cal. 2009) 644 F.Supp.2d 1219, 1245, emphasis added.) The high

percentage of South Asian Indians at Cisco indicates that Cisco was aware or should have been aware of discrimination based on caste and that discrimination based on caste implicates protected categories under FEHA. (Compl., ¶¶ 2, 5; *id*., p. 4-6; p. 4, fns. 8-10.) It follows that Cisco should have taken steps to prevent unlawful practices in its workplace. Thus, the Court should deny Cisco's motion to strike these portions of the complaint.

3. DFEH Has Standing to Seek Non-Monetary Companywide Preventive Remedies

Cisco misrepresents DFEH's allegations regarding non-monetary preventive remedies on behalf of other similarly situated employees as "class allegations" and seeks to strike these allegations. (Mtn. to Strike, pp. 12-14.) As acknowledged by this Court, DFEH brings a government enforcement action and as an "exercise of its police powers, [it] may independently seek non-monetary preventive remedies for violations of Government Code section 12940(k) whether or not [it] prevails on the underlying claim of discrimination, harassment, or retaliation." (Arbitration Order, pp. 6-7; Cal. Code Regs., tit. 2, § 11023, subd. (a)(3).) "Pleading in the language of the statute is not objectionable when sufficient facts are alleged to support the allegation." (*Perkins v. Super. Ct.* (1981) 117 Cal.App.3d. 1, 6-7 [citing *Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 718-719].) Here, DFEH has demonstrated that it may pursue non-monetary preventive remedies independent of whether it prevails on the underlying claims. Therefore, Cisco's motion to strike these allegations should be denied.

E. LEAVE TO AMEND SHOULD BE FREELY GRANTED

If the Court grants any portion of Cisco's motion to strike, then DFEH requests leave to amend the complaint. "Where the defect raised by a motion to strike ... is reasonably capable of cure, 'leave to amend is routinely and liberally granted to give the plaintiff a chance to cure the defect in question.'" (*CLD Const., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.) "It is generally an abuse of discretion to deny leave to amend, because the drastic step of denial of the opportunity to correct the curable defect effectively terminates the pleader's action." (*Id*. at p. 1147.)

VI. CONCLUSION

For the foregoing reasons, Plaintiff DFEH asks the Court to deny Cisco's motion to strike. Alternatively, if the Court grants any portion of the motion to strike, Plaintiff asks the Court to grant leave to amend.

Dated: February 24, 2021

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

MELANIE L. PROCTOR
Attorneys for the DFEH

PROOF OF ELECTRONIC SERVICE

I, the undersigned, hereby declare:

I am over eighteen years of age and not a party to the within cause. My business and mailing address is 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758. My electronic service address is Elizabeth.munoz@dfeh.ca.gov.

On February 24, 2021, I served the following document(s) by electronic transmission performed directly through the DFEH's electronic filing service provider:

- **PLAINTIFF CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S OPPOSITION TO DEFENDANT CISCO SYSTEMS, INC.'S MOTION TO STRIKE**

In the case of *Department of Fair Employment and Housing v. Cisco Systems, Inc. et al*, Santa Clara Superior Court, Case No. 20CV372366, to the person(s) listed below at the following e-mail address(es):

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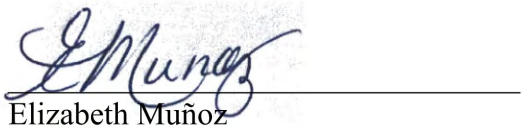
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 24, 2021 at Sacramento, California.



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20CV372366
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(Fee Exempt, Gov. Code, § 6103)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, an agency of the State of California, Plaintiff, vs. CISCO SYSTEMS, INC., a California Corporation; SUNDAR IYER, an individual; RAMANA KOMPELLA, an individual, Defendants.	**Case No.** 20CV372366 **CIVIL RIGHTS - EMPLOYMENT DISCRIMINATION** **DEMAND FOR JURY TRIAL**

The California Department of Fair Employment and Housing (DFEH) brings this action against Cisco Systems, Inc. (Cisco) to remedy workplace discrimination, harassment, and retaliation violations at its San Jose, California corporate headquarters under the California Fair Employment and Housing Act, Cal. Gov't Code § 12900, *et seq*. (FEHA). Specifically, Cisco engaged in unlawful employment practices on the bases of religion, ancestry, national origin/ethnicity, and race/color against Complainant John Doe,[1] and after Doe opposed such unlawful practices, Cisco retaliated against him.

[1] Because of the stigma and potential threats of violence associated with a person's status as Dalit, DFEH uses a fictitious name for Complainant to protect his privacy and protect him from further discrimination, harassment, or retaliation based on his caste and related characteristics. Through the DFEH's administrative process, Defendants have been made aware of Doe's legal name.

Cisco also failed to take all reasonable steps to prevent such unlawful practices in its workplace, as required under FEHA.

INTRODUCTION

1. John Doe is Dalit Indian, a population once known as the "Untouchables," who are the most disadvantaged people under India's centuries-old caste system.[2] As a strict Hindu social and religious hierarchy, India's caste system defines a person's status based on their religion, ancestry, national origin/ethnicity, and race/color—or the caste into which they are born—and will remain until death.[3] At the bottom of the Indian hierarchy is the Dalit, typically the darkest complexion caste, who were traditionally subject to "untouchability" practices which segregated them by social custom and legal mandate. Although *de jure* segregation ended in India, lower caste persons like Dalits continue to face *de facto* segregation and discrimination in all spheres.[4] Not only do Dalits endure the most severe inequality and unfair treatment in both the public and private sectors, they are often targets of hate violence and torture. Of India's approximately 1.3 billion people, about 200 million are Dalits.[5]

2. Unlike Doe, most Indian immigrants in the United States are from upper castes. For example, in 2003, only 1.5 percent of Indian immigrants in the United States were Dalits or members of lower castes.[6] More than 90 percent were from high or dominant castes. Similarly, upon information and belief, the same is true of the Indian employees in Cisco's workforce in San Jose, California.

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[2] Complainant John Doe is Dalit because of his religion, ancestry, national origin/ethnicity, and race/color. The caste to which someone belongs is immutable and determines their social status in traditional Indian culture. Social stratification and discrimination based on caste persists in India and among those living outside India, including in America. Encyclopedia Britannica, *India: Caste* (June 24, 2020), https://www.britannica.com/place/India/Caste (last visited June 29, 2020).

[3] Smita Narula, Human Rights Watch, *Caste Discrimination: A Global Concern,* Background: "Untouchability" and Segregation (2001), https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm#P133_16342 (last visited June 29, 2020).

[4] Human Rights Watch & Center for Human Rights and Global Justice at New York University School of Law, *Hidden Apartheid: Caste Discrimination against India's "Untouchables,"* at 45 (2007), https://www.hrw.org/reports/2007/india0207/india0207webwcover.pdf.

[5] Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs, Government of India, *2011 Primary Census Abstract*, https://censusindia.gov.in/pca/default.aspx.

[6] Tinku Ray, *The US isn't safe from the trauma of caste bias*, The World (Mar. 08, 2019, 9:00 AM), https://www.pri.org/stories/2019-03-08/us-isn-t-safe-trauma-caste-bias.

3. As alleged below, at Cisco's San Jose headquarters, Doe worked with a team of entirely Indian employees. The team members grew-up in India and immigrated as adults to the United States. Except for Doe, the entire team are also from the high castes in India. As beneficiaries of the caste system, Doe's higher caste supervisors and co-workers imported the discriminatory system's practices into their team and Cisco's workplace.

4. Doe's supervisors and co-workers, Defendants Sundar Iyer and Ramana Kompella, are from India's highest castes. Because both knew Doe is Dalit, they had certain expectations for him at Cisco. Doe was expected to accept a caste hierarchy within the workplace where Doe held the lowest status within the team and, as a result, received less pay, fewer opportunities, and other inferior terms and conditions of employment because of his religion, ancestry, national origin/ethnicity, and race/color. They also expected him to endure a hostile work environment. When Doe unexpectedly opposed the unlawful practices, contrary to the traditional order between the Dalit and higher castes, Defendants retaliated against him. Worse yet, Cisco failed to even acknowledge the unlawful nature of the conduct, nor did it take any steps necessary to prevent such discrimination, harassment, and retaliation from continuing in its workplace.

5. Not only did Cisco disregard Doe, but also its own workforce. For decades, similar to Doe's team, Cisco's technical workforce has been—and continues to be—predominantly South Asian Indian. According to the 2017 EEO-1 Establishment Report (EEO-1 Report), for example, Cisco has a significant overrepresentation of Asian employees compared to other companies in the communications, equipment and manufacturing industry (NAICS 3342) in the same geographic area, which is statistically significant at nearly 30 standard deviations.[7] Such overrepresentation is also present in management and professional job categories. In addition to Cisco's direct workforce, Cisco also employs a significant

[7] 2017 EEO-1 Report for Cisco Systems, Inc. at 170 West Tasman Drive in San Jose, California. Because Cisco is a federal contractor and employs 50 or more employees in California and the United States, Cisco is required to file an Employer Information Report EEO-1, also known as the EEO-1 Report. The EEO-1 Report requires employers to report employment data for all employees categorized by sex, race/ethnicity, and job category. EEOC, *EEO-1 Instruction Booklet*, https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet (last visited June 23, 2020).

number of South Asian Indian workers through Indian-owned consulting firms.[8] When combining its direct employees and consultants together, Cisco is among the top five H-1B visa users in the United States.[9] Over 70 percent of these H1-B workers come from India.[10] Outside of San Jose, Cisco's second largest workforce is in India.

6. Although Cisco has employed a predominantly South Asian Indian workforce for decades, Cisco was—and continues to be—wholly unprepared to prevent, remedy, or deter the unlawful conduct against Doe or similarly situated lower caste workers. Cisco failed to take any steps whatsoever to prevent ". . . inequalities associated with [c]aste status, ritual purity, and social exclusion [from] becom[ing] embedded . . ." into its workplace, which is a documented problem for ". . . American mainstream institutions that have significant South Asian immigrant populations."[11] A 2018 survey of South Asians in the U.S. found that 67% of Dalits reported being treated unfairly at their American workplaces because of their caste and related characteristics.[12] However, few South Asian employees raised concerns to their American employers, because they believe "their concerns will not be given weight" or will lead to "negative consequences to their career."[13] This is precisely what happened to Doe at Cisco.

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[8] Joshua Brustein, *Cisco, Google benefit from Indian firms' use of H-1B program*, The Economic Times (June 6, 2017, 8:31 PM), https://economictimes.indiatimes.com/tech/ites/cisco-google-benefit-from-indian-firms-use-of-h-1b-program/articleshow/59020625.cms.

[9] Laura D. Francis & Jasmine Ye Han, *Deloitte Top Participant in H-1B Foreign Worker Program—By Far*, Bloomberg Law (Feb. 4, 2020, 2:30 AM), https://news.bloomberglaw.com/daily-labor-report/deloitte-top-participant-in-h-1b-foreign-worker-program-by-far.

[10] U.S. Citizenship and Immigration Services, *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2019 Annual Report to Congress October 1, 2018 – September 30, 2019*, at 7 (Mar. 5, 2020), https://www.uscis.gov/sites/default/files/reports-studies/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf

[11] Maari Zwick-Maitreyi et al., Equality Labs, *Caste in the United States: A Survey of Caste Among South Asian Americans*, 16 (2018) https://static1.squarespace.com/static/58347d04bebafbb1e66df84c/t/5d9b4f9afbaef569c0a5c132/1570459664518/Caste_report_2018.pdf.

[12] *Id.* at 20.

[13] *Ibid.*

JURISDICTION AND VENUE

8. This action is authorized and instituted pursuant to California Government Code sections 12930 (f) and (h), and 12965(a).

9. The employment practices alleged to be unlawful were and are now being committed within the County of Santa Clara in the State of California, which is within the jurisdiction of the Superior Court of the County of Santa Clara. (Cal. Gov't Code § 12965, subd. (a).)

10. Plaintiff has standing to bring this suit and has complied with all statutory prerequisites to maintain FEHA claims.

11. John Doe filed a pre-complaint inquiry with DFEH on or about April 20, 2018, and a verified administrative complaint against Defendant Cisco on or about July 30, 2018. The charge was dually filed with the Equal Employment Opportunity Commission (EEOC). DFEH properly served the administrative complaint on Defendant Cisco on or about August 7, 2018. On or around October 9, 2018, Doe filed an amended administrative complaint against Defendants Cisco, Iyer, and Kompella. The amended administrative complaint was properly served on all named responding parties on or about October 9, 2018.

12. DFEH investigated Doe's dually filed EEOC-DFEH charge and complaint pursuant to California Government Code sections 12930(f) and 12963.

13. Pursuant to Cal. Gov't Code § 12965(a), the DFEH convened a mandatory dispute resolution session on or about February 11, 2020. Settlement discussions were unsuccessful. The DFEH and Defendants entered consecutive tolling agreements to toll the statutory deadline for DFEH to file a civil action to June 30, 2020.

14. On or about June 30, 2020, DFEH filed a civil rights complaint in the United States District Court for the Northern District of California. On or about October 16, 2020, DFEH voluntarily dismissed the federal civil rights action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

15. DFEH files this state court action pursuant to the FEHA, California Government Code sections 12930, subdivisions (f)(1), (h), and 12965, subdivision (a), and 28 U.S.C. section 1367,

subdivision (d). All conditions precedent to the institution of this lawsuit have been fulfilled. The amount of damages sought by this complaint exceeds the minimum jurisdictional limits of this Court.

PARTIES

Plaintiff California Department of Fair Employment and Housing

16. Plaintiff DFEH is the agency of the State of California charged with the administration, interpretation, investigation, and enforcement of the FEHA, and is expressly authorized to bring this action by California Government Code sections 12930, subdivisions (f), (h), and 12965, subdivision (a).

17. Complainant John Doe is the person claiming to be aggrieved on whose behalf the DFEH files this civil action. (Cal. Gov't Code, §§ 12965, subd. (a), 12930, subd. (f), (h).)

18. At all relevant times, Complainant Doe was, and remains, an "employee" of Defendant Cisco within the meaning of FEHA. (Cal. Gov't Code, §§ 12926, subd. (c)-(d), 12940, subd. (a), (j), (k).) On or around October 2015 to November 2018, Doe worked as a Principal Engineer with Cisco in Santa Clara County, California. Since on or about December 2018, Doe has worked as a Principal Engineer with Cisco in Santa Clara County, California.

19. At all relevant times, Complainant Doe was, and remains, a "person" within the meaning of the FEHA. (Cal. Gov't Code, §§ 12925, subd. (d), 12940, subd. (h).)

Defendant Cisco Systems, Inc.

20. Defendant Cisco (EEO-1 reporting number N14137) is a leading global high-tech firm founded in 1984. The company designs, manufactures, sells, and supports equipment for internet-based networking. It has approximately 75,900 employees worldwide and is publicly traded on NASDAQ. The firm's EEO-1 reports places it in the communications equipment manufacturing industry (NAICS 3342). Within California, Cisco employs at least 18,281 employees at 19 establishments in 6 different metropolitan areas, including the corporate headquarters in San Jose.

21. At all relevant times, Defendant Cisco has continuously been and is now a California Corporation doing business in the State of California and the Cities of San Jose and Milpitas in Santa Clara County and has continuously had at least fifteen employees.

22. At all relevant times, Defendant Cisco has continuously been an employer engaged in an industry affecting commerce within the meaning of California Government Code, section 12926, subdivision (d).

23. At all relevant times, Cisco contracted with and received federal and state funds from the United States and California governments.

Defendant Sundar Iyer

24. At all relevant times, Defendant Sundar Iyer was employed by Cisco as a "supervisor" within the meaning of FEHA. (Cal. Gov't Code, § 12926, subd. (t).) DFEH is informed and believes that Iyer was a Distinguished Engineer with Cisco. Public records indicate Iyer resided in Palo Alto, California at the time of the events alleged herein.

25. At all relevant times, Defendant Iyer was the agent of Defendant Cisco and was acting within the scope and authority of such agency, and Defendant Iyer is jointly and severally responsible and liable to Complainant Doe for the damages alleged.

Defendant Ramana Kompella

26. At all relevant times, Defendant Ramana Kompella was employed by Cisco as a "supervisor" within the meaning of the FEHA. (Cal. Gov't Code, § 12926, subd. (t).) DFEH is informed and believes that Kompella was a Principal Engineer with Cisco. Public records indicate Kompella resided in Cupertino, California at the time of the events alleged herein.

27. At all relevant times, Defendant Kompella was the agent of Defendant Cisco and was acting within the scope and authority of such agency, and Defendant Kompella is jointly and severally responsible and liable to Complainant Doe for the damages alleged.

STATEMENT OF CLAIMS

28. Beginning in the November 1, 2016, Defendants Cisco, Iyer, and Kompella engaged in unlawful employment practices, in violation of California Government Code, section § 12940 subdivisions (a), (j), (h), and (k). These practices include but are not limited to the practices described below.

29. Complainant Doe's ancestry, national origin/ethnicity, and race/color is Dalit Indian. Doe has a darker complexion relative to other persons of non-Dalit Indian descent. Doe's religion is Hindu. As a Dalit, he also is known as being from the Untouchable or Scheduled Caste.

30. Doe has over 20 years of experience in the software development lifecycle process at startups and established companies. In or around September 2015, Iyer recruited and hired Doe as a Principal Engineer for Cisco because of his expertise and experience. As the head of the Cisco team, Iyer hired and supervised Doe, having the authority to control his day-to-day assignments, discipline, discharge, direct, and transfer Doe. Upon information and belief, Iyer is Brahmin.

31. In or around October 2016, two of Doe's colleagues told Doe that Iyer informed them that Doe was from the "Scheduled Caste" (Dalit) and enrolled in the Indian Institute of Technology (IIT) through affirmative action. Iyer was aware of Doe's caste because they attended IIT at the same time.

32. In or around November 1, 2016, Doe confronted Iyer about disclosing Doe's caste to other Cisco employees. Iyer asked Doe who claimed he made such a comment. After Doe shared the names of his colleagues, Iyer denied the comment and stated Doe's colleagues were not telling the truth.

33. In or around November 21, 2016, Doe contacted Cisco's human resources (HR) and Employee Relations to file a discrimination complaint against Iyer.

34. Six days after Doe's first contact with Cisco's HR and employee relations, Iyer told Doe he was taking away Doe's role as lead on two technologies.

35. On or around November 28, 2016, Iyer promoted two of Doe's colleagues to head engineering roles, one of whom was Defendant Kompella. Kompella was made Head of Southbound Engineering. Upon information and belief, Kompella is Brahmin or at least of a higher caste than Dalit. With this new title, Defendant Kompella received a raise of approximately 15% or more. As the Head of Southbound Engineering, Kompella had the ability to direct the day-to-day assignments and recommend employment actions for those on his team, including Doe.

36. On or around November 28, 2016, Iyer also removed team members from the third technology Doe was working on and did not formally integrate the third technology into either team headed by the two new Heads of Engineering. As a result of these changes, Doe's role was reduced to that of a system architect as an independent contributor, and he was isolated from all his colleagues.

37. On or around December 8, 2016, Doe submitted a written complaint about Iyer's disclosure of Doe's caste, Doe's complaint to Iyer, and Iyer's retaliatory employment actions, including the sudden changes to Doe's job duties. He also complained that Iyer made discriminatory comments to a colleague and about a job applicant because of the applicant's religion (Muslim).

38. Cisco's Employee Relations Manager, Brenda Davis, conducted the investigation into Doe's December 2016 complaint. Davis' internal investigation notes revealed that Iyer admitted that he told Doe's colleagues that Doe was not on the "main list." Among those from India, it is commonly known that students not on the main list are admitted to IIT through an affirmative action program designed for those from the "Scheduled Castes" or those outside the caste system. Therefore, stating that someone is not on the "main list" effectively reveals their caste. Despite this, Davis took no further action and failed to even contact relevant witnesses or Doe.

39. Cisco Employee Relations staff, including Davis, also indicated that caste discrimination was not unlawful. As a result, Davis did not recommend any corrective action against Iyer. Iyer also admitted that he made a joke about Doe's co-worker's religion and talked about an applicant's Muslim-related appearance. Still, Davis did not recommend any corrective action. On or around February 2, 2017, Davis closed her investigation finding all of Doe's complaints were unsubstantiated.

40. Iyer's retaliatory efforts continued. He further isolated Doe from the team when he disparaged Doe to other employees, misrepresented that Doe did not perform his job adequately, and told Doe's team members that they should avoid working with him.

41. On or around March 2, 2017, Doe sought review of Davis' investigation findings. After repeated attempts to have Cisco review Davis' findings, HR official Tara Powell finally reopened the investigation on or around April 25, 2017. Powell re-interviewed one of the employees to whom Iyer made the comment about Doe's caste in or around October 2015. The employee stated that he learned about Doe's caste but refused to tell Powell how he knew, noting that he did not want to say anything about Iyer because they had known each other for a long time. He also stated that he thought Doe was being treated unfairly and that he was very technically able but was being excluded at work. Powell did not attempt to contact for an interview the other employee who witnessed Iyer's disclosure of Doe's caste. Two additional witnesses told Powell that they feared losing their jobs or otherwise being

retaliated against for speaking out against Iyer. One of those employees also told Powell that he thought Doe was very competent and asked appropriate questions, but that Iyer was setting Doe up to push him out of the company.

42. Powell's investigation also uncovered a spreadsheet that showed anticipated yearly raises, bonuses, and restricted stock unit awards that Iyer had promised Doe. These raises, bonuses, and awards never materialized when promised. But Powell also found that four out of the eight other team members received raises in or around October 2016.

43. In or around August 2017, Powell concluded she could not substantiate any caste-based or related discrimination or retaliation against Doe. Powell, however, determined that Iyer mocked another employee's religion, and thus violated Cisco's Code of Conduct. Still, no immediate corrective action was taken.

44. Despite Doe's repeated attempts to bring the caste-based and related discrimination, harassment, and retaliation to Defendant Cisco's attention in 2016 and 2017, Cisco failed to recognize casteism as a form of unlawful religion-, ancestry-, national origin/ethnicity-, and race/color-based discrimination or harassment under state or federal law and failed to conduct a thorough investigation. While the investigation confirmed Doe was increasingly isolated and treated unfairly by Iyer and Kompella, Cisco failed to take timely and appropriate corrective action. Moreover, Cisco's training was deficient in that it did not adequately train managerial employees on workplace discrimination, harassment, and retaliation, nor did the company prevent, deter, remedy, or monitor casteism in its workforce.

45. On or around February 26, 2018, Kompella became the Interim Head of Engineering for Cisco's team after Iyer stepped down. In his new role, Kompella supervised Doe and continued to discriminate, harass, and retaliate against Doe by, for example, giving him assignments that were impossible to complete under the circumstances. Kompella also began requiring Doe to submit weekly status reports to him and Senior Vice President/General Manager Tom Edsall.

46. On or around May 21, 2018, Rajeev Gupta took over from Kompella and became the Director of Engineering. In that role, Gupta supervised Doe.

47. Two months later, in or around July 2018, Doe applied for the position of Director of Research and Development Operations with Gupta. According to Gupta's interview notes, he ranked Doe as "below average" in six out of eight categories and as "meeting requirements" in the remaining two categories. But Gupta's assessment of Doe was improperly influenced by Iyer's retaliatory employment actions. Gupta specifically cited Doe's lead role being taken away and his job reduced to that of an independent contributor in November 2016. Gupta's notes also reflected Iyer's retaliatory criticisms about Doe's work product, social skills, and insubordination. Doe did not get the position.

48. The effect of the unlawful employment practices complained of above was to deprive Doe of equal employment opportunities, and otherwise adversely affect his status as employees, because of religion, ancestry, national origin/ethnicity, and race/color.

49. The unlawful employment practices complained of above were intentional.

50. The unlawful employment practices complained of above were done with malice or with reckless indifference to Doe's federally and state-protected civil rights.

FIRST CAUSE OF ACTION

Violation of FEHA: Discrimination on the Basis of Religion, Ancestry, National Origin/Ethnicity, and Race/Color
(Cal. Gov't Code, § 12940, subd. (a))
Against Defendant Cisco

51. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

52. The FEHA guarantees all employees a workplace free from unlawful discrimination and harassment based on the employee's religion, ancestry, national origin/ethnicity, and race/color. (Cal. Gov't Code, § 12940, subd. (a).)

53. As alleged above, Cisco discriminated against Doe by subjecting him to disparate terms and conditions of employment based on his religion, ancestry, national origin/ethnicity, and race/color. Among other actions, Cisco reassigned Doe's job duties and isolated him from his colleagues, denied him a raise, denied him work opportunities that would have led to a raise, denied him a promotion to the Head of Engineering, and denied him a promotion to the Director of Research and Development Operations.

54. Cisco subjected Doe to discriminatory comments and conduct because of his religion, ancestry, national origin/ethnicity, and race/color

55. The alleged discriminatory comments and conduct constitute unlawful discrimination for which Defendant Cisco is liable under California Government Code section 12940, subdivision (a).

56. As a direct result of these unlawful employment practices, Doe suffered economic injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at trial.

57. As a direct result of these unlawful employment practices, Doe suffered emotional distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an amount to be proven at trial.

58. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

59. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

60. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

SECOND CAUSE OF ACTION

Violation of FEHA: Harassment on the Basis of Religion, Ancestry, National Origin/Ethnicity, and Race/Color
(Cal. Gov't Code, § 12940, subd. (j))
Against All Defendants

61. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

62. The FEHA prohibits harassment based on the employee's protected characteristics including, but not limited to, their caste, which includes religion, ancestry, national origin/ethnicity, and race/color. (Cal. Gov't Code, § 12940, subd. (j).) Employers are liable for the harassment of their supervisors. (*Id.*, subd. (j)(1).) Employees and supervisors are liable for their own harassing conduct. (*Id.*, subd. (j)(3).)

63. As alleged above, as supervisors for Cisco's team, Defendants Iyer and Kompella subjected Doe to offensive comments and other misconduct based on his caste, which includes his religion, ancestry, national origin/ethnicity, and race/color, so severe or pervasive that it created a hostile work environment. Among other things, Iyer and Kompella's comments and conduct include revealing Doe's caste to his colleagues, disparaging him to the team, isolating him from the rest of the team, reducing his role to that of an independent contributor, giving him assignments that were impossible to complete under the circumstances, and requiring him to submit weekly status reports. Such a work environment where a stigmatizing personal characteristic such as caste is publicized and used to subjugate an individual in order to maintain a centuries-old hierarchy is hostile, intimidating, offensive, oppressive, and abusive. Other employees corroborated that Doe was isolated from the rest of the team and that Iyer and Kompella were responsible for it. These were observations Cisco was made aware of during its internal investigations. As evidenced by Doe's repeated internal complaints, he in fact considered the work environment to be hostile, intimidating, offensive, oppressive, and abusive.

64. As supervisors for Cisco, Defendants Iyer and Kompella subjected Doe to offensive comments and other misconduct based on his caste, which includes his religion, ancestry, national origin/ethnicity, and race/color, so severe or pervasive that it created a hostile work environment.

65. Defendants Iyer and Kompella are individually liable for their own harassing conduct in violation of the FEHA.

66. Because Defendants Iyer and Kompella were supervisors within the meaning of the FEHA, Defendant Cisco is liable for their harassing conduct. Defendant Cisco knew or should have known of the conduct as a result of Doe's internal complaints and is liable for its failure to take immediate and appropriate corrective action.

67. As a direct result of these unlawful employment practices, Doe suffered economic injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at trial.

68. As a direct result of these unlawful employment practices, Doe suffered emotional distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an amount to be proven at trial.

69. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

70. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

71. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

THIRD CAUSE OF ACTION
Violation of FEHA: Retaliation
(Cal. Gov't Code, § 12940, subd. (h))
Against Defendant Cisco

72. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

73. California law also guarantees each employees' right to a workplace and business environment free from unlawful retaliation because the employee opposed discriminatory or harassing practices that are unlawful under the FEHA. Employers are liable for the retaliatory conduct of supervisors. (Cal. Gov. Code, § 12940, subd. (h).)

74. As alleged above, as supervisors for Cisco, Defendants Iyer and Kompella retaliated against Doe for opposing their discriminatory and harassing conduct by confronting Iyer and filing internal discrimination complaints. Among other things, Doe engaged in protected activity by confronting Iyer about disclosing his caste to colleagues and by repeatedly trying to bring the caste-based and related discrimination and harassment to Cisco's attention. Immediately afterwards, Iyer and Kompella subjected Doe to adverse employment actions including reassigning his job duties, isolating him from colleagues, giving him assignments that were impossible to complete under the circumstances, denying him work opportunities that could have led to a raise, denying him a raise, and denying him promotions. Cisco aided the retaliation.

75. As supervisors for Cisco, Defendants Iyer and Kompella retaliated against Doe for opposing their discriminatory and harassing conduct by confronting Iyer and filing internal discrimination complaints and Cisco aided the retaliation.

76. Defendant Cisco is liable for the retaliatory conduct of Defendants Iyer and Kompella.

77. As a direct result of these unlawful employment practices, Doe suffered economic injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at trial.

78. As a direct result of these unlawful employment practices, Doe suffered emotional distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an amount to be proven at trial.

79. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

80. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

81. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

FOURTH CAUSE OF ACTION

Violation of FEHA: Failure to Take All Reasonable Steps to Prevent Discrimination, Harassment, and Retaliation
(Cal. Gov't Code, § 12940, subd. (k))
Against Defendant Cisco

82. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

83. California Government Code section 12940(k) provides that it is an unlawful employment practice for an employer to fail to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring. Employers have the affirmative duty to take all reasonable steps to prevent and promptly correct discriminatory, harassing, and retaliatory conduct.

(Cal. Code Regs. tit. 2, § 11023, subd. (a).) Cisco's conduct, as described above, constitutes a failure to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation in violation of California Government Code section 12940, subdivision (k).

84. An actionable claim for violation of California Government Code section 12940(k) on behalf of a complainant exists when an underlying claim of discrimination, harassment, or retaliation is established. (Cal. Code Regs. tit. 2, § 11023, subd. (a)(2).)

85. As alleged above, Defendant Cisco failed to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring within its South Asian Indian workforce. Among other things, Defendant Cisco failed to develop anti-discrimination and anti-harassment policies and practices that recognize and prohibit caste discrimination as a form of unlawful discrimination under state and federal law. Defendant Cisco also failed to provide appropriate training to managers, supervisors employees, human resources, and employee relations personnel on how to identify, investigate, remediate, and prevent caste-based discrimination and harassment, or retaliation against employees or persons who oppose discriminatory and harassing practices that are unlawful under the FEHA.

86. Defendant Cisco failed to prevent discrimination and harassment by its managers and supervisors against Doe because of his caste.

87. Defendant Cisco failed to prevent retaliation by its managers and supervisors against Doe because he opposed discriminatory and harassing practices that are unlawful under the FEHA.

88. As a direct result of Cisco's failures, Doe was subjected to unlawful discrimination, harassment, and retaliation by Cisco's managers and supervisors, suffering economic injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at trial.

89. As a direct result of Cisco's failures, Doe was subjected to unlawful discrimination, harassment, and retaliation by Cisco's managers and supervisors, suffering emotional distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an amount to be proven at trial.

90. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

91. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

92. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

93. Plaintiff DFEH also seeks monetary relief for Cisco's failure to take all reasonable steps to prevent harassment from occurring.

FIFTH CAUSE OF ACTION

Violation of FEHA: Failure to Take All Reasonable Steps to Prevent Discrimination, Harassment, and Retaliation
(Cal. Gov't Code, § 12940, subd. (k); Cal. Code Regs. tit. 2, § 11023, subd. (a)(3))
On behalf of DFEH; Against Defendant Cisco

94. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

95. In an exercise of the DFEH's police powers, the DFEH may independently seek additional remedies for a violation of Cal. Gov't Code § 12940(k). (Cal. Code Regs. tit. 2, § 11023, subd. (a)(3).) As the agency of the State of California charged with the administration, interpretation, investigation, and enforcement of FEHA, the DFEH brings this claim in the name of the DFEH on behalf of all Indian persons who are or are perceived to be Dalit, of lower castes, or who fall outside the caste system, who are employed by or may seek employment with Cisco in the future.

96. As alleged above, Defendant Cisco failed to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring within its South Asian Indian workforce. Among other things, Defendant Cisco failed to develop anti-discrimination and anti-harassment policies and practices that recognize and prohibit caste discrimination as a form of unlawful discrimination under state and federal law. Defendant Cisco also failed to provide appropriate training to managers, supervisors employees, human resources, and employee relations personnel on how to identify, investigate, remediate, and prevent caste-based discrimination and harassment, or retaliation against

employees or persons who oppose discriminatory and harassing practices that are unlawful under the FEHA.

97. Cisco's failure to take any reasonable steps to prevent, deter, remedy, or monitor casteism and related violations in its workforce exposes a significant portion of its South Asian Indian workforce to the risk of discrimination, harassment, and retaliation on the basis of their caste and related characteristics.

98. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

99. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

PRAYER FOR RELIEF

WHEREFORE, the DFEH respectfully requests that this Court:

1. Grant a permanent injunction enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination and harassment based on religion, ancestry, national origin/ethnicity, and race/color.

2. Grant a permanent injunction enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation.

3. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for individuals regardless of their religion, ancestry, national origin/ethnicity, and race/color, and that eradicate the effects of their past and present unlawful employment practices

4. Order Defendants to make Doe whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other injunctive relief necessary to eradicate the effects of Defendants' unlawful employment practices.

5. Order Defendants to make Doe whole, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described herein, in amounts to be determined at trial.

6. Order Defendants to make Doe whole, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of herein, including losses such as emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

7. Order Defendants to pay Doe punitive damages for their malicious and/or reckless conduct described herein, in amounts to be determined at trial.

8. Grant such further relief as the Court deems necessary and proper in the public interest.

9. Award the DFEH its costs of this action, including reasonable attorneys' fees, as provided by statute.

JURY TRIAL DEMAND

The DFEH requests a jury trial on all questions of fact raised by its complaint.

Dated: October 16, 2020

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

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Case #20CV372366
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, an agency of the State of California,

Plaintiff,

v.

CISCO SYSTEMS, INC., a California Corporation; SUNDAR IYER, an individual; RAMANA KOMPELLA, an individual,

Defendants.

Case No. 20CV372366

DEFENDANT CISCO SYSTEMS, INC.'S NOTICE OF MOTION TO STRIKE AND MOTION TO STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT

Date: TBD March 9, 2021
Time: TBD 9:00 AM
Dept.: 6
Judge: Honorable Maureen A. Folan

Complaint Filed: October 16, 2020

TO PLAINTIFF CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on _____ at ____ a.m., or as soon thereafter as the matter may be heard, in Department 6, of the Superior Court of the State of California, County of Santa Clara, located at 191 North First Street, San Jose, California, Defendant Cisco Systems, Inc. will, and hereby does, move to strike portions of Plaintiff Department of Fair Employment and Housing's Complaint.

Cisco's motion to strike is based on this notice of motion and motion; the memorandum of points and authorities in support thereof; the request for judicial notice and exhibits thereto; the declaration of Joseph C. Liburt and exhibits thereto; the pleadings and other papers on file in this action; and any and all oral argument as may be presented in connection with the hearing on this matter.

I. MOTION TO STRIKE IMMATERIAL AND/OR IMPERTINENT ALLEGATIONS

1. Pursuant to California Code of Civil Procedure section 435 *et seq*., Cisco moves to strike the allegations regarding "caste" and "casteism" in the Complaint on the ground that they are immaterial because "caste" is not a protected class listed in the FEHA, California Government Code § 12940(a). These allegations are located at the following pages in the Complaint:

- Complaint pg. 1, fn.1 ("Because of the stigma and potential threats of violence associated with a person's status as Dalit, DFEH uses a fictitious name for Complainant to protect his privacy and protect him from further discrimination, harassment, or retaliation based on his caste and related characteristics.");
- Complaint pg. 2:6-7 ("Cisco was—and continues to be—wholly unprepared to prevent, remedy, or deter the unlawful conduct against Doe or similarly situated lower caste workers.");
- Complaint pg. 10:12-15 ("Despite Doe's repeated attempts to bring the caste-based and related discrimination, harassment, and retaliation to Defendant Cisco's attention in 2016 and 2017, Cisco failed to recognize casteism as a form of unlawful religion-, ancestry-, national origin/ethnicity-, and race/color-based

discrimination or harassment under state or federal law and failed to conduct a thorough investigation.");

- Complaint pg. 10:17-20 ("Moreover, Cisco's training was deficient in that it did not adequately train managerial employees on workplace discrimination, harassment, and retaliation, nor did the company prevent, deter, remedy, or monitor casteism in its workforce.");
- Complaint pg. 12:24 ("including, but not limited to, their caste,");
- Complaint pg. 13:2 ("caste, which includes his");
- Complaint pg. 13:15 ("caste, which includes his");
- Complaint pg. 14:22-23 ("and by repeatedly trying to bring the caste-based and related discrimination and harassment to Cisco's attention");
- Complaint ¶ 85;
- Complaint ¶ 86;
- Complaint ¶ 96; and
- Complaint ¶ 97.

2. Cisco moves to strike the allegations regarding "ethnicity" in the Complaint on the ground that they are immaterial because "ethnicity" is not a protected class listed in the FEHA, California Government Code § 12940(a). These allegations are located at the following pages in the Complaint: 1:24; 2:7; 2, fn.2; 3:10; 8:1; 10:14; 11:10; 11:14; 11:22; 11:28; 12:19; 12:24; 13:3; 13:16; 18:19; and 18:25.

3. Cisco moves to strike the allegations regarding "religion" in the Complaint on the grounds that they are immaterial to the claims because Real Party in Interest John Doe failed to exhaust his administrative remedies with the DFEH as to this protected class. These allegations are located at the following pages in the Complaint: 1:24; 2:6; 2, fn.2; 3:10; 10:14; 11:10; 11:14; 11:22; 11:27; 12:19; 12:24; 13:3; 13:15; 18:19; and 18:24.

4. Cisco moves to strike the allegations regarding "color" in the Complaint on the grounds that they are immaterial to the claims because Real Party in Interest John Doe failed to exhaust his administrative remedies with the DFEH as to this protected class. These allegations

are located at the following pages in the Complaint: 1:24; 2:7; 2, fn.2; 3:10; 8:1; 10:14; 11:10; 11:15; 11:22; 11:28; 12:20; 12:25; 13:3; 13:16; 18:19; and 18:25.

5. Cisco moves to strike the allegations regarding "national origin" in the Complaint on the grounds that they are immaterial to the claims because Real Party in Interest John Doe failed to exhaust his administrative remedies with the DFEH as to the protected class of "national origin.". These allegations are located at the following pages in the Complaint: 1:24; 2:7; 2, fn.2; 3:10; 8:1; 10:14; 11:10; 11:14; 11:22; 11:28; 12:19; 12:24; 13:3; 13:15-16; 18:19; and 18:24-25.

6. Cisco moves to strike the following allegations in the Complaint regarding caste discrimination by non-parties against non-parties as immaterial and impertinent because allegations regarding conduct by individuals and organizations that are not parties to an action "do not bear any rational nexus to plaintiff's claims against" the actual named defendants and, therefore, are properly stricken as immaterial and impertinent. *See* Cal. Civ. Proc. Code § 431.10(b). Cisco further moves to strike these allegations because they would unduly prejudice Cisco by confusing issues at trial and causing the jury to draw unwarranted inferences against Cisco. These allegations are located at the following pages in the Complaint:

- Complaint at pg. 2:10-13 ("Although *de jure* segregation ended in India, lower caste persons like Dalits continue to face *de facto* segregation and discrimination in all spheres. Not only do Dalits endure the most severe inequality and unfair treatment in both the public and private sectors, they are often targets of hate violence and torture. Of India's approximately 1.3 billion people, about 200 million are Dalits.");
- Complaint at pg. 2, fn. 2 ("Complainant John Doe is Dalit because of his religion, ancestry, national origin/ethnicity, and race/color. The caste to which someone belongs is immutable and determines their social status in traditional Indian culture. Social stratification and discrimination based on caste persists in India and among those living outside India, including in America. Encyclopedia Britannica, India: Caste (June 24, 2020), https://www.britannica.com/place/India/Caste (last visited June 29, 2020).");

- Complaint at pg. 2, fn. 3 (citation to Smita Narula, Human Rights Watch, Caste Discrimination: A Global Concern, Background: "Untouchability" and Segregation (2001), https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm#P133_16342 (last visited June 29, 2020));
- Complaint at pg. 2, fn. 4 (citation to Human Rights Watch & Center for Human Rights and Global Justice at New York University School of Law, Hidden Apartheid: Caste Discrimination against India's 'Untouchables,' at 45 (2007), https://www.hrw.org/reports/2007/india0207/india0207webwcover. pdf.);
- Complaint at pg. 2, fn. 5 (citation to Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs, Government of India, 2011 Primary Census Abstract, https://censusindia.gov.in/pca/default.aspx.);
- Complaint at pg. 2, fn. 6 (Tinku Ray, The US isn't safe from the trauma of caste bias, The World (Mar. 08, 2019, 9:00 AM), https://www.pri.org/stories/2019-03-08/us-isn-t-safe-trauma-caste-bias.");
- Complaint at pg. 4:8-14 (" 'inequalities associated with [c]aste status, ritual purity, and social exclusion [from] becom[ing] embedded . . .' into its workplace, which is a documented problem for '. . . American mainstream institutions that have significant South Asian immigrant populations.' A 2018 survey of South Asians in the U.S. found that 67% of Dalits reported being treated unfairly at their American workplaces because of their caste and related characteristics. However, few South Asian employees raised concerns to their American employers, because they believe 'their concerns will not be given weight' or will lead to 'negative consequences to their career.'");
- Complaint at pg. 4, fns. 11-13 (citations to summary of Maari Zwick-Maitreyi et al., Equality Labs, Caste in the United States: A Survey of Caste Among South Asian Americans, (2018) https://static1.squarespace.com/static/58347d04bebafbb1e66df84c/t/5d9b4f9afbaef569c0a5c132/1570459664518/Caste_report_2018.pdf.).

7. Cisco moves to strike allegations in the Complaint regarding the composition of Cisco's workforce and employment of individuals on H-1B visas as immaterial and impertinent because DFEH's claims are brought on behalf of a single employee, alleging discrete acts of discrimination and harassment over a limited time period (October 2016 to 2018), while Cisco has almost 76,000 employees worldwide. There are no allegations that others were treated similarly to Doe. Cisco's employment of H-1B visa holders is also immaterial and impertinent because the DFEH does not allege that John Doe has an H-1B visa or that Cisco discriminated against him because of it. These allegations are located at the following pages in the Complaint:

- Complaint at pgs. 2:14-17 ("Unlike Doe, most Indian immigrants in the United States are from upper castes. For example, in 2003, only 1.5 percent of Indian immigrants in the United States were Dalits or members of lower castes. More than 90 percent were from high or dominant castes. Similarly, upon information and belief, the same is true of the Indian employees in Cisco's workforce in San Jose, California.");
- Complaint at pgs. 3:16-4:6 ("For decades, similar to Doe's team, Cisco's technical workforce has been—and continues to be—predominantly South Asian Indian. According to the 2017 EEO-1 Establishment Report (EEO-1 Report), for example, Cisco has a significant overrepresentation of Asian employees compared to other companies in the communications, equipment and manufacturing industry (NAICS 3342) in the same geographic area, which is statistically significant at nearly 30 standard deviations. Such overrepresentation is also present in management and professional job categories. In addition to Cisco's direct workforce, Cisco also employs a significant number of South Asian Indian workers through Indian-owned consulting firms. When combining its direct employees and consultants together, Cisco is among the top five H-1B visa users in the United States. Over 70 percent of these H1-B workers come from India. Outside of San Jose, Cisco's second largest workforce is in India. Although Cisco has employed a predominantly South Asian Indian workforce for decades…");

- Complaint at pg. 3, fn. 7 (citing to "2017 EEO-1 Report for Cisco Systems, Inc. at 170 West Tasman Drive in San Jose, California. Because Cisco is a federal contractor and employs 50 or more employees in California and the United States, Cisco is required to file an Employer Information Report EEO-1, also known as the EEO-1 Report. The EEO-1 Report requires employers to report employment data for all employees categorized by sex, race/ethnicity, and job category. EEOC, EEO-1 Instruction Booklet, https://www.eeoc.gov/ employers/eeo-1-survey/eeo-1-instruction-booklet (last visited June 23, 2020).");
- Complaint at pg. 4, fn. 8 (citation to Joshua Brustein, Cisco, Google benefit from Indian firms' use of H-1B program, The Economic Times (June 6, 2017, 8:31 PM), https://economictimes.indiatimes.com/tech/ites/cisco-google-benefit-from-indian-firms-use-of-h-1b-program/articleshow/59020625.cms.);
- Complaint at pg. 4, fn. 9 ("Laura D. Francis & Jasmine Ye Han, Deloitte Top Participant in H-1B Foreign Worker Program—By Far, Bloomberg Law (Feb. 4, 2020, 2:30 AM), https://news.bloomberglaw.com/daily-labor-report/ deloitte-top-participant-in-h-1b-foreign-worker-program-by-far.");
- Complaint at pg. 4, fn. 10 (citation to U.S. Citizenship and Immigration Services, Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2019 Annual Report to Congress October 1, 2018 – September 30, 2019, at 7 (Mar. 5, 2020), https://www.uscis.gov/sites/default/files/reports-studies/ Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf.).

8. Cisco further moves to strike the allegations regarding Cisco's purported failure to "prevent, remedy, or deter" unlawful conduct against lower caste workers because they are immaterial and impertinent given that this is a single plaintiff case and the DFEH does not allege any wrongdoing against any other lower caste individuals, and none of the claims allege harm suffered by any third parties. These allegations are at the following locations in the Complaint:

- Complaint at pg. 4:6-7 ("Cisco was—and continues to be—wholly unprepared to

prevent, remedy, or deter the unlawful conduct against Doe or similarly situated lower caste workers.")

- Complaint at pg. 17:17-20 ("As the agency of the State of California charged with the administration, interpretation, investigation, and enforcement of FEHA, the DFEH brings this claim in the name of the DFEH on behalf of all Indian persons who are or are perceived to be Dalit, of lower castes, or who fall outside the caste system, who are employed by or may seek employment with Cisco in the future.")

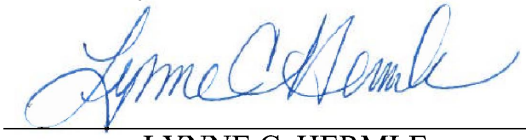
PRAYER FOR RELIEF

Wherefore, Cisco prays:

1. That Cisco's Motion to Strike is granted;
2. For costs associated with bringing this Motion to Strike; and
3. For such other relief as the Court may deem just and proper.

Dated: November 3, 2020

LYNNE C. HERMLE
JOSEPH C. LIBURT
CAROLINA GARCIA
Orrick, Herrington & Sutcliffe LLP

By 

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CASE #: H048962

IN THE COURT OF APPEAL OF THE S

IN AND FOR THE SIXTH APPELLATE DISTRICT

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, an agency of the State of California,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA,

Respondent,

CISCO SYSTEMS, INC.; SUNDAR IYER; AND RAMANA KOMPELLA,

Real Parties in Interest.

Case No. _____

Santa Clara County Superior Court, Case No. 19-CV-000901 Honorable Drew Takaichi, Dept. 2 Tel. (408) 882-2120

Filing Fee Waived for Government Agencies Pursuant to Gov. Code, § 6103

PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF [EXHIBITS FILED UNDER SEPARATE COVER]

IMMEDIATE RELIEF REQUESTED / STAY REQUESTED

Petitioner requests emergency stay be issued on or before April 7, 2021, of the Superior Court's February 11, 2021, Order After Hearing Denying Plaintiff's Motion to Proceed Under a Fictitious Name.

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Public – Redacts Material From Conditionally Sealed Record

CERTIFICATE OF INTERESTED PARTIES OR ENTITIES OR PERSONS Cal. Rules of Court, Rule 8.208)

INITIAL CERTIFICATE [X] **SUPPLEMENTAL CERTIFICATE** [ ]

Please check the applicable box:

[ ] There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d).

[X] Interested entities or persons are listed below:

Full Name of Interested Entity or Party	*Check One* Party	Non-Party	Nature of Interest (*Explain*)
John Doe[1]		X	Aggrieved individual

The undersigned certifies that the above listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies), have either: (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

[1] Pursuant to California Rules of Court, rule 8.208(d)(2), DFEH concurrently applies to file a certificate of interested parties with John Doe's true name under seal.

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Department of Fair
Employment and Housing

/s/ Melanie L. Proctor

April 1, 2021

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INTRODUCTION

Petitioner California Department of Fair Employment and Housing filed this civil rights action against Cisco Systems, Inc., Sundar Iyer, and Ramana Kompella in its own name to remedy workplace discrimination, harassment, and retaliation at Cisco's San Jose, California corporate headquarters.[2] In its complaint, the DFEH alleges that defendants failed to prevent discrimination in the workplace and engaged in unlawful practices against a Cisco employee in California (John Doe, a Dalit Indian) because of his caste-based characteristics of religion, ancestry, national origin/ethnicity, and race/color in violation of the Fair Employment and Housing Act (FEHA), Government Code sections 12900, et seq.

As a public prosecutor charged with eliminating workplace discrimination, DFEH seeks, inter alia, public injunctive relief to remedy, prevent and deter unlawful practices against Dalits and similar caste-oppressed employees on behalf of the state and the public interest. (Gov. Code, §§ 12920, 12920.5 [FEHA, including the DFEH, is an exercise of the police power and its purpose is to "provide effective remedies" that will

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[2] Gov. Code, § 12965 [DFEH "…bring[s] a civil action in the name of the department"]; *Dept. Fair Empl. & Hous. v. Cathy's Creations, Inc.* (2020) 54 Cal.App.5th 404, 410 ["the DFEH's task is to represent the interests of the state and to effectuate the declared public policy of the state"].

"both prevent and deter unlawful employment practices" in order to "eliminate discrimination."].) As the trial court acknowledged when denying defendants' motions to compel arbitration, "when testing a public right, the DFEH acts in the capacity of a public prosecutor." (See Petitioner's Appendix in Support of Petition for Writ of Mandate, Prohibition, or Other Appropriate Relief ("PA"), at p. 680 (February 16, 2021, Order.) Moreover, its role is "more substantive than as a mere representative of the aggrieved individual." (*Ibid.*)

Dalit Indians, a population once known as the "Untouchables" who are the most disadvantaged people under India's millennia-old caste system, have been subjected to discrimination and harassment in the United States—particularly when working in majority-Indian workplaces, like Doe. (PA 8 (Complaint ("Compl.") ¶ 6 n.11); *id.* 148.) When DFEH exercised its prosecutorial discretion to pursue Doe's complaint, DFEH requested that the trial court protect Doe's identity from public disclosure. DFEH argued that Doe has not intervened in this action and is thus not a party to it. Doe is the government's victim-witness. DFEH also argued that the use of a fictitious name for Doe was necessary to protect the safety and privacy interest of him and his family, and also guard against threats of violence, retaliation, and harm to reputation. DFEH additionally argued below that no prejudice to the opposing party would occur because

defendants already possess the information that the government's victim-witness wishes to keep out of public records.

The trial court denied DFEH's motion and ruled that Doe is more than a witness and *cannot* proceed under a fictitious name. (See PA 669-674 (February 3, 2021, Order).) Because disclosure of Doe's identity would chill participation in this *and future* government enforcement actions, the DFEH requests the Court to issue a preemptory writ. Interlocutory review by writ is the only adequate remedy because there is no way to undo the harm of public disclosure of Doe's identity on appeal. Moreover, because the harm cannot be undone by an appeal and the trial court's sixty stay of its order will expire on or about April 12, 2021, a stay is warranted pending resolution on the merits.

Courts will grant interlocutory review of pretrial disputes such as this one that involve questions that cannot be remedied on appeal, particularly if they raise issues of first impression. Here, just as in cases involving issues of privilege, once Doe's identity is publicly revealed, it cannot be clawed back. The Court should therefore grant extraordinary relief to protect the identity of Doe and shield him from further harm, and mandate the Superior Court to issue an order protecting unnecessary

exposure of the government's victim-witness[3] and his family during litigation. Doe is an aggrieved individual whose very complaint involves exposure of his caste status, leading to discrimination and harassment on that basis. A stay of the order is the only way to protect Doe's identity from disclosure until the legal questions at hand, which are notably issues of first impression in the Sixth Appellate District, are resolved.

PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF

Authenticity of Exhibits

1. The Exhibits filed concurrently with this Petition, under separate cover in three volumes as Petitioner's Appendix, are true and accurate copies of documents on file with the Respondent court in the action entitled *Department of Fair Employment and Housing v. Cisco Systems, Inc., et al.*, Santa Clara County Superior Court, Case No. 20-CV-372366, and are supplemented by a true and correct copy of the original Reporter's Transcript of the hearing held on January 26, 2021. Petitioner's Appendix is incorporated by reference as if it were set forth fully in this

[3] Because Doe has not intervened, his role in the litigation is akin to that of a victim-witness in a criminal proceeding. (*Crump v. Appellate Div. of the Superior Court* (2019) 37 Cal.App.5th 222, 239 [discussing prosecutor's control over the criminal proceeding].)

Petition. Petitioner's Appendix is paginated consecutively and page references in this Petition are to the consecutive pagination.

Parties

2. The DFEH is a California state agency charged with enforcing the state's civil rights laws. (Gov. Code, § 12900 et seq.) To that end, the Legislature has delegated to DFEH authority to investigate and prosecute complaints of discriminatory conduct, and to secure effective remedies that will prevent and deter unlawful practices. (*Id*., §§ 12920.5, 12930, subd. (f).) This authority extends to issues that arise under the FEHA, to prosecute civil complaints on behalf of itself and persons aggrieved by discriminatory employment practices. (*Id*., § 12930, subd. (f)(2).) The "'DFEH is a public prosecutor testing a public right,' when it pursues civil litigation to enforce statutes within its jurisdiction." (*Dept. of Fair Empl. & Hous. v. Law Sch. Admissions Council* (N.D.Cal. 2013) 941 F.Supp.2d 1159, 1168 [quoting *State Pers. Bd. v. Fair Empl. & Hous. Com.* (1985) 39 Cal.3d 422, 444].)

3. Real party in interest-defendant Cisco Systems, Inc. is an

"employer" subject to the FEHA.[4] Cisco is a California corporation based in San Jose, California.

4. Real party in interest-defendant Sundar Iyer was, at all times relevant to this action, a "supervisor" within the meaning of Government Code section 12926, subdivision (t), and all other applicable statutes.

5. Real party in interest-defendant Ramana Kompella was, at all times relevant to this action, a "supervisor" within the meaning of Government Code section 12926, subdivision (t), and all other applicable statutes.

Relevant Factual and Procedural Background

6. On or about July 30, 2018, John Doe filed an administrative complaint with DFEH. (PA 9 (Compl. ¶ 11).) Doe filed an amended administrative complaint, naming Iyer and Kompella as additional respondents, on or about October 9, 2018. (*Ibid*.)

7. As required by law, DFEH initiated an investigation into Doe's allegations. (Gov. Code, § 12963; PA 9 (Compl. ¶ 12).)

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[4] The FEHA refers to the aggrieved individual as a "real party in interest." (Gov. Code, § 12965, subd. (a).) However, the aggrieved individual in this case, John Doe, is not a party in either this Court or the court below. For clarity, this brief will refer to Cisco, Iyer, and Kompella (the real parties in interest in this petition and defendants in the court below) as "defendants."

8. Based on its investigation, DFEH concluded that cause existed for believing that the allegations set forth in Doe's administrative complaint were true. (PA 9 (Compl. ¶ 13).) Accordingly, on June 30, 2020, DFEH filed its initial complaint in the United States District Court for the Northern District of California. (See PA 9 (Compl. ¶ 14).) On October 16, 2020, DFEH voluntarily dismissed the federal complaint and refiled in the Santa Clara County Superior Court, raising only state-law claims. (PA 9-10 (Compl. ¶ 15).)

9. The Superior Court docketed the complaint on November 2, 2020. That same day, DFEH moved to allow the complaining party to proceed under a pseudonym, John Doe. (PA 24-382 (Notice of Motion and Memorandum of Points and Authorities, Declarations in Support).)

10. On November 3, 2020, defendants all demurred to the complaint and moved to compel arbitration. (PA 383-384, 393-400.) Cisco also moved to strike portions of the complaint. (PA 385-392.) In support of all its papers, Cisco submitted documents that could reveal John Doe's identity.[5] (PA 401-402.) Iyer and Kompella, who joined Cisco's motions

[5] Because the Superior Court ordered Cisco's Request for Judicial Notice to be removed from the docket and because none of these documents are essential to deciding the issues presented here, DFEH does not include the identifying documents themselves in the PA. However, DFEH did submit a proposed redacted version of the concerning exhibits. (PA 422-435.)

and filed both a supplementary motion to compel arbitration and their own demurrer, relied on these submissions in their filings. (PA 398.)

11. DFEH requested that Cisco withdraw the revealing documents, but Cisco refused. (PA 414-420.) DFEH asked the Superior Court to order the Clerk to seal the publicly filed documents and to maintain the seal over the documents submitted conditionally under seal until DFEH's Motion was decided. (PA 461.) The Superior Court granted DFEH's requests. (PA 554.)

12. On January 26, 2021, the Superior Court heard the DFEH's Motion. (PA 635-660 (Transcript (Tr.).) Although DFEH challenged the tentative order issued by the Superior Court the prior day, it followed the Superior Court's instruction to not repeat arguments already presented in its briefing. (PA 642-643 (Tr. 7:22-8:3.) DFEH requested the Superior Court to stay its order for sixty days. (*Ibid*.)

13. On February 3, 2021, the Superior Court adopted its tentative ruling and denied DFEH's Motion, finding that DFEH and Doe "fail[ed] to establish that identification of one's caste is per se a matter of sensitive and highly personal nature." (PA 674 (February 3, 2021, Order).) As requested by DFEH at the hearing, the Superior Court stayed its order for sixty days from February 11, 2021, the date the order was filed. (*Ibid*.) Notwithstanding the stay of litigation imposed by defendants' arbitration-

related appeals, at the conclusion of the sixty days, the order will take effect, and the documents submitted by defendants in support of their motions will be publicly available.[6] (PA 554, 674.)

14. On February 16, 2021, the Superior Court denied defendants' motions to compel arbitration. (PA 677-683.) Cisco, Iyer, and Kompella have appealed the Superior Court's Order. (*DFEH v. Cisco Systems, Inc., et al.*, H048910.)

15. Following the denial of its Motion, DFEH requested that defendants voluntarily agree to a protective order so that Doe's identity would not be unnecessarily revealed through the litigation. Specifically, counsel for DFEH wrote "As we indicated, we intend to seek a writ from the Court's order denying DFEH's Doe Motion. Given the serious issues at stake, we believe there is a good chance the writ will be granted. But to potentially avoid additional litigation expenses and in keeping with Cisco's commitment to the eradication of 'systemic racism, xenophobia, inequality and all forms of bigotry in America' (https://www.crn.com/news/networking/cisco-s-chuck-robbins-speaks-out-on-abhorrent-racism-frustration-with-lack-of-change-), we thought we would first reach out to see if defendants will agree to a protective order.

[6] The Superior Court did not rule on DFEH's motion to seal the documents submitted by Cisco. (PA 635-660.)

We ask that you make the proposal to your clients, and let us know by Friday, February 26, 2021, whether it would be useful to circulate a proposed stipulated order."

16. Cisco, Iyer, and Kompella declined to agree to a protective order.

The Petition is Timely

17. The Superior Court filed its order denying DFEH's Motion to Use a Fictitious Name on February 11, 2021. (PA 669.) There is no applicable statutory time limit for filing this writ and it is well within the presumed 60-day period that normally applies. (See *Cal West Nurseries v. Superior Court* (2005) 129 Cal.App.4th 1170, 1173–1174 ["As a general rule, a writ petition should be filed within the 60–day period that applies to appeals [as triggered by] the service of an order or judgment"]; *Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701.) The trial court stayed its order for sixty days from the date it filed its order. Accordingly, this petition is timely.

No Other Petition Filed

18. No other petition seeking the relief sought in this Petition has been filed.

Writ Relief is An Appropriate and Necessary Basis for Relief

19. It is well established that writ review of an order is appropriate if "a ruling threatens immediate harm, such as loss of a privilege against disclosure, for which there is no other adequate remedy." (*Doe v. Superior Court (Luster)* (2011) 194 Cal.App.4th 750, 754 ("*Doe*"), quoting *Zurich American Ins. Co. v. Superior Court* (2007) 155 Cal.App.4th 1485, 1493.) In *Doe*, the trial court ordered the plaintiff to verify discovery responses in her true name. (*Doe*, *supra*, 194 Cal.App.4th at p. 752.) The Second District Court of Appeal accepted the writ, noting that the Third District Court of Appeal had recently determined it was appropriate for a Doe plaintiff to verify a writ of mandate using a fictitious name. (*Id.* at p. 754, citing *Doe v. Lincoln Unified Sch. Dist.* (2010) 188 Cal.App.4th 758, 767 ("*Lincoln Unified*").) Here, DFEH essentially sought an order of protection against public identification of Doe, who is not a party to the case. Appellate remedies are not adequate once the information sought to be protected has been disclosed. (*Maldonado v. Superior Court* (2010) 184 Cal.App.4th 739, 752-753 ("*Maldonado*"), quoting *O'Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, 1439; see also *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 330 ("*Kleitman*"), citing to *Raytheon Co. v. Superior Court* (1989) 208 Cal.App.3d 683, 685.)

20. The order below is akin to a discovery ruling. Courts generally review such orders under the abuse of discretion standard, but where "the propriety of a discovery order turns on statutory interpretation," courts review the order *de novo*. (*Gilbert v. Superior Court* (2014) 224 Cal.App.4th 376, 380 [affirmed by *City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, 282 ("*City of Los Angeles*"), as mod. March 20, 2017].) "A trial court abuses its discretion when it applies the wrong legal standards applicable to the issue at hand." (*Zurich American Ins. Co. v. Superior Court* (2007) 155 Cal.App.4th 1485, 1493-1494 [trial court abused its discretion when applying an overly restrictive standard for application of the attorney-client privilege to a corporate entity, writ relief granted], quoting *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 85; see also *Venture Law Group v. Superior Court* (2004) 118 Cal.App.4th 96 [writ relief granted where discovery order erroneously ordered attorney to violate attorney-client privilege in answering deposition questions]; *Doe 2 v. Superior Court (Calkins)* (2005) 132 Cal.App.4th 1504, 1517 [abuse of discretion where trial court applied wrong standard on claim of clergy-penitent privilege, writ relief granted].)

21. Writ review may be granted on "questions of first impression that are of general importance to the trial courts and to the [legal] profession, and where general guidelines can be laid down for future

cases." (*Oceanside Union Sch. Dist. v. Superior Court* (1962) 58 Cal.2d 180, 185-186; *Kleitman*, *supra*, 74 Cal.App.4th at p.330-331.)

22. DFEH and Doe will be irreparably harmed if this Petition is not granted because, pursuant to the Superior Court's February 3, 2021, order, the identity of a civil rights government victim-witness who was harassed and discriminated against based on his caste status will be publicly revealed. Such a result risks substantially chilling the willingness of future victim-witnesses who fear public disclosure from coming forward, undermining the State's interest in public enforcement of rights secured under the FEHA. Once Doe's identity is publicly disclosed, his ability to maintain anonymity as a victim-witness will be forever lost, even if DFEH is successful in a later appeal. Thus, writ review is warranted.

23. This same reason supports DFEH's request for an immediate stay pending final disposition of this Petition. In the absence of a stay from this court, the trial court's stay will expire on or about April 12, 2021, resulting in the identification of Doe in trial court filings. (PA 674.) Allowing the stay to expire would foreclose the relief sought through this writ, which is a clear basis for this Court to issue a stay pending resolution of these proceedings. (*Doe 2 v. Superior Court (Avongard Products U.S.A. Ltd.*) (2016) 1 Cal.App.5th 1300, 1310 ("*Avongard*") [staying discovery order compelling exposure of anonymous email author in defamation suit

pending decision on writ]; *Glassdoor, Inc. v. Superior Court (Machine Zone, Inc.)* (2017) 9 Cal.App.5th 623, 628 ("*Machine Zone*") [same].)

24. This writ presents critical issues of first impression for the Sixth Appellate District and California about the protections that should be allowed to civil rights complainants who would otherwise be chilled from exercising their rights to seek the protection of the State. This writ also presents an opportunity for the Court to declare as a matter of law that courts in California should follow the standards set forth in *Does I Thru XXIII v. Advanced Textile Corp.* (9th Cir. 2000) 214 F.3d 1058 to determine whether a party or witness should be allowed anonymity "in special circumstances when the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." (*Id*. at p. 1068.)

25. The facts and circumstances here are exceptional, including legal questions of first impression and of great public importance, and there is undeniable need for a prompt resolution before protected information is irrevocably disclosed, all of which warrant issuance of the writ. (See, e.g., *Anderson v. Superior Court* (1989) 213 Cal.App.3d 1321, 1328; *Silva v. Superior Court* (1993) 14 Cal.App.4th 562, 573-574.) Like an interim discovery order, the order at issue is not immediately appealable, and there is no other adequate remedy at law. (See Code Civ. Proc., § 1086).

PRAYER

Petitioner prays that this court:

1. Issue an immediate stay of the enforcement of the Santa Clara County Superior Court's February 3, 2021, Order After Hearing Denying Plaintiff's Motion to Proceed Under a Fictitious Name, pending the final disposition of this Petition.

2. Issue a peremptory writ of mandate and/or prohibition and/or such other extraordinary relief as is warranted, in the first instance (Code Civ. Proc., §§ 1088, 1105), directing the Respondent court to set aside and vacate its February 3, 2021, order and enter a new and different order granting the relief sought by DFEH; or

3. In the alternative to issuing a peremptory writ in the first instance, issue an alternative writ directing the Respondent court to set aside and vacate its order dated February 3, 2021, and enter a new and different order granting the relief sought by DFEH, or to show cause why it should not be ordered to do so; and, upon return to the alternative writ, issue a peremptory writ directing the Respondent court to enter a new and different order granting the relief sought by the DFEH.

4. Award Petitioner its costs pursuant to Rule 8.493 of the California Rules of Court and Government Code section 12965 subdivision (b).

5. Grant such other relief as may be just and proper.

VERIFICATION

I, Melanie Proctor, declare:

I am one of the attorneys of record for Petitioner in the action before the Santa Clara County Superior Court, *DFEH v. Cisco Systems, Inc.*, *et al.* (Case No. 20-CV-372366). I have read the foregoing Petition and know its contents. The facts alleged in the Petition are within my own knowledge, and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 30, 2021, at El Cerrito, California.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter turns on whether the identity of a government's victim-witness to civil rights violations must be publicly exposed when the Department of Fair Employment and Housing (DFEH) chooses to litigate claims involving that victim-witness on behalf of the State, and there is substantial risk of harm to the witness and his family from disclosing his identity.

The trial court below ruled that DFEH is foreclosed from seeking the protection of a pseudonym for the victim-witness of discrimination in this action that DFEH brings in its own capacity as public prosecutor. Rather than applying the three factors articulated by the Third District Court of Appeal in *Lincoln Unified*, *supra*, 188 Cal.App.4th 758, the court below effectively adopted a categorical rule limiting the ability to use pseudonyms to protect identities of witnesses unless they are victims of sexual assault. (PA 673-674.) If allowed to stand, the Superior Court's order will dramatically restrict both DFEH's ability to effectuate its statutory mandate to investigate and prosecute discriminatory practices that violate the FEHA and the ability of aggrieved individuals to seek relief through DFEH. The potential chilling effect of severely limiting the use of pseudonyms to only

cases of sexual assault would undermine the Legislature's intent in enacting FEHA.

DFEH's statutory duties mandate that it investigate alleged FEHA violations of public importance, and bring civil lawsuits to remedy substantiated wrongs on behalf of both itself *and* the aggrieved individual. Both state and federal courts have acknowledged that "DFEH acts as a public prosecutor when it pursues civil litigation under the FEHA and it may seek remedies to vindicate what it considers to be in the public interest in preventing … discrimination." (*Dept. of Fair Employment & Hous. v. Superior Court of Kern Cty.* (2020) 54 Cal.App.5th 356, 373, citing *State Personnel Bd. v. Fair Employment & Housing Com.* (1985) 39 Cal. 3d 422, 444), and *Dept. of Fair Empl. & Housing v. Law Sch. Admissions Council* (N.D.Cal. 2013) 941 F.Supp.2d 1159, 1172) (internal quotations omitted).) The court below recognized the proper role of DFEH in this litigation in ruling on defendants' motions to compel arbitration when it observed that "the statutory rights established by the FEHA are 'for a public reason' [citation], and when testing a public right, the DFEH acts in the capacity of a public prosecutor. [citation] This supports DFEH's argument that DFEH's role and capacity in an action for violation of FEHA is more substantive

than a mere representative of the aggrieved individual."[7] (PA 680; PA 681 ["The FEHA authorizes DFEH to file a civil action, and pursue that action in the interests of the state and public as well as the interests of the aggrieved individual."].).

As discussed below, the Court should accept this Petition for Writ Review ("Petition") of the Superior Court's February 3, 2021, order that denied DFEH's Motion, which sought to grant Doe protection from further harassment, discrimination, and harm. If not reversed, this decision will have wide-reaching and chilling effects on the DFEH's ability to perform its statutory duties and protect the civil rights of Californians. This single Superior Court order risks gutting the beating heart of the FEHA – DFEH's public complaint mechanism, – by setting a precedent in practice that the identity of nearly all civil rights complainants will be disclosed in litigation even if they face substantial risk of harm and invasion of privacy.

II. STATUTORY BACKGROUND

The California Legislature has vested DFEH with the authority to enforce state civil rights laws as "an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state." (Gov. Code, § 12920.) DFEH satisfies its statutory mandate by

[7] The aggrieved individual only becomes a party to the action if he elects to intervene. (Gov. Code, § 12965, subd. (a).)

enforcing the California Fair Employment and Housing Act, Government Code section 12900 et seq., as well as other civil rights statutes. One way DFEH enforces the FEHA is by investigating complaints from aggrieved members of the public, resolving those complaints when possible, and pursuing enforcement actions in court when necessary.

FEHA "establishes a comprehensive scheme intended to protect and safeguard the right and opportunity of all persons" to be free from discrimination. (*Hirst v. City of Oceanside* (2015) 236 Cal.App.4th 774, 782, citing Gov. Code, § 12920; *State Pers. Bd. v. Fair Empl. & Housing Com., supra,* 39 Cal.3d at p. 428.) The Unruh Civil Rights Act, Civil Code section 51, and the Ralph Civil Rights Act, Civil Code section 51.7, are expressly incorporated into FEHA. (Gov. Code, § 12948.)

As part of this comprehensive scheme, FEHA provides the procedures for investigation and prosecution of unlawful discrimination and civil rights violations. As applicable here, the FEHA states that "any person claiming to be aggrieved by an alleged unlawful practice" may file a complaint with DFEH. (Gov. Code, § 12960, subd. (b).) Once a complaint is filed, DFEH "shall make prompt investigation in connection therewith." (Gov. Code, § 12963.) DFEH is authorized to "investigate, conciliate, mediate, and prosecute" the alleged discriminatory practices. (Gov. Code, § 12930, subd. (f)(2).)

If, at the conclusion of its investigation, DFEH determines that the complaint is valid, the Legislature has mandated that it "shall immediately endeavor to eliminate the [civil rights violation] complained of by conference, conciliation, and persuasion." (Gov. Code, §§ 12963.7, subd. (a), 12965, subd. (a).) If the violations do not cease, and "if circumstances warrant, the director in the director's discretion may bring a civil action in the name of the department on behalf of the person claiming to be aggrieved." (Gov. Code, § 12965, subd. (a) [emphasis added].) As the trial court noted below, DFEH "seeks its own injunctive relief and specific relief to make the employee whole." (PA 682 (February 16, 2021, Order).) In addition, "[p]rior to filing a civil action, the department shall require all parties to participate in mandatory dispute resolution in the department's internal dispute resolution division.…" (*Ibid*.)

Significantly, a civil action brought pursuant to section 12965, such as the underlying matter, may seek a wide range of relief, including any relief available to a private plaintiff or to a class. (See Gov. Code, § 12965, subds. (a) and (c) [emphasis added].) However, DFEH is not limited to seeking individual relief for the government's victim-witness: "When a government agency brings an enforcement action, it may have multiple objectives" and seek multiple remedies. (*Dept. of Fair Empl. & Housing v. LSAC*, *supra*, 941 F.Supp.2d at p. 1172.) Thus, DFEH is entitled to, and

routinely does, seek remedies extending beyond the interests of the aggrieved party to "vindicate what it considers to be the public interest in preventing … discrimination." (*Ibid*. [citation omitted]; see also Gov. Code, § 12965, subd. (c) [authorizing any other relief that, in the judgment of the court, will effectuate the purposes of FEHA].)

III. STANDARD OF REVIEW

When the propriety of an order turns on a question of law, "the Court determines the issue de novo." (*City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, 282 [internal quotations omitted].) A court abuses its discretion when it applies the wrong legal standard. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733 ("*Costco*").) Under either standard, DFEH should prevail.

IV. ARGUMENT

DFEH requested the Superior Court's permission to proceed with its litigation on behalf of its victim-witness using the fictitious name John Doe and to order defendants to redact personally identifying information from all public communications, filings, and statements. Although party names are usually required in any pleading (Code Civ. Proc., § 422.40), courts have allowed even parties to proceed under fictitious names where "exceptional circumstances" exist. (*Lincoln Unified*, *supra*, 188 Cal.App.4th at p. 767.) Here, where the aggrieved individual is *not* a party

to the case and DFEH elected to proceed with the litigation to vindicate the public's interest in eliminating harassment, discrimination, and retaliation in employment, the case presents those exceptional circumstances.

Courts in California have permitted plaintiffs to proceed anonymously: (1) when identification creates a risk of retaliatory physical or mental harm; (2) when anonymity is necessary to preserve privacy in a matter of a sensitive and highly personal nature; and (3) when the anonymous party is compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal prosecution.[8] (*Lincoln Unified*, *supra*, 188 Cal.App.4th at pp. 766–767, citing *Advanced Textile Corp.*, *supra*, 214 F.3d at pp. 1067-1068.) A party requesting to remain anonymous must show that "the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." (*Advanced Textile*, *supra*, 214 F.3d at p. 1057.)

In this case, the potential harm to the government's victim-witness and his family is substantial, the opposing parties are not prejudiced because they already know his identity, and the general public has no

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[8] Contrary to defendants' arguments below, anonymity is not restricted to a few statutory exceptions. (PA 562, 575; *Lincoln Unified*, *supra*, 188 Cal.App.4th at p. 766-767 [rejecting argument that anonymity is confined to limited situations defined by statute and discussing long line of cases in which it is allowed].)

legitimate interest in learning his name or his caste that outweighs the extreme risk of harm to the victim-witness and his family of disclosing his identity. Accordingly, on balance, the victim-witness in this government enforcement action should be permitted to proceed anonymously.

In denying DFEH's request to protect John Doe's identity, the Superior Court disregarded the substantial evidence submitted by DFEH in support of its motion. (PA 672-673.) While it took note of the supporting declarations, it did not assess the weight of those declarations when denying DFEH's Motion. (*Ibid*.) The declarants' statements stemmed from personal knowledge about their organizations, professional and educational backgrounds, and complaints they've heard and read. (Evid. Code, § 800.) The statements also reflect their research and experience as experts in the field of caste. (Evid. Code, §§ 800, 801.)

In addition, the trial court rejected DFEH's request that the Court take judicial notice of numerous articles. (PA 672.) Those articles, which are self-authenticating, provide important context for DFEH's Motion. (Evid. Code, § 645.1; *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 900 n.3 [taking judicial notice of news articles for context]; *Unruh-Haxton v. Regents of Univ. of Cal.* (2008) 162 Cal.App.4th 343, 365 [noting trial court took judicial notice of news articles not for the truth of the matters asserted therein, but rather, to assess claims of ignorance].) The articles

show the level of press interest in the case, and demonstrate that if Doe's identity is revealed, it will become widely known, not just in the United States, but also in India.[9] (PA 184-193, 210-380.) As explained below, the Superior Court erred in at least three regards in its application of the three-factor test under *Lincoln Unified*.

A. Identification of Doe's Name and Caste Creates Significant Risk of Retaliatory Physical and Mental Harm

Disclosing Doe's name and Dalit status will create a tremendous risk of retaliatory physical and mental harm to him and his family, sufficient to establish the propriety of proceeding anonymously under the first prong of the *Lincoln Unified* standard. (*Cf. Advanced Textile, supra,* 214 F.3d at p. 1067 [reversing the district court, the Ninth Circuit held that the court was required to consider evidence of threatened retaliation by third parties].)

A 2018 survey of 1,500 South Asians in the United States found that 26 percent said they had experienced a physical assault because of their caste, while 59 percent reported caste-based derogatory jokes or remarks directed at them.[10] Anecdotal data also indicate that Dalit Indians ***in the***

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[9] DFEH renews its request for judicial notice here for those articles, as well as several that followed the Superior Court's orders. (DFEH Request for Judicial Notice, filed concurrently.)

[10] PA 128-183 [Zwick-Maitreyi et al., *Caste in the United States: A Survey of Caste Among South Asian Americans* (2018) pp. 26-27, Equality (continued…)

United States, once their caste is revealed, have been raped, attacked, and spat on because of their caste.[11] (See PA 203-204 (Declaration of Dr. Suraj Yengde (Yengde Decl.), ¶¶ 3, 5-7); PA 120-123 (Declaration of Thenmozhi Soundararajan (Soundararajan Decl.), ¶¶ 3-4, 6-9, 11).) The trial court dismissed this evidence as speculative. (PA 672.) But this was not a dispositive motion or trial, and thus the standards for admitting expert evidence do not apply, and in any event, the evidence establishes a material risk of harm to Doe and his family within the United States. (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 272, citing Evid. Code, § 801, subd. (a).)

Here, Doe will face actual and formidable risk of physical violence, or the threat of physical violence, and mental harm if his identity is disclosed. (*Advanced Textile*, *supra,* 214 F.3d at p. 1063; see PA 203-206 (Yengde Decl.).) One of Doe's supervisors, defendant Iyer, talked about Doe to other engineers and those in their shared social circles. (PA 116 (Declaration of John Doe (Doe Decl.), ¶ 11.) The risk of retaliatory harm,

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Labs <https://www.equalitylabs.org/caste-in-the-united-states> (as of March 31, 2021)].

[11] DFEH Request for Judicial Notice, Exh. 3 [Ray, *Caste in America: The US Isn't Safe From the Trauma of Caste Bias* (Mar. 8, 2019) WGBH News, The World <https://www.pri.org/stories/2019-03-08/us-isn-t-safe-trauma-caste-bias> (as of March 31, 2021)].

thus, is concrete because absent the protective order DFEH sought, Iyer can easily continue to leak Doe's name to their shared networks to encourage social and economic backlash against Doe. (*Ibid.*; *id.* at p. 117, ¶ 13.) Furthermore, Doe continues to work at Cisco. (*Id.*, at p. 116, ¶ 10.) He fears his name will be disclosed to his new workplace colleagues or he will be terminated pretextually in retaliation. Indeed, in support of its motion to compel arbitration, its demurrer, and its motion to strike, Cisco unnecessarily submitted documents to the Superior Court that, once unsealed, will reveal Doe's name. (PA 457-458.) Thus, defendants' own actions undermine their argument that arbitration would preserve Doe's privacy because they have taken steps to expose him. (*Ibid*.)

Doe's family in the United States faces a similar risk of retaliation and abuse, particularly if his identity (and theirs by extension) as a Dalit is exposed. (*Advanced Textile*, *supra,* 214 F.3d at p. 1063 [finding noteworthy that plaintiffs "reasonably fear that their families may face similar threats of physical and economic retaliation if their true identity is revealed"].) The risk will be compounded here because disclosure of his identity will be specifically in the context of being a Dalit who challenged the caste system. (PA 205-206 (Yengde Decl., ¶ 8).)

For Doe's family in India, the risk of retaliatory violence is worse. A 2019 U.S. State Department report on India contains a catalog of systemic

abuses against Dalits, including extrajudicial killings and sexual violence against Dalit women. (PA 116 (Doe Decl., ¶ 4); PA 204 (Yengde Decl., ¶ 5).) According to a Human Rights Watch report, Dalits are physically assaulted and threatened with economic and social retaliation for refusing to carry out various caste-based tasks. (DFEH Request for Judicial Notice, Exh. 2 [Narula, Caste Discrimination: A Global Concern, Background: "Untouchability" and Segregation (2001) Human Rights Watch <https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm#P133_16342> (as of Mar. 23, 2021)].) The report noted that any attempt to defy the social order led to "violence and economic retaliation on the part of those most threatened by changes in the status quo." (*Ibid.*; see also PA 203, 205-206 (Yengde Decl., ¶ 3, ¶¶ 7-8; *id.* 116-117 (Doe Decl., ¶¶ 6, 7).)

Doe's family have been the victims of caste slurs, isolation, and ostracization, and employment discrimination by neighbors, school mates, and employers in India because of their caste. (PA 116 (Doe Decl., ¶¶ 4-7).) As explained in the Yengde Declaration, name is linked to caste. (PA 204-205 (Yengde Decl., ¶ 6.)) Some of Doe's family in India have been able to avoid hate violence because they changed their name and moved to the city. (PA 116 (Doe Decl., ¶ 7).) However, Doe still has family with his last name who live in rural areas of India, and they are especially at risk for being

physically attacked because of their caste, particularly if it comes to light that one of their relatives challenged the caste system.[12] (PA 116-117 (Doe Decl., ¶¶ 6, 14).) Additionally, news of this lawsuit has gained traction in India, increasing risk of disclosure of the caste of all his family members in India. (See, e.g., PA 292-297, 323-344.) Moreover, the international attention that this lawsuit has garnered in the United States and India, and the ensuing threats to pro-Dalit organizations, make the public disclosure of Doe's name particularly dangerous and create an imminent risk to Doe and his family. (PA 116-118 (Doe Decl., at ¶¶ 6-8, 13-19); see also PA 122-123 (Soundararajan Decl., ¶¶ 8-12).) DFEH should be able to vindicate his rights without fear of such retaliatory physical and mental harm to a government victim-witness.

Federal asylum cases provide a useful analogue for assessing the foreseeable risk of harm to Doe and his family, particularly his family in India. In cases like this one, where membership in a particular group results in being targeted for discrimination, harassment, and violence, the Ninth Circuit has found evidence similar to what is in the record here persuasive to establish a foreseeable risk of harm. (See, e.g., *Singh v. I.N.S.* (9th Cir.

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[12] PA 280-284 [Gettleman and Raj, *Tell Everyone We Scalped You! How Caste Still Rules in India,* New York Times (Nov. 17, 2018) https://www.nytimes.com/2018/11/17/world/asia/tell-everyone-we-scalped-you-how-caste-still-rules-in-india.html (as of March 29, 2021)].

1996) 94 F.3d 1353, 1358–1359.) In *Singh*, the asylum applicant, an ethnic Indian citizen of Fiji, was a member of an ethnic/racial group that, after the 1987 coups, was targeted with discrimination, harassment, and violence on account of their race. The Ninth Circuit found that the relevant Country Reports verified "that Indians [in Fiji] are subject to significant harassment and crime based on race" and that the documentation substantiated the claim for asylum. (*Id*. at p. 1360.) Additionally, the court found noteworthy that the discrimination, harassment, and violence were conducted by groups that the Fiji "government was unwilling or unable to control." (*Id*. at pp. 1358–1359.) Here, the evidence similarly establishes a significant risk of harm to Doe's family in India if his identity is disclosed, because they will be linked to a person challenging the caste system, conduct that is documented as a trigger for retaliatory violence that governmental authorities are unlikely to curtail. (PA 120-122 (Soundararajan Decl., ¶¶ 4-9), 205-206 (Yengde Decl., ¶ 8), .)

B. A Fictitious Name Should Be Permitted Due to The Personal and Sensitive Nature of Caste Disclosure

Under California law, even litigants are allowed to proceed under fictitious names "to preserve privacy in a matter of sensitive and highly personal nature," such that public disclosure would inflict irreparable injury. (*Lincoln Unified*, *supra*, 188 Cal. App. 4th at p. 767 [quoting *Advanced Textile, supra,* 214 F.3d at p. 1068].) A non-litigant such as Doe

has an even stronger claim to anonymity.

For example, a United States district court in California considered social stigmatization among the "most compelling" reasons for permitting anonymity. (*Jane Roes 1-2 v. SFBSC Mgmt., LLC* (N.D.Cal. 2015) 77 F.Supp.3d 990, 994.) The district court applied the Ninth Circuit's instruction that anonymity is permitted where the subject matter of a case is "sensitive and highly personal," and where disclosing an individual's identity threatens to subject the person to "harassment, . . . ridicule or personal embarrassment." (*Jane Roes 1-2, supra*, 77 F.Supp.3d at 994, citing *Advanced Textile,* 214 F.3d at pp. 1067–1068; see also *Doe v. Penzato* (N.D.Cal. May 13, 2011, No. CV10–5154 MEJ) 2011 WL 1833007 at *3 [granting anonymity to prevent public exposure and stigma of having been a victim of sexual assault].) Another district court in California permitted employee plaintiffs to intervene anonymously where "[t]hey [we]re concerned that they will be embarrassed by the public disclosure of the nature of their allegations against Defendants . . . in the small community where they live and work." (*EEOC v. ABM Indus. Inc.* (E.D. Cal. 2008) 249 F.R.D. 588, 593.) This analysis is consistent with *Lincoln Unified*'s second prong, which focuses on the party's interest in "privacy in a matter of sensitive and highly personal nature," and provides an additional basis to support allowing DFEH to proceed while protecting

Doe's identity. (*Lincoln Unified, supra*, 188 Cal.App.4th at p. 767.)

To be sure, the cases cited above all involve sexual assault. But, as DFEH noted below, courts have allowed use of a fictitious name in cases not involving sexual assault. (PA 627, citing *Alexander v. Falk* (D.Nev. Aug. 30, 2017, 16cv2268) 2017 WL 3749573, *5 [pseudonymous author plaintiffs allowed to proceed under pseudonyms in defamation case when they took care to maintain their anonymity]; PA 630, citing *Dept. of Fair Empl. & Hous. v. Law Sch. Admissions Council* (N.D.Cal. Aug. 20, 2012, 12cv1830) 2012 WL 3583023, at *4-5 [allowing non-intervening aggrieved individuals with cognitive differences to proceed anonymously]; *Advanced Textile*, *supra*, 214 F.3d at pp. 1062-1063 [collective action under Fair Labor Standards Act]; see also *Publius v. Boyer-Vine* (E.D.Cal. 2017) 321 F.R.D. 358, 366-367 [allowing blogger who challenged enforcement of a state statute prohibiting "doxing" of elected or appointed official to proceed anonymously]; *Doe v. Franklin Bank, S.S.B.* (W.D.Tex. 2008, A-08-CA-293 LY) 2008 WL 11334179, at *4 [concluding plaintiff who challenged infringement on his right to privacy concerning medical diagnoses and treatment should be allowed to proceed anonymously].) The Superior Court cited only cases involving sexual issues (PA 655-656.) The trial court erred as a matter of law when it declined to consider these additional authorities and narrowed the comparison of the risk to Doe's privacy of revealing his

Dalit status only to cases involved sexual assault or other sexual matters. (PA 673-674.)

As discussed in Section A, *supra*, if identified outside of this litigation, Doe and his family are likely to face social stigmatization, ostracization, harassment, ridicule, and personal embarrassment. In the Indian and Indian-American community, one's caste is a highly sensitive and personal matter, especially if one is from the lowest class, as is Doe. A 2018 study uncovered that over half of surveyed Dalits in the U.S. feared being outed. (PA 145-146.) Those surveyed expressed significant psychological turmoil around the secrecy of their caste. (PA 146.) In its Complaint, the DFEH alleged that Doe confronted defendant Iyer when he learned that Iyer had revealed Doe's Dalit status to his co-workers. (PA 12-13 (Compl., ¶¶ 31-37).) DFEH also alleged defendants Cisco, Iyer, and Kompella continued to discriminate against and harass him because he is Dalit Indian, and when he opposed the unlawful actions, Doe faced swift and sweeping retaliation. (PA 12-14 (Compl., ¶¶ 31-47).) As a result of defendants' actions, Doe suffered psychological injury, emotional pain, mental anguish, and humiliation. (PA 16-20 (Compl., ¶¶ 57, 68, 78, 89).) Revealing Doe's identity would not only reveal his caste, it would also reveal him as one who is openly challenging a two-millennia-old caste system that its beneficiaries feel passionately about retaining. (PA 159.)

Therefore, to protect John Doe from further harassment, injury, ridicule, and personal embarrassment due to the personal and highly sensitive nature of caste disclosure, the DFEH requests he be permitted to proceed anonymously.

C. Doe Has A Legitimate Fear of Further Discrimination Should His Identity Be Revealed

A fictitious name will also protect Doe from further discrimination as he continues to work at Cisco and seeks work in the future. In *Advanced Textile*, where the plaintiffs requested to use fictitious names out of a fear of future retaliation from their employer, the court identified three relevant factors in determining whether the use of pseudonyms was appropriate: "(1) the severity of the threatened harm, (2) the reasonableness of the anonymous party's fears, and (3) the anonymous party's vulnerability to such retaliation." (*Advanced Textile*, *supra,* 214 F.3d at p. 1068.) In *Lincoln Unified*, the appellate court examined the line of cases allowing parties to proceed under a fictitious name, and quoted the Ninth Circuit's test. (*Lincoln Unified*, *supra*, 188 Cal.App.4th at pp. 766-767; see also *The Rossdale Group, LLC v. Walton* (2017) 12 Cal.App.5th 936, 946 ["The *Lincoln Unified* court then examined a long line of cases allowing the plaintiff to proceed under a fictitious name."].)

Here, DFEH seeks to maintain Doe's anonymity to prevent further injury to him and his family and to avoid the possibility that any employers

will discriminate against him based on his caste. (PA 203 (Yengde Decl., ¶¶ 11-12).) Each of these concerns is concrete and legitimate. Especially in this age of internet-accessible information, Doe's concerns should be addressed by the use of a fictitious name. "The judicial use of 'Doe plaintiffs' to protect legitimate privacy rights has gained wide currency, particularly given the rapidity and ubiquity of disclosures over the World Wide Web." (*Starbucks Corp. v. Superior Court* (2008) 168 Cal.App.4th 1436, 1452, fn.7.)

Below, defendants argued that other federal cases weigh against allowing Doe anonymity. (PA 577-578.) They cited, for example, a case in which non-native Hawaiian students sought admission to a school traditionally reserved for native Hawaiians. (*Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate* (9th Cir. 2010) 596 F.3d 1036, 1038.) The district court found the children did not reasonably fear severe harm and denied their motion to proceed anonymously. (*Id*. at p. 1045.) Upon abuse of discretion review, the Ninth Circuit affirmed the finding, noting that among other things, the plaintiffs did not fear harm from disclosure of their identities in the litigation because, if they were admitted to the school, it would be *obvious* they were not native Hawaiians, and other non-Hawaiians attended the school without incident. (*Id*. at p. 1045.) Here, Doe has not voluntarily revealed his caste at work. (PA 115-116 (Doe

Decl., ¶ 3).) Moreover, as stated above, Doe is not a party to this action. (Gov. Code, § 12965, subd. (a).) Rather, in this instance, DFEH seeks to afford a non-intervening aggrieved individual protection when the very harm he suffered stemmed from involuntary exposure of his caste status.

D. Disclosure of Doe's Identity Cannot Be Undone and Will Cause Irreparable Damage to Doe and DFEH's Interests

Once Doe's identity is disclosed, the damage will be irreparable, and he will have very few remedies to stem further public disclosure while working at Cisco or if he looks for another job. (*Advanced Textile*, *supra*, 214 F.3d at p. 1058 ["Anonymity in litigation can be used to shield plaintiffs from economic injury"].) Moreover, courts have found that employees are more effectively protected from retaliation by concealing their identities than by relying on the deterrent effect of *post hoc* remedies. (*Id.* at p. 1071.) Therefore, the severity of the harm once public disclosure is made, the reasonableness of Doe's fears, and his particular vulnerability to retaliation warrant allowing him to proceed anonymously.

E. Doe's Need for Anonymity Outweighs Any Prejudice to The Opposing Parties or The Public

The Superior Court expressed concern that granting Doe anonymity would impair the right of the public to know what occurs in its courts. (PA 672-673.) But as the Superior Court acknowledged, the right of privacy can outweigh that right in "an unusual case." (PA 671, quoting *Lincoln Unified*,

supra, 188 Cal.App.4th at p. 767.) As set forth above, this is such a case based on the factors set forth in *Lincoln Unified*. The harm DFEH seeks to redress involves the involuntary exposure of Doe's caste status, and the use of that status as a basis for harassment and discrimination. (PA 5-23.) Absent the use of a pseudonym and an appropriate protective order, it is probable that DFEH's government enforcement action can be used to expose Doe to further harm. (PA 294-380; DFEH Request for Judicial Notice, Exhs. 5-6.) This, in turn, will likely deter other aggrieved individuals from seeking DFEH enforcement of their rights. The Court should protect Doe's right to seek assistance from the DFEH without fear of further harm. (*Avongard*, *supra*, 1 Cal.App.5th at p. 1311; *Machine Zone, Inc*., *supra*, 9 Cal.App.5th at p. 628; see Gov. Code, § 12960, subd. (c).)

The use of the pseudonym in this case will neither prejudice defendants nor materially impair the public's right to know. State and federal courts have adopted a balancing test between the need for anonymity and the public interest in open proceedings. (*Lincoln Unified*, *supra*, 188 Cal.App.4th at pp. 766–767, citing *Advanced Textile*, *supra*, 214 F.3d at pp. 1067-1068.) As the Ninth Circuit explained in *Advanced Textile*, "a party may preserve his or her anonymity in judicial proceedings in special circumstances when the party's need for anonymity outweighs

prejudice to the opposing party and the public's interest in knowing the party's identity." (*Advanced Textile, supra*, 214 F.3d at p. 1068.) The Superior Court concluded that *Lincoln Unified* did not adopt any federal standard. (PA 671.) However, it is as explicit an endorsement of the federal standard as exists in any published California case.

The factors set forth in *Lincoln Unified* support DFEH's position here, yet the Superior Court effectively cabined *Lincoln Unified* and the ability to proceed anonymously only to cases involving sexual assault. (PA 673-674.) Here, DFEH submitted substantial evidence to support its argument that caste *is* a highly sensitive and personal issue. (PA 41-380.) Notwithstanding the evidence and context offered by DFEH for its motion, the Superior Court focused on cases involving sexual issues. (PA 673-674.)

In contrast to Doe's legitimate need for anonymity, there is no prejudice to the defendants, who already know his identity. (*Advanced Textile, supra*, 214 F.3d at p. 1069, fn. 11 ["[W]hatever knowledge defendants have of plaintiffs' identities . . . lessens their claims to be prejudiced by the use of pseudonyms"].) In addition, the use of a fictitious name is *in* the public interest because it encourages victims of caste discrimination and harassment to bring their own claims against their alleged harassers. (*Id.* at p. 1073 ["Employee suits to enforce their statutory rights benefit the general public"].) Otherwise, victims of caste-based

discrimination, harassment, and retaliation will face a Hobson's choice between seeking justice and having their caste more widely publicized in the process, thereby subjecting them to further caste-based discrimination, harassment, and retaliation from strangers, or avoiding the risk of further damage by staying silent. As is the case here, "anonymity does not obstruct the public's view of the issues joined or the court's performance in resolving them." (*Id.* at p. 1068 [internal citations omitted].) Put differently, the public's interest in knowing *Doe's specific identity* as a victim of alleged caste-based discrimination is minimal in absolute terms, and immaterial relative to the interest in ensuring effective enforcement of civil rights laws preventing discrimination based on caste. Rather than engaging in this type of analysis, the Superior Court's analysis effectively adopted a bright-line rule foreclosing proceeding anonymously in cases involving caste-based discrimination or other protected categories that do not involve intimate sexual matters.

Moreover, as the United States Supreme Court has recognized, fear of employer reprisals will frequently chill employees' willingness to challenge employers' violations of their rights. (*Id.* at p. 1073, citing *Mitchell v. Robert De Mario Jewelry, Inc*. (1960) 361 U.S. 288, 292 and *NLRB v. Robbins Tire & Rubber Co*. (1978) 437 U.S. 214, 240.) Permitting Doe to use a pseudonym will serve the public's interest by enabling the

government enforcement action to go forward and also because it will encourage other victims to come forward, not only in this case, but also in the future. On balance, the Court should allow John Doe to proceed anonymously.

V. CONCLUSION

The Superior Court erred because it did not apply the proper legal standard to DFEH's Motion. Rather than assessing the factors discussed in *Lincoln Unified*, *supra*, 188 Cal.App.4th 758, the Superior Court rejected the suggestion it should do so. Instead, the Superior Court cited the line of cases applying the use of a pseudonym to cases "involving human sexuality" and effectively limiting the ability to proceed anonymously to such cases, without acknowledging the other cases cited by DFEH that did not fall into that category. The Superior Court, moreover, concluded that Doe was effectively a party, despite well-settled authority (which the Superior Court recognized in denying defendants' motion to compel arbitration) that a complainant is *not* a party when DFEH enforces rights under FEHA. Additionally, the Superior Court only nominally considered the substantial evidence presented in support of DFEH's Motion and did not consider some of it at all (refusing to take judicial notice of news articles), while extensively discussing the public's interest in court proceedings. But granting anonymity to Doe would not prevent the public

from knowing what occurs in the case.

As irreparable damage will be done at the expiration of the Superior Court's sixty day stay of its order, this is a matter of great urgency. For the reasons stated herein, DFEH respectfully requests that the Court grant the petition. If the Court denies the petition, DFEH respectfully requests the Court to grant an additional sixty day stay to allow DFEH time to seek further review.

Dated: April 1, 2021

Respectfully submitted,

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/s/
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CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c)(1) of the California Rules of Court, the undersigned hereby certifies that the foregoing PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF [EXHIBITS FILED UNDER SEPARATE COVER] uses a 13-point Times New Roman font and contains approximately 8,836 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: April 1, 2021

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/s/

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CASE NO. H048962

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Plaintiff/Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA,
Respondent,

CISCO SYSTEMS, INC.; SUNDAR IYER; AND RAMANA KOMPELLA,
Defendants/Real Parties in Interest.

Superior Court of California, County of Santa Clara
Case No. 20CV372366
Hon. Drew C. Takaichi, Department 2

JOINT PRELIMINARY OPPOSITION OF
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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, Rule 8.208)

There are no interested entities or persons that must be listed in this certificate under Rule 8.208.

Dated: April 8, 2021

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I. INTRODUCTION

Real Parties in Interest Cisco Systems, Inc. ("Cisco"), Sundar Iyer ("Iyer"), and Ramana Kompella ("Kompella," collectively the "Real Parties in Interest") respectfully submit this Preliminary Opposition to the Petition for Writ of Mandate, Prohibition, or Other Appropriate Relief filed in this Court on April 1, 2021 (the "Petition") by Petitioner the Department of Fair Employment and Housing ("DFEH").

The Petition and accompanying request for relief must be denied because it is predicated on a misinterpretation of the Order denying DFEH's Motion to Proceed Using a Fictitious Name (the "Motion") issued on February 11, 2021 (the "Order") by the Superior Court of California for the County of Santa Clara (the "Trial Court").

In its Petition, DFEH claims that the Trial Court erred by adopting a blanket rule preventing a party or witness from proceeding pseudonymously in litigation unless they are a victim of sexual assault. In doing so, the Petition grossly mischaracterizes the Trial Court's Order, ultimately ignoring the underlying reasoning of the Trial Court's decision. The trial court did not limit the ability of a party or witness to proceed anonymously, let alone misinterepret applicable law or make erroneous evidentiary rulings. Rather, the Trial Court rejected DFEH's request to proceed anonymously on behalf of John Doe ("Doe") because it concluded, after a comprehensive analysis of applicable law, that Doe's unsubstantiated threats of retaliation and social stigmatization were speculative, and therefore insufficient to overcome the public's interest in open judicial proceedings.

As such, the Petition does little more than re-hash prior arguments,

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failing to demonstrate any abuse of discretion or error by the Trial Court that would justify review by this Court.

II. BACKGROUND AND PROCEDURAL HISTORY

On June 30, 2020, DFEH filed suit on behalf of Doe in the District Court for the Northern District of California by filing a complaint pseudonymously. Doe alleges that Iyer and his subsequent interim manager, Kompella, harassed him in violation of the California Fair Employment and Housing Act because he is a self-identified Dalit. (*See* Complaint, Petitioner's Appendix ("PA") 005-023.) Doe alleges related claims against Cisco for discrimination, including claims for failure to prevent discrimination, harassment, and retaliation. (*Id.*)

Specifically, the Complaint alleges that, "[i]n or around October 2016, two of Doe's colleagues told Doe that Iyer informed them that Doe was from the 'Scheduled Caste' (Dalit) and enrolled in the Indian Institute of Technology (IIT) through affirmative action." (Complaint, ¶ 31, PA 012.) Iyer denied making the statement, indicating "Doe's colleagues were not telling the truth." (*Id.*, ¶ 32.) In fact, Iyer was responsible for recruiting and hiring Doe into an engineering role on an elite project. (*Id.* at ¶ 30.)

On or around February 26, 2018, Kompella became the Interim Head of Engineering after Iyer stepped down from his position as head of the project. (Complaint, ¶45, PA 014.) Doe's only non-conclusory allegation is that Kompella began "requiring Doe to submit weekly status reports," although that requirement was not instituted at the request of Kompella, let alone on his authority. (*Id.*)

DFEH voluntarily dismissed the federal action on October 16, 2020

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and initiated this action on behalf of Doe, again pseudonymously, by filing a complaint the same day. As grounds for proceeding under a pseudonym, DFEH has represented in the Complaint that Doe's status as a self-identified Dalit exposes him to condemnation and retaliation, including "***potential*** threats of violence." (Complaint, p.1, n.1 (emphasis added), P005.)

On November 2, 2020, DFEH filed its Motion to Proceed Using a Fictitious Name, arguing that anonymity in this litigation is appropriate for two reasons. First, to protect Doe's family, in both India and the United States, from perceived threats and acts of violence should their status as Dalit be revealed. (*See* Doe Decl., 3:14-20, PA 117.) And second, to prevent Doe, his wife, and their children from being discriminated and retaliated against in their professional and social lives. (*See id.* at 3:6-13; 3:21-24.)

On January 12, 2021, the Real Parties in Interest concurrently filed their oppositions to the Motion, arguing that DFEH's request for anonymity rests entirely on a strained and procedurally improper interpretation of federal case law, which has no applicability when a California statute controls. (PA 560-621.) The Real Parties in Interest further argued that the "evidence" relied on by DFEH was, in part, procedurally improper, and nonetheless consisted of nothing more than anecdotal statements of non-parties and unsubstantiated threats of retaliation against Doe. (*Id.*)

On February 3, 2021, the Court issued its Order denying the Motion, ultimately concluding that Doe failed to establish a basis for proceeding under a pseudonym. (PA 669-676.) In reaching that decision, the Trial Court applied the Third District Court of Appeal's decision in *Doe v.*

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Lincoln Unified School District, 188 Cal. App. 4th 758 (2010), which cited favorably to the Ninth Circuit test for anonymity developed in *Does I Thru XXIII v. Advanced Textile Corp*, 214 F.3d 1058 (9th Cir. 2000). (PA 670-674.)

The Trial Court found that "the risk of retaliatory physical or mental harm to Doe . . . is speculative," and therefore insufficient to justify the use of a pseudonym under *Lincoln* and *Advanced Textile*. (PA 672.) This decision was largely premised on the fact that neither DFEH nor Doe provided any information concerning the source and/or severity of any actual threats of violence against Doe and/or his family ***in the United States***, or that authorities in the United States would be unable, or unwilling, to offer protection against such threats. (PA 672-673.) Indeed, DFEH's showing is, and was, entirely speculative, and largely related to conditions faced by Dalits in India, not the San Francisco Bay Area. Additionally, the Trial Court was unpersuaded by DFEH's arguments that the identification of an individual's caste ***in the United States*** is of a sensitive or highly personal nature sufficient to justify anonymity. (PA 674.) As a result, the Trial Court properly concluded, "[w]hile the Court agrees that plaintiffs and witnesses can proceed anonymously, DFEH and Doe have failed to establish a basis for doing so here." (PA 674.)

III. ARGUMENT

A. Standard Of Review.

DFEH submits that the Trial Court Order is subject to review under an abuse of discretion standard. (*See* Petition, p. 23, ¶ 20.) The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. *See In re Stephanie M.*, 7 Cal. 4th 295, 318 (1994), *as modified*

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on denial of reh'g (May 12, 1994). Where a trial court has discretionary power to decide an issue, an appellate court is not authorized to substitute its judgment of the correct result for the decision of the trial court. *See In re Marriage of King*, 80 Cal. App. 4th 92, 118 (2000). Indeed, the reviewing court resolves any evidentiary conflicts most favorably to the trial court's ruling and, if more than one reasonable inference can be deduced from the facts, the reviewing court must accept the inference supporting the trial court's decision *See In re Stephanie M.*, 7 Cal. 4th at 318.

B. DFEH Misstates The Trial Court's Ruling In Positing A Purported Legal Challenge To The Order.

In an attempt to justify this Court's intervention, DFEH argues that the Trial Court committed an abuse of discretion by failing to apply the Third District's decision in *Doe v. Lincoln Unified School District*, 188 Cal. App. 4th 758 (2010). (*See* Petition, p. 29.) This is a blatant misstatement of the Trial Court's Order.

A simple review of the Order demonstrates that the Trial Court did apply *Lincoln*, ultimately concluding that DFEH and Doe failed to meet the *Advance Textile* factors justifying anonymous litigation given the speculative nature of Doe's perceived fears of retaliation and social stigmatization. (PA 670-674.)

In making this determination, the Trial Court did not "adopt[] a categorical rule limiting the ability to use pseudonyms to protect identities of witnesses unless they are victims of sexual assault," and there is nothing in the Order to support such a statement. (Petition, p. 29.) Rather, the Trial Court merely concluded that the identity of an individual's caste, supported

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by unrelated narratives of caste identity in India, does not raise privacy concerns sufficient to justify anonymous litigation in California. (PA 674.) In determining what privacy concerns are sufficient to justify anonymity, the Trial Court analyzed the case law cited by the parties, the majority of which addressed privacy concerns in the context of human sexuality. (PA 673-674.) The Trial Court indicated that courts have traditionally found such concerns to be adequate, albeit not required, to justify anonymity, and that those decisions are a helpful guidepost in ascertaining analogous concerns warranting anonymity. (PA 674.) As a result, the Trial Court did not apply the incorrect legal standard in denying DFEH's Motion, and there is no risk that the Order will adversely affect the ability of individuals with sufficient, non-speculative, privacy concerns to seek anonymity. Indeed, if DFEH's position were to be accepted, and litigants were freely permitted to proceed anonymously without demonstrating the requisite level of proof, then the public's interest in open judicial proceedings would be gutted.

DFEH's blatant mischaracterization of the Trial Court's Order, crafted for no other purpose than to convolute the issues in an attempt to justify this Court's intervention, is insufficient to support the Petition.

C. The Trial Court Did Not Abuse Its Discretion When It Concluded That Doe Failed To Establish A Basis For Proceeding Anonymously.

DFEH's other argument justfying Court intervention fares no better. The Trial Court did not "disregard[] the substantial evidence submitted by DFEH in support of its motion," and there is nothing in the Trial Court's Order to support such a self-serving statement. (Petition, p. 36.) The Trial Court correctly weighed the evidence submitted by DFEH in making its

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decision, ultimately concluding that Doe failed to provide any information concerning the source and/or severity of any actual threats of violence against Doe and/or his family ***in the United States***, or realistic danger of social stigmatization. (PA 672-673.) Similarly, the Trial Court properly denied, in part, DFEH's request for judicial notice, which improperly sought notice of ***the disputed contents*** of several articles and perodicals. (PA 672.) DFEH does not allege that the Trial Court's decision was erroneous in this regard, yet nonetheless relies on these very sources in an attempt to demonstrate an abuse of discretion.

Clearly, DFEH fails to appreciate the applicable standard of review and its corresponding limitations on the permissible scope of relief this Court can grant. Simply re-arguing the merits of its underlying Motion is not sufficient to prompt this Court's intervention. *See In re Marriage of Rosevear*, 65 Cal. App. 4th 673, 682 (1998) (holding that the burden is on the complaining party to establish abuse of discretion, and the showing on appeal is insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion).

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IV. CONCLUSION

For the foregoing reasons, Real Parties in Interest Cisco Systems, Inc., Sundar Iyer, and Ramana Kompella respectfully request that the Petition for Writ of Mandate, Prohibition, or Other Appropriate Relief be summarily denied.

Respectfully Submitted,

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Alexander Hernaez, Esq.
Andrew S. Esler, Esq.

Attorneys for Real Parties in Interest Sundar Iyer and Ramana Kompella

/s/ Lynne C. Hermle
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Attorneys for Real Party in Interest Cisco Systems, Inc.

Dated: April 8, 2021

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certified that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed Preliminary Opposition of the Real Parties in Interest is produced using 13-point Times New Roman font and contains approximately 1,839 words, which is less than the total words permitted by the rules of the Court. Counsel relies on the word count of the computer program used to prepare this Preliminary Opposition.

Dated: April 8, 2021

FOX ROTHSCHILD LLP

By *<u>/s/ Alexander Hernaez</u>*
Alexander Hernaez

Attorneys for Real Parties in Interest Sundar Iyer and Ramana Kompella

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PROOF OF SERVICE

I, the undersigned, hereby declare:

I am over the age of eighteen years and not a party to this action. My business address is: Fox Rothschild LLP, 345 California Street, Suite 2200, San Francisco, CA 94104-2670. My electronic service address is epaulsen@foxrothschild.com

On April 8, 2021, I served the following document(s) by email:

JOINT PRELIMINARY OPPOSITION OF REAL PARTIES IN INTEREST

by transmitting a true copy to the following person(s) at the email address(es) listed below. I waited a customary time after transmitting all files, and did not receive a returned notice that the files did not go through properly.

Melanie L. Proctor melanie.proctor@dfeh.ca.gov Siri Thanasombat siri.thanasombat@dfeh.ca.gov Jeanette Hawn jeanette.hawn@dfeh.ca.gov Elizabeth Munoz elizabeth.munoz@dfeh.ca.gov Janette Wipper janette.wipper@dfeh.ca.gov Stephanie Newton stephanie.newton@dfeh.ca.gov California Department of Fair Employment and Housing 2218 Kausen Drive, #100 Elk Grove, CA 95758 Telelphone: 916-478-7251	*Attorneys for Respondent/Plaintiff California Department of Fair Employment and Housing* Via Electronic Service

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Trial Court Hon. Drew C. Takaichi Judge President Santa Clara County Superior Court 191 N. First Street San Jose, CA 95113 Telephone: 408-882-2120	Via Mail Service

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 8, 2021 at San Francisco, California.

Elisabeth Paulsen	*/s/ Elisabeth Paulsen*
Declarant	Signature

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Filed 8/5/22

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, Petitioner, v. THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent, CISCO SYSTEMS, INC., et al., Real Parties in Interest.	No. H048962 (Santa Clara Super. Ct. No. 20-CV-372366)

When a party to a civil action asks to proceed under a fictitious name, the trial court must determine whether that party's privacy concerns outweigh the First Amendment right of public access to court proceedings. In this employment discrimination suit by the Department of Fair Employment and Housing, the Department asked that the real party in interest—the affected employee—be referred to as John Doe, in part because revealing his identity could jeopardize the safety of his family members in India. The trial court denied the request, deciding that the safety of a party's family members outside California cannot be considered when weighing the competing interests in privacy versus public access. We conclude evidence of potential harm to family members anywhere is a legitimate consideration in determining whether a party should be granted anonymity in litigation. We will issue a writ of mandate directing the trial court to vacate its order and reconsider the issue.

I. BACKGROUND

The Department of Fair Employment and Housing, the state administrative agency responsible for enforcing employment discrimination laws, brought this action against Cisco Systems, Inc., for employment discrimination based on caste. The Department's complaint alleges an engineer employed by Cisco was treated unfavorably by two supervisors because he is from the lowest caste (Dalit) under the traditional caste system of India.

The Department sued under the Fair Employment and Housing Act, which allows it to bring a civil action on behalf of an employee affected by discrimination. (See Gov. Code, § 12965, subd. (a)(1).) In such an action, the Department is the plaintiff and the employee is the real party in interest. (Gov. Code, § 12965, subd. (a)(3).) The employee was concerned about further mistreatment, even violence, against him and his family if his lower caste status were publicly revealed. He asked that the Department not use his name in legal filings and that his identity be protected from disclosure in court proceedings.

The Department moved for an order allowing the employee to proceed in the action under a fictitious name. It supported the motion with evidence that in India violence is regularly perpetrated against people considered to be of lower caste status, and the employee has family members who live there and could be in danger if their caste affiliation became known. The Department also presented evidence that publicly revealing the caste of the employee could hinder his ability to obtain future employment and might result in his family being socially ostracized.

The trial court denied the motion. It acknowledged that fictitious names can be used in judicial proceedings when identifying a party would create a risk of retaliatory physical or mental harm. But it expressly declined to consider evidence that revealing the employee's caste affiliation created a risk of harm to family members in India. The trial court stated in its written order: "While the Court has great sympathy for the plight

of those members of the Dalit in India, research has not revealed any case authority—and Plaintiff has not pointed to any case authority—as to whether residents of another country or another country's discriminatory practices is a consideration as to whether a party in California may remain anonymous in a lawsuit alleging violation of the California FEHA against a corporation in California." The court found speculative whether the employee would be denied future employment opportunities and subjected to harassment if his identity were revealed, and decided the evidence was insufficient to allow for anonymity on that basis.

The Department petitioned for a writ of mandate requiring the trial court to vacate its order and allow use of a fictitious name. We temporarily stayed the ruling and issued an order to show cause why the requested relief should not be granted.

II. DISCUSSION

The names of all parties to a civil action must be included in the complaint. (Code Civ. Proc., § 422.40.) That requirement extends to real parties in interest—anyone with a substantial interest in the subject matter of the action. (*Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1296–1297.) In an employment discrimination lawsuit brought by the Department of Fair Employment and Housing, the affected employee is a real party in interest. (Gov. Code, § 12965, subd. (a)(3).) As a result, the Department's motion for the employee to proceed under a fictitious name is a request that a party be allowed to litigate anonymously.

Because of the inherently sensitive nature of some proceedings, statutes specifically allow for keeping certain parties' identities confidential. (See, for example, Civ. Code, § 1708.85, subd. (f)(1) [plaintiff in action for nonconsensual distribution of sexually explicit materials may proceed under pseudonym]; Code Civ. Proc., § 372.5 [allowing pseudonym for guardian ad litem litigating on behalf of a minor]; Civ. Code, § 3427.3 [allowing pseudonym in actions for interference with access to health care]; Cal. Rules of Court, rule 8.401(a) [providing for anonymity in juvenile appeals].) Even in the

absence of a statute, anonymity for parties may be granted when necessary to preserve an important privacy interest. (*Doe v. Lincoln Unified School District* (2010) 188 Cal.App.4th 758, 766; see also *Starbucks Corp. v. Superior Court* (2008) 168 Cal.App.4th 1436, 1452, fn. 7.)

In *Doe v. Lincoln Unified School District*, *supra*, 188 Cal.App.4th 758, the court of appeal noted the common practice in California courts of using pseudonyms to protect privacy, and observed federal courts have likewise permitted plaintiffs to use pseudonyms "in special circumstances when the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." (*Id*. at pp. 766–767; quoting *Does I thru XXIII v. Advanced Textile Corp.* (9th Cir. 2000) 214 F.3d 1058, 1067.) But no California case has articulated the standard that applies to determine whether a party may proceed anonymously absent specific statutory authorization. (See *Starbucks Corp. v. Superior Court*, *supra*, 168 Cal.App.4th 1436, 1452, fn. 7 ["We do not decide the appropriate standards or mechanisms for protective nondisclosure of identity in California, because the matter is not now before us."].)

In determining the appropriate standard, we first note that here the identity of the employee seeking to proceed under a pseudonym is known to the defendant. Significant constitutional concerns would be implicated were it otherwise. (See, e.g., *Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1132 [testimony from an anonymous witness unknown to a criminal defendant violates right of confrontation and due process].) Since the employee's identity is known to the defendant, proceeding anonymously would not similarly intrude on the defendant's rights.

But another important constitutional right is implicated when a party is allowed to proceed anonymously: the right of public access to court proceedings. Among the guarantees of the First Amendment to the United States Constitution is that court proceedings are open and public. (*Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 580.) Public access to court proceedings is essential to a functioning

democracy. It promotes trust in the integrity of the court system, and it exposes abuses of judicial power to public scrutiny. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1221 (*KNBC*).) The right of public access applies not only to criminal cases, but also to civil proceedings like this one. (*Id.* at p. 1222.) And the right to access court proceedings necessarily includes the right to know the identity of the parties. (*Id.* at p. 1211 [public has a general right of access to civil proceedings; by submitting a dispute to resolution in court, litigants should anticipate the proceedings will be adjudicated in public].)

KNBC involved media coverage of a civil trial between two Hollywood celebrities. In an effort to prevent the jury from learning through the media of matters discussed outside the jury's presence, the trial court closed the courtroom to all spectators – including the media – except when the jury was present. The California Supreme Court held that closing a courtroom to the public during trial proceedings infringes on the First Amendment right to public access. Under *KNBC*, because of the constitutional interest at stake, a trial court cannot close proceedings to the public without first conducting a hearing and expressly finding an overriding interest supporting closure; a substantial probability the overriding interest will be prejudiced absent closure; the proposed closure is narrowly tailored to serve the overriding interest; and no less restrictive means would protect the overriding interest. (*KNBC*, *supra*, 20 Cal.4th 1178, 1218–1221.)

KNBC also made clear the public's right of access extends to documents filed in a civil proceeding, so the same inquiry must be conducted before a court can seal any portion of the record. (*KNBC*, *supra*, 20 Cal.4th 1178, 1217.) The Judicial Council accordingly has adopted rules requiring that courts employ the overriding interest test before sealing a record. (Cal. Rules of Court, rules 2.550; 2.551; 8.160; see also *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 68.)

Much like closing the courtroom or sealing a court record, allowing a party to litigate anonymously impacts the First Amendment public access right. Before a party to

a civil action can be permitted to use a pseudonym, the trial court must conduct a hearing and apply the overriding interest test: A party's request for anonymity should be granted only if the court finds that an overriding interest will likely be prejudiced without use of a pseudonym, and that it is not feasible to protect the interest with less impact on the constitutional right of access.[1] In deciding the issue the court must bear in mind the critical importance of the public's right to access judicial proceedings. Outside of cases where anonymity is expressly permitted by statute, litigating by pseudonym should occur "only in the rarest of circumstances." (*KNBC*, *supra*, 20 Cal.4th 1178, 1226.)

Our review of the decision to deny a request to proceed under a pseudonym involves a constitutional question, and we therefore use our independent judgment to determine whether the trial court's ruling is correct. (*Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154, 1161–1162.) Although the trial court applied the correct standard to decide the question, it erred by not considering relevant evidence likely to affect the answer. In making its decision the court expressly considered the public's right to access court proceedings, and cited *KNBC* in its order. It considered whether an important interest would be prejudiced if the employee were required to publicly disclose his identity. Even without any California authority directly on point, it is clear the trial court understood the interests it needed to balance. (See, e.g., *Does I thru XXIII v. Advanced Textile Corp.*, *supra*, 214 F.3d 1058, 1068–1073 [setting out factors courts should consider in response to a party's request for anonymity].)

But in deciding whether an overriding interest justified anonymity, the trial court expressly declined to consider the employee's concern about safety of family members in India. That was error. Retaliatory harm to family members—wherever they are

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[1] Procedurally, because a hearing is required, a party who wants to proceed anonymously will file the initial complaint or petition *conditionally* under a pseudonym and then move for an order granting permission to proceed that way. If the request is granted, the initial pleading can remain. If pseudonym use is denied, the pleading must be amended to state the party's true name.

located—is precisely the kind of interest that may justify allowing a party to litigate under a pseudonym. As the trial court acknowledged, substantial risk of harm to the employee himself would be sufficient to allow for anonymity. An identifiable risk that family members will suffer retaliatory physical harm should be treated the same way. Indeed, specific concerns for the safety of family members may sometimes be greater than the concern for one's own safety. The fact that the family members are geographically distant does not render the concern irrelevant as a threshold matter.

A party seeking anonymity has the burden to show that geographically distant family members are at risk. The trial court's task is to consider the evidence produced on that point and assign it the appropriate weight. (See, e.g., *Singh v. INS* (9th Cir. 1996) 94 F.3d 1353, 1359 [In asylum proceeding, "whether discrimination, harassment, or violence directed at a particular group on account of a protected ground is sufficiently offensive to constitute persecution [] must be decided on a case-by-case basis."].) Assessing the specific risk of harm to family members in India is therefore a fact-dependent exercise and involves factors such as the likelihood of harm to the identified family members and how severe the harm would be. Those considerations are critical to determining whether the risk of harm to family members is an overriding interest that outweighs the First Amendment right of public access to court proceedings. The trial court never made findings on those points because it deemed the issue of family member safety irrelevant and did not consider it further. The trial court should be given the opportunity to make the determination in the first instance. We therefore conclude the appropriate remedy is to vacate the order denying the request to proceed under a fictitious name and direct the trial court to reconsider the issue. When it does so, the court must apply the overriding interest test and take into account all considerations relevant to determining whether the public's right of access is outweighed by the employee's privacy interest, including specific risk of retaliatory harm to family members outside the jurisdiction.

III. DISPOSITION

The petition for writ of mandate is granted. Let a peremptory writ of mandate issue directing respondent court to vacate its order denying petitioner's motion to proceed using a fictitious name and to reconsider the motion based on the views expressed in this opinion. Costs in this original proceeding are awarded to petitioner.

Grover, Acting P. J.

WE CONCUR:

Danner, J.

Lie, J.

Trial Court:	Santa Clara County Superior Court Superior Court No. 20-CV-372366
Trial Judge:	Hon. Drew C. Takaichi
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Superior Court of CA,
County of Santa Clara
20CV372366
Reviewed By: D Harris

(Fee Exempt, Gov. Code, § 6103)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, an agency of the State of California, Plaintiff, vs. CISCO SYSTEMS, INC., a California Corporation; SUNDAR IYER, an individual; RAMANA KOMPELLA, an individual, Defendants.	**Case No.** 20CV372366 **CIVIL RIGHTS - EMPLOYMENT DISCRIMINATION** **DEMAND FOR JURY TRIAL**

The California Department of Fair Employment and Housing (DFEH) brings this action against Cisco Systems, Inc. (Cisco) to remedy workplace discrimination, harassment, and retaliation violations at its San Jose, California corporate headquarters under the California Fair Employment and Housing Act, Cal. Gov't Code § 12900, *et seq*. (FEHA). Specifically, Cisco engaged in unlawful employment practices on the bases of religion, ancestry, national origin/ethnicity, and race/color against Complainant John Doe,[1] and after Doe opposed such unlawful practices, Cisco retaliated against him.

[1] Because of the stigma and potential threats of violence associated with a person's status as Dalit, DFEH uses a fictitious name for Complainant to protect his privacy and protect him from further discrimination, harassment, or retaliation based on his caste and related characteristics. Through the DFEH's administrative process, Defendants have been made aware of Doe's legal name.

Cisco also failed to take all reasonable steps to prevent such unlawful practices in its workplace, as required under FEHA.

INTRODUCTION

1. John Doe is Dalit Indian, a population once known as the "Untouchables," who are the most disadvantaged people under India's centuries-old caste system.[2] As a strict Hindu social and religious hierarchy, India's caste system defines a person's status based on their religion, ancestry, national origin/ethnicity, and race/color—or the caste into which they are born—and will remain until death.[3] At the bottom of the Indian hierarchy is the Dalit, typically the darkest complexion caste, who were traditionally subject to "untouchability" practices which segregated them by social custom and legal mandate. Although *de jure* segregation ended in India, lower caste persons like Dalits continue to face *de facto* segregation and discrimination in all spheres.[4] Not only do Dalits endure the most severe inequality and unfair treatment in both the public and private sectors, they are often targets of hate violence and torture. Of India's approximately 1.3 billion people, about 200 million are Dalits.[5]

2. Unlike Doe, most Indian immigrants in the United States are from upper castes. For example, in 2003, only 1.5 percent of Indian immigrants in the United States were Dalits or members of lower castes.[6] More than 90 percent were from high or dominant castes. Similarly, upon information and belief, the same is true of the Indian employees in Cisco's workforce in San Jose, California.

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[2] Complainant John Doe is Dalit because of his religion, ancestry, national origin/ethnicity, and race/color. The caste to which someone belongs is immutable and determines their social status in traditional Indian culture. Social stratification and discrimination based on caste persists in India and among those living outside India, including in America. Encyclopedia Britannica, *India: Caste* (June 24, 2020), https://www.britannica.com/place/India/Caste (last visited June 29, 2020).

[3] Smita Narula, Human Rights Watch, *Caste Discrimination: A Global Concern,* Background: "Untouchability" and Segregation (2001), https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm#P133_16342 (last visited June 29, 2020).

[4] Human Rights Watch & Center for Human Rights and Global Justice at New York University School of Law, *Hidden Apartheid: Caste Discrimination against India's "Untouchables,"* at 45 (2007), https://www.hrw.org/reports/2007/india0207/india0207webwcover.pdf.

[5] Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs, Government of India, *2011 Primary Census Abstract*, https://censusindia.gov.in/pca/default.aspx.

[6] Tinku Ray, *The US isn't safe from the trauma of caste bias*, The World (Mar. 08, 2019, 9:00 AM), https://www.pri.org/stories/2019-03-08/us-isn-t-safe-trauma-caste-bias.

3. As alleged below, at Cisco's San Jose headquarters, Doe worked with a team of entirely Indian employees. The team members grew-up in India and immigrated as adults to the United States. Except for Doe, the entire team are also from the high castes in India. As beneficiaries of the caste system, Doe's higher caste supervisors and co-workers imported the discriminatory system's practices into their team and Cisco's workplace.

4. Doe's supervisors and co-workers, Defendants Sundar Iyer and Ramana Kompella, are from India's highest castes. Because both knew Doe is Dalit, they had certain expectations for him at Cisco. Doe was expected to accept a caste hierarchy within the workplace where Doe held the lowest status within the team and, as a result, received less pay, fewer opportunities, and other inferior terms and conditions of employment because of his religion, ancestry, national origin/ethnicity, and race/color. They also expected him to endure a hostile work environment. When Doe unexpectedly opposed the unlawful practices, contrary to the traditional order between the Dalit and higher castes, Defendants retaliated against him. Worse yet, Cisco failed to even acknowledge the unlawful nature of the conduct, nor did it take any steps necessary to prevent such discrimination, harassment, and retaliation from continuing in its workplace.

5. Not only did Cisco disregard Doe, but also its own workforce. For decades, similar to Doe's team, Cisco's technical workforce has been—and continues to be—predominantly South Asian Indian. According to the 2017 EEO-1 Establishment Report (EEO-1 Report), for example, Cisco has a significant overrepresentation of Asian employees compared to other companies in the communications, equipment and manufacturing industry (NAICS 3342) in the same geographic area, which is statistically significant at nearly 30 standard deviations.[7] Such overrepresentation is also present in management and professional job categories. In addition to Cisco's direct workforce, Cisco also employs a significant

[7] 2017 EEO-1 Report for Cisco Systems, Inc. at 170 West Tasman Drive in San Jose, California. Because Cisco is a federal contractor and employs 50 or more employees in California and the United States, Cisco is required to file an Employer Information Report EEO-1, also known as the EEO-1 Report. The EEO-1 Report requires employers to report employment data for all employees categorized by sex, race/ethnicity, and job category. EEOC, *EEO-1 Instruction Booklet*, https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet (last visited June 23, 2020).

number of South Asian Indian workers through Indian-owned consulting firms.[8] When combining its direct employees and consultants together, Cisco is among the top five H-1B visa users in the United States.[9] Over 70 percent of these H1-B workers come from India.[10] Outside of San Jose, Cisco's second largest workforce is in India.

6. Although Cisco has employed a predominantly South Asian Indian workforce for decades, Cisco was—and continues to be—wholly unprepared to prevent, remedy, or deter the unlawful conduct against Doe or similarly situated lower caste workers. Cisco failed to take any steps whatsoever to prevent ". . . inequalities associated with [c]aste status, ritual purity, and social exclusion [from] becom[ing] embedded . . ." into its workplace, which is a documented problem for ". . . American mainstream institutions that have significant South Asian immigrant populations."[11] A 2018 survey of South Asians in the U.S. found that 67% of Dalits reported being treated unfairly at their American workplaces because of their caste and related characteristics.[12] However, few South Asian employees raised concerns to their American employers, because they believe "their concerns will not be given weight" or will lead to "negative consequences to their career."[13] This is precisely what happened to Doe at Cisco.

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[8] Joshua Brustein, *Cisco, Google benefit from Indian firms' use of H-1B program*, The Economic Times (June 6, 2017, 8:31 PM), https://economictimes.indiatimes.com/tech/ites/cisco-google-benefit-from-indian-firms-use-of-h-1b-program/articleshow/59020625.cms.

[9] Laura D. Francis & Jasmine Ye Han, *Deloitte Top Participant in H-1B Foreign Worker Program—By Far*, Bloomberg Law (Feb. 4, 2020, 2:30 AM), https://news.bloomberglaw.com/daily-labor-report/deloitte-top-participant-in-h-1b-foreign-worker-program-by-far.

[10] U.S. Citizenship and Immigration Services, *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2019 Annual Report to Congress October 1, 2018 – September 30, 2019*, at 7 (Mar. 5, 2020), https://www.uscis.gov/sites/default/files/reports-studies/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf

[11] Maari Zwick-Maitreyi et al., Equality Labs, *Caste in the United States: A Survey of Caste Among South Asian Americans*, 16 (2018) https://static1.squarespace.com/static/58347d04bebafbb1e66df84c/t/5d9b4f9afbaef569c0a5c132/1570459664518/Caste_report_2018.pdf.

[12] *Id.* at 20.

[13] *Ibid.*

JURISDICTION AND VENUE

8. This action is authorized and instituted pursuant to California Government Code sections 12930 (f) and (h), and 12965(a).

9. The employment practices alleged to be unlawful were and are now being committed within the County of Santa Clara in the State of California, which is within the jurisdiction of the Superior Court of the County of Santa Clara. (Cal. Gov't Code § 12965, subd. (a).)

10. Plaintiff has standing to bring this suit and has complied with all statutory prerequisites to maintain FEHA claims.

11. John Doe filed a pre-complaint inquiry with DFEH on or about April 20, 2018, and a verified administrative complaint against Defendant Cisco on or about July 30, 2018. The charge was dually filed with the Equal Employment Opportunity Commission (EEOC). DFEH properly served the administrative complaint on Defendant Cisco on or about August 7, 2018. On or around October 9, 2018, Doe filed an amended administrative complaint against Defendants Cisco, Iyer, and Kompella. The amended administrative complaint was properly served on all named responding parties on or about October 9, 2018.

12. DFEH investigated Doe's dually filed EEOC-DFEH charge and complaint pursuant to California Government Code sections 12930(f) and 12963.

13. Pursuant to Cal. Gov't Code § 12965(a), the DFEH convened a mandatory dispute resolution session on or about February 11, 2020. Settlement discussions were unsuccessful. The DFEH and Defendants entered consecutive tolling agreements to toll the statutory deadline for DFEH to file a civil action to June 30, 2020.

14. On or about June 30, 2020, DFEH filed a civil rights complaint in the United States District Court for the Northern District of California. On or about October 16, 2020, DFEH voluntarily dismissed the federal civil rights action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

15. DFEH files this state court action pursuant to the FEHA, California Government Code sections 12930, subdivisions (f)(1), (h), and 12965, subdivision (a), and 28 U.S.C. section 1367,

subdivision (d). All conditions precedent to the institution of this lawsuit have been fulfilled. The amount of damages sought by this complaint exceeds the minimum jurisdictional limits of this Court.

PARTIES

Plaintiff California Department of Fair Employment and Housing

16. Plaintiff DFEH is the agency of the State of California charged with the administration, interpretation, investigation, and enforcement of the FEHA, and is expressly authorized to bring this action by California Government Code sections 12930, subdivisions (f), (h), and 12965, subdivision (a).

17. Complainant John Doe is the person claiming to be aggrieved on whose behalf the DFEH files this civil action. (Cal. Gov't Code, §§ 12965, subd. (a), 12930, subd. (f), (h).)

18. At all relevant times, Complainant Doe was, and remains, an "employee" of Defendant Cisco within the meaning of FEHA. (Cal. Gov't Code, §§ 12926, subd. (c)-(d), 12940, subd. (a), (j), (k).) On or around October 2015 to November 2018, Doe worked as a Principal Engineer with Cisco in Santa Clara County, California. Since on or about December 2018, Doe has worked as a Principal Engineer with Cisco in Santa Clara County, California.

19. At all relevant times, Complainant Doe was, and remains, a "person" within the meaning of the FEHA. (Cal. Gov't Code, §§ 12925, subd. (d), 12940, subd. (h).)

Defendant Cisco Systems, Inc.

20. Defendant Cisco (EEO-1 reporting number N14137) is a leading global high-tech firm founded in 1984. The company designs, manufactures, sells, and supports equipment for internet-based networking. It has approximately 75,900 employees worldwide and is publicly traded on NASDAQ. The firm's EEO-1 reports places it in the communications equipment manufacturing industry (NAICS 3342). Within California, Cisco employs at least 18,281 employees at 19 establishments in 6 different metropolitan areas, including the corporate headquarters in San Jose.

21. At all relevant times, Defendant Cisco has continuously been and is now a California Corporation doing business in the State of California and the Cities of San Jose and Milpitas in Santa Clara County and has continuously had at least fifteen employees.

22. At all relevant times, Defendant Cisco has continuously been an employer engaged in an industry affecting commerce within the meaning of California Government Code, section 12926, subdivision (d).

23. At all relevant times, Cisco contracted with and received federal and state funds from the United States and California governments.

Defendant Sundar Iyer

24. At all relevant times, Defendant Sundar Iyer was employed by Cisco as a "supervisor" within the meaning of FEHA. (Cal. Gov't Code, § 12926, subd. (t).) DFEH is informed and believes that Iyer was a Distinguished Engineer with Cisco. Public records indicate Iyer resided in Palo Alto, California at the time of the events alleged herein.

25. At all relevant times, Defendant Iyer was the agent of Defendant Cisco and was acting within the scope and authority of such agency, and Defendant Iyer is jointly and severally responsible and liable to Complainant Doe for the damages alleged.

Defendant Ramana Kompella

26. At all relevant times, Defendant Ramana Kompella was employed by Cisco as a "supervisor" within the meaning of the FEHA. (Cal. Gov't Code, § 12926, subd. (t).) DFEH is informed and believes that Kompella was a Principal Engineer with Cisco. Public records indicate Kompella resided in Cupertino, California at the time of the events alleged herein.

27. At all relevant times, Defendant Kompella was the agent of Defendant Cisco and was acting within the scope and authority of such agency, and Defendant Kompella is jointly and severally responsible and liable to Complainant Doe for the damages alleged.

STATEMENT OF CLAIMS

28. Beginning in the November 1, 2016, Defendants Cisco, Iyer, and Kompella engaged in unlawful employment practices, in violation of California Government Code, section § 12940 subdivisions (a), (j), (h), and (k). These practices include but are not limited to the practices described below.

29. Complainant Doe's ancestry, national origin/ethnicity, and race/color is Dalit Indian. Doe has a darker complexion relative to other persons of non-Dalit Indian descent. Doe's religion is Hindu. As a Dalit, he also is known as being from the Untouchable or Scheduled Caste.

30. Doe has over 20 years of experience in the software development lifecycle process at startups and established companies. In or around September 2015, Iyer recruited and hired Doe as a Principal Engineer for Cisco because of his expertise and experience. As the head of the Cisco team, Iyer hired and supervised Doe, having the authority to control his day-to-day assignments, discipline, discharge, direct, and transfer Doe. Upon information and belief, Iyer is Brahmin.

31. In or around October 2016, two of Doe's colleagues told Doe that Iyer informed them that Doe was from the "Scheduled Caste" (Dalit) and enrolled in the Indian Institute of Technology (IIT) through affirmative action. Iyer was aware of Doe's caste because they attended IIT at the same time.

32. In or around November 1, 2016, Doe confronted Iyer about disclosing Doe's caste to other Cisco employees. Iyer asked Doe who claimed he made such a comment. After Doe shared the names of his colleagues, Iyer denied the comment and stated Doe's colleagues were not telling the truth.

33. In or around November 21, 2016, Doe contacted Cisco's human resources (HR) and Employee Relations to file a discrimination complaint against Iyer.

34. Six days after Doe's first contact with Cisco's HR and employee relations, Iyer told Doe he was taking away Doe's role as lead on two technologies.

35. On or around November 28, 2016, Iyer promoted two of Doe's colleagues to head engineering roles, one of whom was Defendant Kompella. Kompella was made Head of Southbound Engineering. Upon information and belief, Kompella is Brahmin or at least of a higher caste than Dalit. With this new title, Defendant Kompella received a raise of approximately 15% or more. As the Head of Southbound Engineering, Kompella had the ability to direct the day-to-day assignments and recommend employment actions for those on his team, including Doe.

36. On or around November 28, 2016, Iyer also removed team members from the third technology Doe was working on and did not formally integrate the third technology into either team headed by the two new Heads of Engineering. As a result of these changes, Doe's role was reduced to that of a system architect as an independent contributor, and he was isolated from all his colleagues.

37. On or around December 8, 2016, Doe submitted a written complaint about Iyer's disclosure of Doe's caste, Doe's complaint to Iyer, and Iyer's retaliatory employment actions, including the sudden changes to Doe's job duties. He also complained that Iyer made discriminatory comments to a colleague and about a job applicant because of the applicant's religion (Muslim).

38. Cisco's Employee Relations Manager, Brenda Davis, conducted the investigation into Doe's December 2016 complaint. Davis' internal investigation notes revealed that Iyer admitted that he told Doe's colleagues that Doe was not on the "main list." Among those from India, it is commonly known that students not on the main list are admitted to IIT through an affirmative action program designed for those from the "Scheduled Castes" or those outside the caste system. Therefore, stating that someone is not on the "main list" effectively reveals their caste. Despite this, Davis took no further action and failed to even contact relevant witnesses or Doe.

39. Cisco Employee Relations staff, including Davis, also indicated that caste discrimination was not unlawful. As a result, Davis did not recommend any corrective action against Iyer. Iyer also admitted that he made a joke about Doe's co-worker's religion and talked about an applicant's Muslim-related appearance. Still, Davis did not recommend any corrective action. On or around February 2, 2017, Davis closed her investigation finding all of Doe's complaints were unsubstantiated.

40. Iyer's retaliatory efforts continued. He further isolated Doe from the team when he disparaged Doe to other employees, misrepresented that Doe did not perform his job adequately, and told Doe's team members that they should avoid working with him.

41. On or around March 2, 2017, Doe sought review of Davis' investigation findings. After repeated attempts to have Cisco review Davis' findings, HR official Tara Powell finally reopened the investigation on or around April 25, 2017. Powell re-interviewed one of the employees to whom Iyer made the comment about Doe's caste in or around October 2015. The employee stated that he learned about Doe's caste but refused to tell Powell how he knew, noting that he did not want to say anything about Iyer because they had known each other for a long time. He also stated that he thought Doe was being treated unfairly and that he was very technically able but was being excluded at work. Powell did not attempt to contact for an interview the other employee who witnessed Iyer's disclosure of Doe's caste. Two additional witnesses told Powell that they feared losing their jobs or otherwise being

retaliated against for speaking out against Iyer. One of those employees also told Powell that he thought Doe was very competent and asked appropriate questions, but that Iyer was setting Doe up to push him out of the company.

42. Powell's investigation also uncovered a spreadsheet that showed anticipated yearly raises, bonuses, and restricted stock unit awards that Iyer had promised Doe. These raises, bonuses, and awards never materialized when promised. But Powell also found that four out of the eight other team members received raises in or around October 2016.

43. In or around August 2017, Powell concluded she could not substantiate any caste-based or related discrimination or retaliation against Doe. Powell, however, determined that Iyer mocked another employee's religion, and thus violated Cisco's Code of Conduct. Still, no immediate corrective action was taken.

44. Despite Doe's repeated attempts to bring the caste-based and related discrimination, harassment, and retaliation to Defendant Cisco's attention in 2016 and 2017, Cisco failed to recognize casteism as a form of unlawful religion-, ancestry-, national origin/ethnicity-, and race/color-based discrimination or harassment under state or federal law and failed to conduct a thorough investigation. While the investigation confirmed Doe was increasingly isolated and treated unfairly by Iyer and Kompella, Cisco failed to take timely and appropriate corrective action. Moreover, Cisco's training was deficient in that it did not adequately train managerial employees on workplace discrimination, harassment, and retaliation, nor did the company prevent, deter, remedy, or monitor casteism in its workforce.

45. On or around February 26, 2018, Kompella became the Interim Head of Engineering for Cisco's team after Iyer stepped down. In his new role, Kompella supervised Doe and continued to discriminate, harass, and retaliate against Doe by, for example, giving him assignments that were impossible to complete under the circumstances. Kompella also began requiring Doe to submit weekly status reports to him and Senior Vice President/General Manager Tom Edsall.

46. On or around May 21, 2018, Rajeev Gupta took over from Kompella and became the Director of Engineering. In that role, Gupta supervised Doe.

47. Two months later, in or around July 2018, Doe applied for the position of Director of Research and Development Operations with Gupta. According to Gupta's interview notes, he ranked Doe as "below average" in six out of eight categories and as "meeting requirements" in the remaining two categories. But Gupta's assessment of Doe was improperly influenced by Iyer's retaliatory employment actions. Gupta specifically cited Doe's lead role being taken away and his job reduced to that of an independent contributor in November 2016. Gupta's notes also reflected Iyer's retaliatory criticisms about Doe's work product, social skills, and insubordination. Doe did not get the position.

48. The effect of the unlawful employment practices complained of above was to deprive Doe of equal employment opportunities, and otherwise adversely affect his status as employees, because of religion, ancestry, national origin/ethnicity, and race/color.

49. The unlawful employment practices complained of above were intentional.

50. The unlawful employment practices complained of above were done with malice or with reckless indifference to Doe's federally and state-protected civil rights.

FIRST CAUSE OF ACTION

Violation of FEHA: Discrimination on the Basis of Religion, Ancestry, National Origin/Ethnicity, and Race/Color
(Cal. Gov't Code, § 12940, subd. (a))
Against Defendant Cisco

51. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

52. The FEHA guarantees all employees a workplace free from unlawful discrimination and harassment based on the employee's religion, ancestry, national origin/ethnicity, and race/color. (Cal. Gov't Code, § 12940, subd. (a).)

53. As alleged above, Cisco discriminated against Doe by subjecting him to disparate terms and conditions of employment based on his religion, ancestry, national origin/ethnicity, and race/color. Among other actions, Cisco reassigned Doe's job duties and isolated him from his colleagues, denied him a raise, denied him work opportunities that would have led to a raise, denied him a promotion to the Head of Engineering, and denied him a promotion to the Director of Research and Development Operations.

54. Cisco subjected Doe to discriminatory comments and conduct because of his religion, ancestry, national origin/ethnicity, and race/color

55. The alleged discriminatory comments and conduct constitute unlawful discrimination for which Defendant Cisco is liable under California Government Code section 12940, subdivision (a).

56. As a direct result of these unlawful employment practices, Doe suffered economic injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at trial.

57. As a direct result of these unlawful employment practices, Doe suffered emotional distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an amount to be proven at trial.

58. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

59. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

60. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

SECOND CAUSE OF ACTION

Violation of FEHA: Harassment on the Basis of Religion, Ancestry, National Origin/Ethnicity, and Race/Color
(Cal. Gov't Code, § 12940, subd. (j))
Against All Defendants

61. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

62. The FEHA prohibits harassment based on the employee's protected characteristics including, but not limited to, their caste, which includes religion, ancestry, national origin/ethnicity, and race/color. (Cal. Gov't Code, § 12940, subd. (j).) Employers are liable for the harassment of their supervisors. (*Id.*, subd. (j)(1).) Employees and supervisors are liable for their own harassing conduct. (*Id.*, subd. (j)(3).)

63. As alleged above, as supervisors for Cisco's team, Defendants Iyer and Kompella subjected Doe to offensive comments and other misconduct based on his caste, which includes his religion, ancestry, national origin/ethnicity, and race/color, so severe or pervasive that it created a hostile work environment. Among other things, Iyer and Kompella's comments and conduct include revealing Doe's caste to his colleagues, disparaging him to the team, isolating him from the rest of the team, reducing his role to that of an independent contributor, giving him assignments that were impossible to complete under the circumstances, and requiring him to submit weekly status reports. Such a work environment where a stigmatizing personal characteristic such as caste is publicized and used to subjugate an individual in order to maintain a centuries-old hierarchy is hostile, intimidating, offensive, oppressive, and abusive. Other employees corroborated that Doe was isolated from the rest of the team and that Iyer and Kompella were responsible for it. These were observations Cisco was made aware of during its internal investigations. As evidenced by Doe's repeated internal complaints, he in fact considered the work environment to be hostile, intimidating, offensive, oppressive, and abusive.

64. As supervisors for Cisco, Defendants Iyer and Kompella subjected Doe to offensive comments and other misconduct based on his caste, which includes his religion, ancestry, national origin/ethnicity, and race/color, so severe or pervasive that it created a hostile work environment.

65. Defendants Iyer and Kompella are individually liable for their own harassing conduct in violation of the FEHA.

66. Because Defendants Iyer and Kompella were supervisors within the meaning of the FEHA, Defendant Cisco is liable for their harassing conduct. Defendant Cisco knew or should have known of the conduct as a result of Doe's internal complaints and is liable for its failure to take immediate and appropriate corrective action.

67. As a direct result of these unlawful employment practices, Doe suffered economic injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at trial.

68. As a direct result of these unlawful employment practices, Doe suffered emotional distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an amount to be proven at trial.

69. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

70. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

71. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

THIRD CAUSE OF ACTION
Violation of FEHA: Retaliation
(Cal. Gov't Code, § 12940, subd. (h))
Against Defendant Cisco

72. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

73. California law also guarantees each employees' right to a workplace and business environment free from unlawful retaliation because the employee opposed discriminatory or harassing practices that are unlawful under the FEHA. Employers are liable for the retaliatory conduct of supervisors. (Cal. Gov. Code, § 12940, subd. (h).)

74. As alleged above, as supervisors for Cisco, Defendants Iyer and Kompella retaliated against Doe for opposing their discriminatory and harassing conduct by confronting Iyer and filing internal discrimination complaints. Among other things, Doe engaged in protected activity by confronting Iyer about disclosing his caste to colleagues and by repeatedly trying to bring the caste-based and related discrimination and harassment to Cisco's attention. Immediately afterwards, Iyer and Kompella subjected Doe to adverse employment actions including reassigning his job duties, isolating him from colleagues, giving him assignments that were impossible to complete under the circumstances, denying him work opportunities that could have led to a raise, denying him a raise, and denying him promotions. Cisco aided the retaliation.

75. As supervisors for Cisco, Defendants Iyer and Kompella retaliated against Doe for opposing their discriminatory and harassing conduct by confronting Iyer and filing internal discrimination complaints and Cisco aided the retaliation.

76. Defendant Cisco is liable for the retaliatory conduct of Defendants Iyer and Kompella.

77. As a direct result of these unlawful employment practices, Doe suffered economic injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at trial.

78. As a direct result of these unlawful employment practices, Doe suffered emotional distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an amount to be proven at trial.

79. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

80. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

81. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

FOURTH CAUSE OF ACTION

Violation of FEHA: Failure to Take All Reasonable Steps to Prevent Discrimination, Harassment, and Retaliation
(Cal. Gov't Code, § 12940, subd. (k))
Against Defendant Cisco

82. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

83. California Government Code section 12940(k) provides that it is an unlawful employment practice for an employer to fail to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring. Employers have the affirmative duty to take all reasonable steps to prevent and promptly correct discriminatory, harassing, and retaliatory conduct.

(Cal. Code Regs. tit. 2, § 11023, subd. (a).) Cisco's conduct, as described above, constitutes a failure to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation in violation of California Government Code section 12940, subdivision (k).

84. An actionable claim for violation of California Government Code section 12940(k) on behalf of a complainant exists when an underlying claim of discrimination, harassment, or retaliation is established. (Cal. Code Regs. tit. 2, § 11023, subd. (a)(2).)

85. As alleged above, Defendant Cisco failed to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring within its South Asian Indian workforce. Among other things, Defendant Cisco failed to develop anti-discrimination and anti-harassment policies and practices that recognize and prohibit caste discrimination as a form of unlawful discrimination under state and federal law. Defendant Cisco also failed to provide appropriate training to managers, supervisors employees, human resources, and employee relations personnel on how to identify, investigate, remediate, and prevent caste-based discrimination and harassment, or retaliation against employees or persons who oppose discriminatory and harassing practices that are unlawful under the FEHA.

86. Defendant Cisco failed to prevent discrimination and harassment by its managers and supervisors against Doe because of his caste.

87. Defendant Cisco failed to prevent retaliation by its managers and supervisors against Doe because he opposed discriminatory and harassing practices that are unlawful under the FEHA.

88. As a direct result of Cisco's failures, Doe was subjected to unlawful discrimination, harassment, and retaliation by Cisco's managers and supervisors, suffering economic injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at trial.

89. As a direct result of Cisco's failures, Doe was subjected to unlawful discrimination, harassment, and retaliation by Cisco's managers and supervisors, suffering emotional distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an amount to be proven at trial.

90. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

91. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

92. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

93. Plaintiff DFEH also seeks monetary relief for Cisco's failure to take all reasonable steps to prevent harassment from occurring.

FIFTH CAUSE OF ACTION

Violation of FEHA: Failure to Take All Reasonable Steps to Prevent Discrimination, Harassment, and Retaliation
(Cal. Gov't Code, § 12940, subd. (k); Cal. Code Regs. tit. 2, § 11023, subd. (a)(3))
On behalf of DFEH; Against Defendant Cisco

94. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

95. In an exercise of the DFEH's police powers, the DFEH may independently seek additional remedies for a violation of Cal. Gov't Code § 12940(k). (Cal. Code Regs. tit. 2, § 11023, subd. (a)(3).) As the agency of the State of California charged with the administration, interpretation, investigation, and enforcement of FEHA, the DFEH brings this claim in the name of the DFEH on behalf of all Indian persons who are or are perceived to be Dalit, of lower castes, or who fall outside the caste system, who are employed by or may seek employment with Cisco in the future.

96. As alleged above, Defendant Cisco failed to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring within its South Asian Indian workforce. Among other things, Defendant Cisco failed to develop anti-discrimination and anti-harassment policies and practices that recognize and prohibit caste discrimination as a form of unlawful discrimination under state and federal law. Defendant Cisco also failed to provide appropriate training to managers, supervisors employees, human resources, and employee relations personnel on how to identify, investigate, remediate, and prevent caste-based discrimination and harassment, or retaliation against

employees or persons who oppose discriminatory and harassing practices that are unlawful under the FEHA.

97. Cisco's failure to take any reasonable steps to prevent, deter, remedy, or monitor casteism and related violations in its workforce exposes a significant portion of its South Asian Indian workforce to the risk of discrimination, harassment, and retaliation on the basis of their caste and related characteristics.

98. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it will continue to engage in, the unlawful employment discrimination described herein unless it is enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of unlawful discrimination will continue to be violated.

99. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other injunctive relief as prayed for herein.

PRAYER FOR RELIEF

WHEREFORE, the DFEH respectfully requests that this Court:

1. Grant a permanent injunction enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination and harassment based on religion, ancestry, national origin/ethnicity, and race/color.

2. Grant a permanent injunction enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation.

3. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for individuals regardless of their religion, ancestry, national origin/ethnicity, and race/color, and that eradicate the effects of their past and present unlawful employment practices

4. Order Defendants to make Doe whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other injunctive relief necessary to eradicate the effects of Defendants' unlawful employment practices.

5. Order Defendants to make Doe whole, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described herein, in amounts to be determined at trial.

6. Order Defendants to make Doe whole, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of herein, including losses such as emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

7. Order Defendants to pay Doe punitive damages for their malicious and/or reckless conduct described herein, in amounts to be determined at trial.

8. Grant such further relief as the Court deems necessary and proper in the public interest.

9. Award the DFEH its costs of this action, including reasonable attorneys' fees, as provided by statute.

JURY TRIAL DEMAND

The DFEH requests a jury trial on all questions of fact raised by its complaint.

Dated: October 16, 2020

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

By: Melanie L. Proctor

MELANIE L. PROCTOR
Assistant Chief Counsel
Counsel for Plaintiffs

Filed 8/5/22

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, Plaintiff and Respondent, v. CISCO SYSTEMS, INC., et al., Defendants and Appellants.	H048910 (Santa Clara County Super. Ct. No. 20-CV-372366)

The issue in this case is whether the Department of Fair Employment and Housing can be compelled to arbitrate an employment discrimination lawsuit when the affected employee agreed to resolve disputes with the employer through arbitration. We conclude the Department cannot be required to arbitrate in that situation because it did not agree to do so. We will therefore affirm the denial of the employer's motion to compel arbitration.

I. BACKGROUND

Cisco Systems, Inc. hired John Doe in September 2015 to work as an engineer. (John Doe is a fictitious name used in the trial court proceedings to protect the employee's privacy.) Doe was required to sign an arbitration agreement as a condition of his employment. Under the agreement, Cisco and Doe must arbitrate "all disputes or claims arising from or relating to" Doe's employment, including claims of discrimination, retaliation, and harassment.

Several years after signing the agreement, Doe filed a complaint with the California Department of Fair Employment and Housing, the administrative agency

responsible for enforcing state employment discrimination laws. The Department of Fair Employment and Housing investigates violations of the California Fair Employment and Housing Act ("FEHA"; Gov. Code, § 12900 et seq.; unspecified statutory references are to this code). When it receives a complaint of employment discrimination, the Department has authority to issue subpoenas, take depositions, and propound written interrogatories. (§§ 12963.1, 12963.2, 12963.3.) If it determines the complaint has merit, the Department must try to informally resolve it with the employer by "conference, conciliation, and persuasion." (§ 12963.7.)

If the matter is not resolved informally, the Department can decline to pursue it further and instead issue a right to sue notice to the complainant, which allows the employee to file a lawsuit against the employer. (§ 12965, subd. (c)(1)(A).) Or the Department can itself sue the employer for violating FEHA. (§ 12965, subd. (a)(1).) The affected employee has the right to participate as a plaintiff in a suit by the Department but is not required to do so. (§ 12965, subd. (a)(3).)

Doe's complaint to the Department alleged Cisco discriminated against him because of ancestry or race. He reported that two supervisors denied him opportunities and disparaged him because, under the traditional caste system of India, he is from the lowest caste and they are from the highest. Doe also accused Cisco of retaliating when he complained about being treated unfavorably because of his caste.

The Department notified Cisco of Doe's complaint, investigated it, and decided it had merit. Attempts at informal resolution were unsuccessful. The Department then filed a lawsuit in Santa Clara County Superior Court against Cisco and the two supervisors. Doe is not a party to the suit.

The Department's complaint contains five causes of action alleging multiple violations of FEHA. It seeks a permanent injunction preventing Cisco from committing further violations, and mandatory injunctive relief requiring Cisco to institute policies to prevent employment discrimination. The complaint requests an order that Cisco

compensate Doe for past and future economic losses. It also seeks punitive damages and any further relief the trial court decides is in the public interest.

Cisco moved to compel the Department to proceed only by arbitration based on the arbitration agreement Doe signed. The trial court denied the motion.

II. DISCUSSION

Cisco contends the Department is bound by Doe's arbitration agreement and that the trial court therefore should have granted the motion to compel arbitration. Whether an arbitration agreement binds a third party is a legal question we review de novo. (*Benaroya v. Willis* (2018) 23 Cal.App.5th 462, 468.)

An arbitration agreement is a contract in which the parties agree to give up the right to take disputes to court in exchange for receiving a generally faster and less costly decision from an agreed-upon arbitrator. Issues regarding formation of an arbitration agreement are governed by state law principles applicable to contracts generally. (*Dotson v. Amgen, Inc.* (2010) 181 Cal.App.4th 975, 980.)

Fundamental to any contract is mutual consent. A contract cannot exist unless both parties have agreed to the same thing. (Civ. Code, § 1550; see also *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811.) As a result, parties cannot be compelled to arbitrate a dispute they have not agreed to resolve that way. (*County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 245; see also, *Benasra v. Marciano* (2001) 92 Cal.App.4th 987, 990 [strong public policy in favor of arbitration does not extend to those who are not parties to arbitration agreement].)

The Department never consented to resolve disputes with Cisco by arbitration, so it ordinarily cannot be compelled to arbitrate those disputes. However we acknowledge that arbitration agreements can be enforced against third parties in certain situations. (*Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 859.) Nonsignatories have been bound by arbitration agreements when the nonsignatory

assumed the obligations of the party who signed the agreement; when an agency relationship exists between the nonsignatory and the signer; and when the nonsignatory is the alter ego of the signer. (*Ibid.*, citing *Benaroya v. Willis* (2018) 23 Cal.App.5th 462, 468.) Cisco's theory is along those lines: that the Department is bound by the arbitration agreement because it is Doe's proxy in this action and is not acting independently.

The plain language of the Government Code sections giving the Department authority to enforce employment discrimination laws indicates otherwise. The Department is authorized "to bring civil actions pursuant to section 12965" and "to prosecute those civil actions before state and federal trial courts." (§ 12930, subd. (h).) Under section 12965, subdivision (a)(1), "the director in the director's discretion may bring a civil action in the name of the department on behalf of the person claiming to be aggrieved." With those provisions, the Legislature gave the Department the ability to sue an employer directly for violating FEHA.

Some regulatory laws can be enforced only by the state, precluding private parties from suing for violations. (*Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 596.) But in the area of employment discrimination, the Legislature has allowed both for affected employees to enforce the law (after exhausting the administrative remedies provided for by FEHA), and for an administrative agency—the Department of Fair Employment and Housing—to do so as well. That structure promotes robust enforcement and advances the Legislature's stated aim of providing "effective remedies that will both prevent and deter unlawful employment practices and redress the adverse effects of those practices on aggrieved persons." (§ 12920.5.)

As the public arm of the enforcement procedure, the Department acts independently when it sues for FEHA violations.[1] Were it merely a proxy, the employee

[1] After oral argument in this matter, the Legislature amended FEHA to clarify the Department's role in pursuing litigation on behalf of the public. (See Assem. Bill No. 2662, effective June 21, 2022, adding Gov. Code, § 12930, subd. (o) ["By

would decide whether to bring an action, and the Department would be limited to pursuing only the relief that could be obtained by the employee. But under the relevant legislation, the Department has discretion to decide whether to file suit (§ 12965, subd. (a)(1)), and it can seek remedies beyond those available in a suit brought by an employee (§ 12965, subd. (c) [providing, as an example of such additional relief, an order that the employer conduct training for all employees on FEHA requirements]). (See also, *Department of Fair Employment and Housing v. Superior Court* (2020) 54 Cal.App.5th 356, 373 [the Department acts as a public prosecutor when it pursues litigation and can seek remedies to vindicate the public interest in preventing discrimination].) The ability to decide whether to file an action and the ability to pursue relief separate from what can be obtained by an employee confirm that the Department operates as an independent party in an enforcement lawsuit. (See *EEOC v. Waffle House, Inc.* (2002) 534 U.S. 279, 291 [The EEOC, the Department's federal counterpart, is not bound by employee arbitration agreements because it has the ability determine whether to file suit and what relief to pursue.].) Although the affected employee is not a party in this case, the right of an employee to join as a plaintiff in an action brought by the Department also supports this view. (§ 12965, subd. (a)(3).) An employee joining a suit by the Department is entitled to separate counsel. (*Ibid.*) We do not see how the

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performing the functions and duties and exercising the powers set forth in this part, the department represents the interests of the state and effectuates the declared public policy of the state to protect and safeguard the rights and opportunities of all persons from unlawful discrimination and other violations of this part. This subdivision is declarative of existing law as stated in *Department of Fair Employment and Housing v. Cathy's Creations, Inc.* (2020) 54 Cal.App.5th 404, 410."]; and amending § 12965, subd. (a) and § 12981, subd. (a) to add language indicating that when the Department brings a civil action it is "acting in the public interest.") Our decision is based on the statute as it existed at the time the arbitration agreement in question was formed and at the time this action was filed. We note the statutory amendments do not alter our conclusion; indeed, the new language supports the result we reach here.

Department could be a proxy for an employee when the law contemplates that both the Department and the employee can be plaintiffs, each represented by separate counsel.

Cisco seizes on statutory language providing that the Department files suit "on behalf of the person claiming to be aggrieved" (§ 12965, subd. (a)(1)) and in such an action "the person claiming to be aggrieved shall be the real party in interest" (§ 12965, subd. (a)(3)). Cisco argues those provisions mean that only the employee has an interest in the suit, not the Department. Indeed, the Department brings an action on behalf of an affected employee because at least some of the remedies sought are for the employee. That makes the employee a real party in interest, but it does not undermine or conflict with the Department having an independent interest in FEHA enforcement.

A real party in interest has a substantial interest in the subject matter of the action and stands to benefit from or be injured by a judgment. (*Cohen v. TNP 2008 Participating Notes Program, LL*C, *supra*, 31 Cal.App.5th 840, 859.) All real parties in interest are bound by the judgment in the action. (*Wolford v. Thomas* (1987) 190 Cal.App.3d 347, 357.) Ensuring the employee is bound by the judgment, favorable or unfavorable, protects employers from successive litigation. (See *Redevelopment Agency of San Diego v. San Diego Gas & Electric Co.* (2003) 111 Cal.App.4th 912, 920–921 [statutes limiting standing to real parties in interest prevent duplicative claims on the same demand]; see also Code Civ. Proc. § 367 ["Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute."].)

In section 12965, the Legislature has allowed the Department to sue for violations and seek various remedies, even though the affected employee is the real party in interest. Nothing in section 12965 eliminates the broader state interest in litigating the suit to protect the public from unlawful discriminatory practices. Cisco asserts that the Legislature's purpose was merely to require the Department to provide legal representation to employees in FEHA suits. Cisco bases the argument on the legislative history of a 1992 amendment to section 12965 (which implemented an administrative

adjudication procedure that the Legislature has since eliminated).[2] The former administrative hearing process applied where damages could be awarded against employers, but also allowed employers to opt out, in which case the Department could file suit to resolve the claims. Although later amendments eliminated the administrative hearing procedure, some language relating to Department actions filed after an employer has opted out remains in the current statute: in such an action the employee "shall be the real party in interest and shall have the right to participate as a party and be represented by that person's own counsel." (§ 12965, subd. (a)(3).) Citing excerpts from the 1992 legislative history, Cisco argues section 12965 was never intended to allow the Department to independently bring a civil action; rather, it was intended only to require the Department to provide "legal assistance" to employees when an employer opted out of administrative proceedings.

We reject Cisco's legislative history argument for three reasons. First, the statutory language authorizing the Department to "bring a civil action in the name of the department on behalf of the person claiming to be aggrieved," is sufficiently clear in describing an independent action. Legislative history is properly considered only where the plain statutory language is unclear or where the literal meaning of a statute is at odds with its clear purpose. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 755.) Second, the words of the statute—authorizing the Department to bring a civil action—are directly contrary to the meaning urged by Cisco (which would limit the Department's role to providing legal counsel to employees). (*Ibid.* ["Legislative history, even when appropriately considered, cannot be used to contradict language that the Legislature decided to include in the statute."].) Using legislative history to alter the meaning of the text would be particularly inappropriate here where the legislative history relates to a former version of the statute. And third, the documents Cisco relies on show

[2] We grant Cisco's request that we take judicial notice of the legislative history.

only the subjective motivation of the bill's author, rather than the Legislature as a whole. Materials that reflect the understanding of an individual legislator, even the bill's author, are generally not considered in ascertaining the meaning of a statute as they do not demonstrate the Legislature's *collective* intent. (*Metropolitan Water District of Southern California v. Imperial Irrigation Dist.* (2000) 80 Cal.App.4th 1403, 1426.)

Cisco compares the text authorizing the Department to bring an action for employment discrimination under section 12965 with FEHA provisions allowing the Department to sue in other contexts. In Cisco's view, that comparison reflects legislative intent to allow an independent action by the Department in the other contexts but not for individual complaints of employment discrimination. Cisco points to section 12981, relating to housing discrimination, which expressly acknowledges the ability of the Attorney General to bring suit for housing discrimination and authorizes the Department to do so as well. But the lack of a similar reference to the Attorney General in section 12965 does not change the clear meaning of the language that the Department can "bring a civil action in the name of the department on behalf of the person claiming to be aggrieved" by employment discrimination. (§ 12965, subd. (a)(1).) Cisco also cites section 12974, which authorizes the Department to file an action seeking temporary injunctive relief to prevent employment discrimination while an administrative complaint process is pending. But we do not see how specifically allowing for provisional injunctive relief precludes or limits the filing of a later enforcement action if the matter is not resolved administratively. (*Department of Fair Employment and Housing v. Superior Court*, *supra*, 54 Cal.App.5th 356; 385.) Nothing in the other statutes Cisco references affects the dispositive point: the Department has authority to file a civil action to enforce employment discrimination laws. (See §§ 12930, subd. (h), and 12965, subd. (a)(1).)

Our conclusion is consistent with related authorities. In *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 99, fn. 6, the California Supreme Court decided that an employee's claim for employment discrimination in violation of

FEHA is not categorically exempt from arbitration. In dicta there, the Supreme Court stated, "Nothing in this opinion, however, should be interpreted as implying that an arbitration agreement can restrict an employee's resort to the Department of Fair Employment and Housing, the administrative agency charged with prosecuting complaints made under the FEHA, or that the department would be prevented from carrying out its statutory functions by an arbitration agreement to which it is not a party." (*Ibid.*, at p. 99, fn. 6.) Although whether the Department is bound by an employee's arbitration agreement was not decided in *Armendariz*, Supreme Court dicta "is not to be blithely ignored," and is typically followed by appellate courts. (*Bunch v. Coachella Valley Water Dist.* (1989) 214 Cal.App.3d 203, 212.)

Our conclusion reflects the view of the United States Supreme Court in *EEOC v. Waffle House, Inc., supra*, 534 U.S. 279, 291, which held that the federal agency charged with enforcing employment discrimination laws is not bound by an employee's agreement to arbitrate. And very recently, the Supreme Court decided *Viking River Cruises, Inc. v. Moriana* (2022) ___ U.S ___ [2022 U.S. LEXIS 2940], a case involving an unrelated issue (whether California's rule invalidating waivers of representative claims under the Private Attorneys General Act is preempted by federal law). That decision reaffirmed, consistent with what we say here, that arbitration is a matter of consent and a party cannot be compelled to arbitrate absent a contractual basis for concluding the party agreed to do so. (*Viking River Cruises, Inc. v. Moriana,* at p. *6.).

Our reasoning also aligns with a decision from the Ninth Circuit Court of Appeals and cases from other states declining to require administrative enforcement agencies to arbitrate without their consent. (See *Walsh v. Arizona Logistics* (9th Cir. 2021) 998 F.3d 393 [federal Department of Labor not bound by employee's arbitration agreement]; *Joule, Inc. v. Simmons* (Mass. 2011) 459 Mass. 88, 97 [Massachusetts Supreme Court holding Massachusetts Commission Against Discrimination not bound by employee's arbitration agreement]; *Rent-A-Center, Inc. v. Iowa Civil Rights Commission*

(Iowa 2014) 843 N.W.2d 727, 741 [Iowa Supreme Court holding Iowa Civil Rights Commission not bound by employee's arbitration agreement].)

We note "the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry," or other protected characteristics. (§ 12920.) To implement that policy, the Legislature created the Department and gave it broad powers to investigate employment discrimination complaints and bring civil actions against violators when necessary. The Department acts independently when it exercises the power to sue for FEHA violations. As an independent party, the Department cannot be compelled to arbitrate under an agreement it has not entered.

III. DISPOSITION

The order denying the motion to compel arbitration is affirmed. Costs are awarded to respondent by operation of rule 8.278(a)(1) of the California Rules of Court.

Grover, Acting P. J.

WE CONCUR:

Danner, J.

Lie, J.

Trial Court	Santa Clara County Superior Court Superior Court No. 20-CV-372366
Trial Judge	Hon. Drew C. Takaichi
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Article

Dr Babasaheb Ambedkar's Context of Religious Conversion

Contemporary Voice of Dalit
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Milind E. Awad[1]

Abstract

It is evidently seen that the history of religion has gone through various historical trajectories, such as conflicts and appropriation, spread and conversion, individual change and social transformation. In the recent history of conversion, Dr Ambedkar's mass conversion to Buddhism is one of the important cultural phenomena in India. In this article, I intend to discuss the social–cultural context of Dr B. R. Ambedkar's historical public conversion from Hinduism to Buddhism in 1956 at Nagpur, Maharashtra. Further, I argue that Dr Ambedkar's conversion to Buddhism was an attempt of replacement of the 'common sense' of historically humiliated and stigmatized 'untouchable' castes. It was an attempt of the restructuring and culturalization of the untouchable castes through rejecting the 'coercion' and 'consent' of the hegemonic structure of caste Hindu cultural authority, which was functional as a culture authority and social power. I argue that Dr Ambedkar's religious conversion was an attempt to establish the epistemological separation and formulation of social ontology through the cultural imagination of 'ex-communicated' castes with the refusal of the ideology of 'pure and impure'.

Keywords

Dr B. R. Ambedkar, Buddhism, caste, conversion, culture, common sense, Dalit, religion.

[AQ1] In the 20th century, religious conversion in India has gained attention in the field of Religious Studies, Social Sciences and Humanities in the larger scholarly, academic discussion as well as among the public discussion at large. In the religious history of India, India has fostered religions, such as Hinduism, Buddhism, Jainism and Sikhism and naturalized Islam and Christianity. In medieval India, the rise of *Bhakti* movement originated various versions of the *Bhakti* tradition based on non-theistic mass culture and practice to claim access to divinity through *Bhaktimarg*. Christain Lee Novetrke opined that 'Public memory is constructed as an explicit component of *Bhakti*' (Novetrke, 2011, p. 10). It is important to see the emergence of the *Bhakti* public through the biographic circulation of memories, personal devotion and remembrance of *Bhakti sants* to create public memories through the teaching, *gathas*, *abhang*, *dohas* and verses to create *Nirguna* divinity. In the early medieval period, Islam was introduced in India and later on Christianity was introduced in India with the arrival of Portuguese, English and French. Christianity separated with the Christian missionary activities, such as health, education and social reform as a mission of civilization and with the perspective of liberal humanism.

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It is evident that the history of religion has gone through various historical trajectories such as conflicts and appropriation, spread and conversion, individual change and social transformation. In the recent history of conversion, the Dr Ambedkar-led mass conversion to Buddhism is one of the important cultural phenomena in India. In this article, I intend to discuss the social–cultural context of Dr B. R. Ambedkar's historical public conversion from Hinduism to Buddhism in 1956 at Nagpur, Maharashtra. I argue that Dr Ambedkar's conversion to Buddhism was an attempt of replacement of the 'common sense' of the historically humiliated and stigmatized 'untouchable' castes. It was an attempt of the restructuring and culturalization of the untouchable castes through rejecting the 'coercion' and 'consent' of the hegemonic structure of caste Hindu cultural authority which functioned as social power. I argue that Dr Ambedkar's religious conversion was an attempt to make an epistemological separation and create a social ontology through the cultural imagination of 'ex-communicated' castes with the refusal of the ideology of 'pure and impure' (Dumont, 1980, p. 33). Dr Ambedkar's conversion has replaced the set of belief, customs, idea of rituals and religious faith in the everyday culture of personal and public life of *Ambedkrite* Buddhist. This religious movement replaces the belief systems which relied on the moral and ethical dimension Buddhism. This change is not confined only to the religious domain, but it functions in the social, political and cultural domains at the level of 'private' and 'public' life. Buddhist revival in India has rejected the stigmatized and humiliated past of untouchable life. Dr Ambedkar's caste critique provides an understating of the ritualistic and cultural composition of untouchability defined in the Hindu religious canonical scriptures. The cultural phenomenology of *Ambedkarite Buddhism* invokes universal values, such as reason, individualism, self-respect, dignity and equality in order to cultivate the modern liberal values. The aim of this movement is to secularize the historically humiliated and hierarchized 'ex-communicated' untouchable castes and their cultural habitués.

Marc David Baer has described (Baer, 2014) the conversion process into four categories: acculturation, adhesion or hybridity, syncretism and transformation. Acculturation is when religious change accompanies the incorporation of a people and its territory into a conquering empire or socioeconomic system. Adhesion or hybridity is when the person or group adopts new beliefs and practices alongside the old. Syncretism occurs when the convert(s) reconcile or fuse old and new beliefs and practices to create a new religious synthesis. Transformation is when converts attempt to completely replace the old with the new. Dr Ambedkar's religious conversion was conceptualized to change the old faith to new faith in order to reconfigure the reformative religious, cultural space for the sociocultural stigmatized 'ex-communicated' untouchable castes. The replacement of faith is the replacement of 'common sense' of untouchable castes. The conversion of faith and common sense was an attempt to annihilate the mental slavery of 'ex-communicated castes' obliged thorough the material and cultural aspect of caste society on the notion of purity-pollution logic. When Dr Ambedkar's rejected Hindu common sense he rejected the imbibed cultural taboo of untochability with the replacement of universal values such as liberty, equality, dignity and fraternity. Dr Ambedkar characterized the innate disassociation between Hindu religion and caste composition and explained the impossibility of reformation or conversion of social identity within the Hindu religion. He observed that

> Hindu Society being a collection of castes and each caste being a close corporation there is no place for a convert. Thus, it is the caste which has prevented the Hindus from expanding and from absorbing other religious communities. So long as caste remains, Hindu religion cannot be made a missionary religion and *Shudhi* will be both a folly and a futility. (Ambedkar, 2014, pp. 54–55)

Dr Ambedkar was convinced that social–cultural mobility, revival of social identity, religious reform and liberty of faith is not possible within caste society. Therefore Dr Ambedkar's act of conversion to

Buddhism was an attempt of conversion of faith, belief, culture in order to replace the historical Hindu 'common sense' to *Ambedkrite* Buddhist 'Good sense'. I assert my understanding that the entire system of culture, faith, belief, superstitions, moral and ethical dimension of religion, social practices of religion in everyday culture is based on the historical acumen of religion and culture. According to Gramsci '"common sense" is a collective noun, like religion: there is not just one common sense, for that too is a product of history and a part of the historical process' (Gramsci, 2004, pp. 325–326). Gramscian notion of common sense is a product of history (Zene, 2013, p. 111) and socio-historical process. On the contrary, Gramsci suggests that 'Philosophy is criticism and the superseding of religion and "common sense". In this sense it coincides with "good" as opposed to "common" sense' (Gramsci, 2004, p. 326). In this context, Gramscian 'Good Sense' is a product of contemplative ability. Gramsci's concept of 'common sense is closely linked to his concept of culture, and if we want to understand what common sense is for Gramsci, it is instructive to contrast his notion of culture with the anthropological notion of culture' (Zene, 2013, p. 104).

It is important to deploy the anthropological notion of culture in the context of caste structure in India. Dr Ambedkar's caste critique provides the systematic understating of caste, culture, rituals and religion in India. Dr Ambedkar argues that the origin of caste is based on 'belief' which is infected by the religious institution. In the context of Hinduism, the idea of customs, culture, faith and ritual is associated with caste identity constructed by historical Hindu religion. Dr Ambedkar describes the character of caste society; he writes that 'In every Hindu the consciousness that exists is the consciousness of his caste. That is the reason why the Hindus cannot be said to form a society or a nation' (Ambedkar, 2014, p. 50). It is significant to understand that individual mobility, choice of profession and privilege of faith are merely impossible because of caste rigidity. Dr Ambedkar saw that 'Caste System is not merely division of labor; It is also a division of labourers' (Ambedkar, 2014, p. 14). Further, he argued that 'Caste System is not merely a division of labourers which is quite different from division of labour—it is an hierarchy in which the divisions of labourers are graded one above the other' (Ambedkar, 2014, p. 47). It is suggestive that caste is 'graded inequality'; therefore, stigmatized social identity remains stigmatized due to caste labour. Therefore, Dr Ambedkar's call to leave the dirty work of caste occupation/barter work needs to be understood as the rejection of stigmatized social identity associated with stigmatized caste labour.

Dr Ambedkar described the nature of 'caste incivilities' (Waghmore, 2013, p. 1) as follows:

> The Untouchable has no entry in the higher arts of civilization and no way open to a life of culture. He must only sweep. He must do nothing else. Untouchability carries no security as to livelihood. None from the Hindus is responsible for the feeding, housing and clothing of the Untouchable. The health of the Untouchable is the care of nobody. Indeed, the death of an Untouchable is regarded as a good riddance. There is a Hindu proverb which says "The Untouchable is dead and the fear of pollution has vanished." (Ambedkar, 2014, p. 17).

It is important to understand that Dr Ambedkar understood the impossibility of civilization in the caste society because of caste rigidity. There is an impossibility of the translation of caste authority and cultural power even after the influence of colonial modernity led influence of modern liberal political ideas and temperament scientific knowledge. Therefore, it is evident to see the conflict in contemporary India that modern caste elite professionals are highly under the influence of authority of sciences, technological modernity, but there is very less progress in terms of modern values and its lifeworld.

It is important to recognize that Ambedkar's early intellectual engagement, initially published as a research paper in 1916, 'Caste in India: Their Mechanism, Genesis and Development', provide the systematic understanding of the origin of caste and explained the role of endogamy and religious

sculpture in order to sustain the caste system in India. Dr Ambedkar criticized the inter-caste issues among untouchable castes and examines the reason of vicious caste composition and victimization of caste structure. In Dr Ambedkar's 1936 speech in Mumbai 'What Path to Salvation' (Ambedkar, 1936), he narrates the social behaviour among untouchable castes:

> …the present movement of the Untouchables has been very severely criticized. It has been said that there are several castes among the Untouchables, and every caste practice untouchability. *Mahars* and *Mangs* do not dine together. Both these castes do not touch the scavengers, and practice untouchability against them. It is therefore asked what right these people have to expect from others the non-observance of the practice of untouchability, when they themselves practice casteism and untouchability amongst themselves. The untouchables are generally advised to abolish castes and untouchability from amongst them, and then come [to the caste Hindus] for redress. (Ambedkar, 2022)

In this context, Dr Ambedkar caste critique morally and ethically empowers Dalit masses to aspire for anti-caste society. Gail Omvedt opined, 'Dr. Ambedkar attempted to bring Buddhism to the world of social action and social change' (Omvedt, 2013, p. 3).

In the post-conversion *Ambedkrite* Buddhism we evidently witness the growing religious and cultural assertion among the Dalit masses. Eventually, the religious realm has become one of the important domains of Dalit assertion, and it has changed the cultural patterns of Dalit sociality and aesthetics, indeed the moral-ethical Dalit lifeworld. One can see this changing pattern in the aesthetic perception, cultural changes, such as naming of persons, replacement of performing rituals and practising culture in everyday life, the architecture and interiors of houses; these changes are evident among both the rising Dalit middle-class and the masses at large. I think it is important to see the significance of Dr Ambedkar's religious conversion in the contemporary sociopolitical context with Hannah Ardent's understanding of life of action (*vita activa*) with the life of contemplation (*vita contemplativa*) (Ardent, 1998, p. 7). It is important to understand how this articulation of culture creates the populist and spontaneous solidarities among Dalit masses and what kind of political assertion is aspired to through various kinds of mobilization. Christophe Jaffrelot observes the changing political culture among Dalit middle-class students when he notes, 'They were all enthusiastic all about the functioning of Indian Democracy and positive about the act of voting' (Jaffrelot, 2008, p. 48).

I argue that Dr Ambedkar's idea of religion may not necessarily develop from the archaeologically frozen facts and notions of religious spirituality; rather it is the configuration of modern liberal values, such as dignity, self-respect and recognition. Dr Ambedkar invokes these morally motivated values from the teachings of Buddhism. Dr Ambedkar writes 'Buddhism was a revolution. It was as great as a Revolution as the French Revolution. Though it began as a Religious revolution, it became more than Religious revolution. It became a Social and Political Revolution' (Ambedkar, 2014, p. 153). It is called counter-revolution because it was contesting against the caste rigidity which denied the freedom to act and the privilege of faith for individuals and communities. Dr Ambedkar describes, 'Caste has killed public spirit. Caste has destroyed the sense of public charity. Caste has made public opinion impossible' (Ambedkar, 2014, p. 56). As a result, neither Dalits could they live a dignified life nor could they enter the public realm with a sense of dignity. This condition of life is barbaric, which was merely reduced to a biological life or 'bare life' in the Agambenian sense. Hannah Arendt argued that active life and contemplative life are fundamental conditions of human life (Arendt, 1998, p.3), which are denied in the caste society. The contested culture asserts the privilege of faith, which was denied to them as 'Untouchable'. This privilege of faith creates a new civic sense in Dalit life, which makes them sovereign beings in their social life. The rise of civility against the 'caste incivilities' arises because of the changing pattern of common sense through the cultivation of good sense of a newly emerging culture.

The replacement of historical Hindu common sense rehabilitates the common sense to good sense with the adoption of the new culture that brings the intellectual and moral reform amongst the historically humiliated and ghettoized 'untouchable' castes in India. This new Buddhist civility (Zene, 2013, p. 43) is preferred by Ambedkar because it foregrounds three principles 'Buddhism teaches *prajna* (Understanding as against superstition and supernaturalism), *Karuna* (Love), and *Samata* (Equality). This is what man wants a good and happy life. Neither God nor soul can save him from the hell of his own doing' (Ambedkar, 2022). This metaphor encourages Dalits to participate in the larger idea of the public in the sense of the modern sovereign state and its democratic mechanism by changing their private realm.

In the past, caste taboo, stigma, isolation and forceful ghettoization limited associations with each and every fellow of his/her caste identity. The emerging new civic sense among Dalits has changed the cultural subordination of the past rooted in the inhabited inevitable and inescapable values. This historical change and emergence of a new civic sense allow Dalits to claim an equal status, which is also institutionally ensured in the modern democratic civic life. Dr Ambedkar was always in favour of the formal, legal and procedural arrangements for untouchables. He was convinced that without legal safeguards it was impossible to empower the 'untouchables'. In his seminal work, *State and Minorities*, Amebedkar posits that 'It is difficult to expect that in a country like India, where most persons are communally minded those in authority will give treatment to those who do not belong to their community. Unequal treatment has been the inescapable fate of the Untouchables in India' (Ambedkar, 2014, p. 407). It is important to see that Dr Ambedkar's project of secularization of Indian society offers a potentiality of political emancipation. Moreover, this politics of emancipation emerges from a culture and norms of the new civility constituted by a move towards Buddhist conversion. However, it is important to understand that political emancipation without this new civility is not sufficient. In fact, it is these new ways of being that Dalits constitute themselves into sovereign subjects.

It is very important to think about the limitation of political sovereignty in the condition of bare life. Dalit life in the past and to some extent in the present was/is considered as a bare life, which was promised to be elevated through constitutionally granted civil rights and political rights. It is important to realize the sovereignty with two conditions in post-independence India; one is legal procedural, and the second is the normative formation of the new civility through the cultivation of conversed values and faith. Dr Ambedkar's attempt of procedural arrangements through the legal, procedural amendment and by religious conversion opened two crucial forms of emancipation: political emancipation and human emancipation.

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Land Rights Movement: Experience of Marathwada

Dr. Milind Awad

Abstract

This paper deals with experience of land rights movement in Marathwada. It focuses on two issues, first the politicization of Dalits and the issue of land, and second the social activism of Dalits and the land legalization process related to issue of governance and politics. How they are becoming political is one experience, another is how they are negotiating with state, as an issue of governance.

Conceptual framework

This paper seeks to make a brief enquiry of procedural aspect of Land right movement in Maharashtra particularly in *Marathawada*. The example of Campaign for Human Right, CHR led land right movement is an interesting example of governance-based political action and its politicisation. CHR led land right movement is an example of governance-based initiative which follows required revenue procedure to get entitlement of land on cultivator's name. The mobilisation of CHR is empowered and intervened by politically empowered agency of anti-caste thought. CHR led land right movement is example of the politicisation based on technology (for instance revenue law and legal processes).

CHR is an example of interaction between the dalit mobilisation and government/ bureaucracy. It is interesting to study the politicization of the issue of social identity and its interaction with simultaneous process and people's politicization on the issue of redistribution of resources such as land which is secured by law/ legalities. It's very interesting see the dialogue between these simultaneous movements of 'recognition and redistribution.'[1]

The population which is recognised by state as vulnerable population through various governmental parameters is asserting their social identity

and their 'will' to recognise themselves in particular. People who are asserting their legal right is contesting with state on various avenue and also developing the language of strategic negotiation with state agency.

Violation of Dalits civil right in various forms for instance restricting temple entry, restrictions on sharing common water tank, rejection of civil rights and social amenities, brutal caste atrocities on Dalits are the major issue on which massive politicisation is accoutring but the nature of responses from Dalit mobilisation is limited as curcumstantional responses. Historically Dalit mobilisation is trained to respond on the issues such as atrocities on Dalit, for instance the incident of Khairlanji. If not, the issue like demand of effective implementation of governance or legal provisions such as distribution of opportunities through affirmative action programs in India. The various issues such as effective implementation of SC/ ST reservation, implementation of SC/ST Special component plan, land legalisation etc. are the examples of Dalit mobilisation which is creating the systematic language of negotiation with state on various avenues in everyday life.

I think the movement which is creating the language of negotiation is de-essentialising the historical character of Dalit mobilisation. It also is creating a dialogue with simultaneous allied movement which is democratising the space of Dalit mobilisation. In larger context one can see Dalit mobilisation is taking place in particular cultural ghettos. The idea of being Dalit is becoming essentinlise among ex-untouchables caste which is creating new hierarchies among them. The mobilisation on issues like Reservation within reservation, right to work, right to food, right to education, and economic issues like land redistribution are initiating the process of democratisation of dalit movement as well in larger context.

The mobilisation on land redistribution can be seen as 'normative democracy'[2] this is because land is not just a source of livelihood but also a sense of dignity. The notion of owning land for Dalits is creating moral capacity to conduct dialogue with existing feudal structure. This paper seeks to make a case study of grass roots movement Jamin Adhikar Andolan, JAA led by Campaign for Human Right, CHR a dalit group mobilising around the issue of land redistribution and its legalisation.

Field Report on CHR led Jamin Adhikar Andolan (JAA)

Dalits who account for 14.97 % of the Marathwada region's population.[3] Land ownership and holding patterns are skewed against the Dalit and huge parcels of land are owned by the powerful upper castes. Most Dalits are either marginal farmers or landless and work as labourers in fields owned by the upper castes. During the lean agricultural season, a significant number of Dalit families are forced to migrate to work as sugarcane cutters. Their poverty, coupled with their lowest position in the social/caste hierarchy,

confine Dalits to a very marginalised socio-economic and political existence, away from the mainstream. Their status of this section on major indicators of development, such as per capita income, literacy, food security, morbidity, mortality, and political participation is very less compared to other communities in the same region. Incidences of violence against dalits are common place.

It is estimated that over 85 % of the Dalits working in the agricultural sector in Marathwada are landless labourers, and are struggling for existence.[4] A number of NGOs involved in organizing and improving the status of Dalits resolve that lack of access to land is one of the major causes of their vulnerability, as it is the only source of livelihood in this area. Ironically, ample land is 'reserved' and unutilized in the same area, which Dalits can use for their subsistence. *Gairans* (i.e. grazing land) reserved by the government for grazing of livestock, is a major resource. Besides Gairans, other common lands (temple lands, revenue lands, *Vatani* – i.e. lands gifted to Dalits, fertile patches around changing river basins etc.) also exist, that could be made available to the landless. All these add up to over 11% of the total land in Marathwada.[5]

Historically, Dalits have been denied the opportunity to own land. As a result of their landlessness, and the consequent marginalisation as well as lack of opportunities for securing alternative livelihood options, Dalits have resorted to land occupation. The attitude of the government, by and large, had been to turn a blind eye to the occupations / encroachments. Governments adopted a populist approach to encroachments and these were regularised from time to time. Following the internal emergency in India in 1976, the encroachments were regularised on a wide scale through the Revenue and Forest department Government Resolution (GR) in December 1978. This GR was subsequently amended in September 1979. All encroachments prior to April 1972 were regularised and eligibility criteria laid out for encroachments. The aim was to benefit only weaker sections. The 1972 GR stated no further encroachments would be regularised. However, the encroachments continued. In November 1991, the Government passed another GR regularising encroachments on 108,915 hectares of government and *gairan landsi.*[6]

Landlessness, and the consequent marginalisation as well as lack of opportunities for securing alternative livelihood options, Dalits have resorted to land occupation. While occupation of public lands is not a new phenomenon in Maharashtra, these occupations have been done primarily by tribals in mountainous and forest regions. In rural areas, this trend has been followed by Dalits and other landless sections who have taken to occupying common lands in the village.

Although occupations have been carried out on common lands by other communities, including upper castes, in Marathwada, the proportion of

occupants belonging to the Dalit community has been significantly higher. The major reason behind these occupations is the factor of landlessness among the Dalits. A related motive of land occupation is to earn better social status. A common feature among Dalits is to equate social status with ownership of land. Land occupies a prominent position in rural India. In villages, without land, there is no food security, no collateral to access credit, no opportunity to access provisions of government agricultural schemes. Most importantly, without land, there is no social status. In fact, it is the important measure of wealth in villages. Thus, land is a symbol of social status and a means of upward social mobility. Land occupation is also the outcome of the Dalits' desire/aspiration to gain control over productive resources.

A characteristic feature of occupation is that by and large only village common lands/grazing lands, locally referred to as *Gairan* have been occupied to establish private ownership. In Marathwada, the extent of grazing lands is 2, 40,800 hectares, spread over some 7,786 villages.[7] As the name implies, these lands used for grazing livestock and are a part of the common property resources of a village. However, at present these lands are so degraded that they hardly satisfy any livelihood needs. Again, as these lands are located in an arid zone, they are subject to the vagaries of monsoon and as a result the quantity and quality of grass is not really enough. Traditionally, the upper caste communities who owned cattle benefited from such lands. In 1964, the landless Dalit communities initiated a movement to occupy grazing lands in Maharashtra for agricultural use.[8] Occupation of such lands was easier because the control and management of grazing lands vests with *the "gram panchayats*" (local unit of governance at the village level), which have traditionally been a weak political body in comparison to the organised revenue and forest departments. *Gram Panchayats* did not have judicial powers too to deal with these encroachments.

The outcome of these encroachments and regularisation has been both negative and positive. The encroachments have generated social conflict in Marathwada because to some extent, it has altered feudal and hierarchical caste relationships. Significant changes in terms of labour relationships have come about with the incidence of bonded labour declining as encroachers gave importance to cultivating these lands and preferred to work as wage labourers. It has also led to increased violence against Dalits with many of them being beaten, their crops destroyed and evicted from *gairans.* On a positive side, regularisation has helped to reduce the uncertainty under which Dalits live and put a seal on changed relationships. Beneficiaries have also an acquired sense of pride in becoming farmers.

However, despite government resolutions to regularise occupation/ encroachments and improve the access of Dalits and other landless to land, and by extension, their social and economic mobility, there remains still, many problems with the actual implementation of these resolutions. For instance,

there are no reliable and accurate statistics on encroachers/encroachments. Even though land certificates have been granted to the eligible, the actual measurement and demarcation of plots has not been carried out resulting in a lot of confusion and uncertainty. Again, although encroachments have been regularised, civil and criminal cases continue to be filed against the Dalits at various levels. Old cases too have not been withdrawn. This has resulted in considerable harassment for the beneficiaries.

JAA- A descriptive account.

The aim of the JAA is to influence government policies with respect to land entitlements for landless people as well as implementation of existing resolutions / policies. The initiative is based on legitimate provisions guaranteed by the various revenue laws for the landless people.

The JAA is one of the good example of the Dalits struggle on the issue of land and part of a larger livelihood promotion programme (JAA) which consists of: (1) research into: history of grazing lands, quantity and quality of available grazing lands in Marathwada region, productive potential of grazing lands, Constitutional rights of landless people, existing Government policies and provisions affecting the landless people and land reform processes in two other States in India (Kerala and Madhya Pradesh); (2) organisation and capacity building of landless people and campaigning at different levels to draw public attention on the plight of landless people; (3) enhancing technical skills / capacities of people who have gained access to grazing lands to help them develop the lands they have had access to and promoting sustainable land husbandry practices; and (4) promotion of community based micro-finance institutions for facilitating credit for land development and land husbandry. JAA is initiated by a dalit ngo RDC, which have come together to form a campaign to fight for the rights of landless people in the Marathwada region of Maharashtra.[9]

The overall aim of the land right movement is to facilitate the process of securing land titles to families who are occupants/dependents of grazing or *gairan* lands to improve their livelihood prospects by securing their access to such lands and other common property resources in the Marathwada Region of Maharashtra state in India. Most of these families belong the Dalit community, the lowest caste, who are socially and economically among the most disadvantaged and marginalised sections of the population. The focus of the movement is on the consolidation of the mobilisation and campaigning work, including the filing of applications for land entitlements, and the training of grassroots activists, done through a JAA.

The specific objectives of the JAA Movement are to provide impetus to the efforts of landless (families) dependents/occupants of grazing lands, who had filed applications for land titles , to secure titles to these lands by facilitating

the process of collection of proofs of their occupancy to strengthen their claims to these lands, and to build on capacities of the trained activists team through a series trainings on required skills/ expertise to effectively support the struggle of the grazing land dependents/occupants or *gairandharaks* at the local (village, block and district) level.

JAA to achieve the objectives are Mobilised and organised the landless people in 1,000 villages through mass demonstration and rallies and through the formation of village land right committee, Identified and mobilised a cadre of 5,000 landless people from 1,000 villages to work on the issue of land entitlement for the landless and provided them preliminary training in: community organisation, mobilisation skills, dealing with the police and Constitutional rights of landless people. Further on it Facilitate the filing of 18,000 applications for land titles for those people who are presently occupying grazing lands in Marathwada.[10] It organised local level media campaigns to highlight the issues of the landless people and gain public support. It lobbied with local politicians before the Assembly elections to project issues of the landless in the election manifestos of political parties. It also engaged the services of an external expert to prepare a charter of demands of the landless people, which will be used for future campaigns for the rights of landless people.

JAA Collected the required proofs for establishing legally valid claims to land ownership over grazing lands for 18,000 *gairandharak* families. It compiled dossiers, that will record/document the status of the land records (maintenance and updating, physical verification, and procedures) of the 1,000 *gairandharak* families.[11] It conducted a series of intensive skills-improvement trainings over a period of one year, through an external organization, for the orgnisation team members.

The movement was started in 50 select blocks or *talukas* across four districts or *zillas* of the Marathwada region of Maharashtra. The beneficiaries are the landless and marginalised Dalit communities in Marathwada, in particular the 10,000 *gairandharak* families.[12]

The criteria for selected 18,000 cases were families A) Those who fell within the identified 50 Talukas. B) who have occupied land before 1990 but do not have the necessary proof C) already having most of the proof supporting their claim. D) who have demonstrated leadership qualities and sustained interest in the land acquisition process E) who have benefited from the regularisation process but do not have all the documents or whose occupancy has not be revised in the land records.[13]

The main stakeholders of this process were those A) Who have established claim on land but need land improvement B) who are cultivating the land but need to establish legal title C) who are not capable to hold the land acquired due to social pressures / lack of legal awareness D) women from the landless

families, who would be joint owners, and E) small / local Cammunity Based Organisations, individuals, and developmental actors who are working on the land issue.[14]

As mentioned earlier in order to get land entitlements, occupants of grazing land need to prove that they have been occupying these lands. The proofs secured by JAA for land entitlement are the following.

1. Application by the occupant to the block revenue officer (BRO) or *tahsildar* about possession of land and requesting for entitlement.
2. Record of a police case filed against the occupant because of his/her encroaching on the piece of land
3. Proof of the occupant having received punishment for occupying/ encroaching on the piece of land
4. A copy of the court judgement in the case involving the occupation , either in favour of or against the occupant / encroacher
5. Affidavit of the occupants (by both husband and wife) certifying themselves to be occupants of piece of land
6. Affidavits of fellow occupants from the village, who had encroached on land at the same time as the present occupants and who have received entitlements on the land, stating that the applicants in question had also encroached land at the same time as them. (This serves as a proof because sometimes some encroachers/occupants were not given land despite occupying these lands because either these have been officially recorded as land reserved for social forestry, although in reality there was no plantation/trees at the time of encroachment or were notified as land reserved for social forestry post the occupation).
7. Affidavits of five key persons from the village (village head or "sarpanch", vice sarpanch, police constable or "police patil", chairman of the village farmer's cooperative society and an elder/old resident of the village)
8. Affidavits of neighbours occupying the adjacent land, stating that the occupant had been occupying the piece of land for which entitlement is being sought
9. Affidavit of five senior/ elderly residents of the village
10. Affidavits by shepherds and cattle grazers or "balutedars" grazing on the land stating that they have not been able to graze their land owing to the land being occupied/encroached by the applicant/occupant of the piece of land
11. "Panchnama" or report of the village revenue official or "talathi" about the encroachment with details about the size (amount/quantity) of land and the number of occupants/encroachers

12.1 E document recording the occupant/applicant as a cultivator of the piece of land in question

13. Map documenting the location, with boundaries, and the size and parcels of land occupied. This map will be prepared by the occupants/village land rights units

14. Reports/Records of demonstrations or applications made by occupants of grazing land occupants to the authorities concerned demanding regularisation of/entitlements to occupied grazing lands

15. Resolution / No objection certificate (NOC) of the village assembly or "gram sabha" stating that it has no objection to giving entitlements to occupants of the common lands of the village. It is possible for the gram sabha to pass such a resolution under the 73rd Amendment to the Indian Constitution which grants such powers to local units of self government or "panchyati raj institutions (PRI).[15]

Post facto analysis of JAA

Most of the schemes are for landholders but actual landless are ruled out. They do not get timely information regarding making applications for the various developmental schemes because they do not know and have network to get information. It seems that bureaucracy is biased against Dalits and landless. Not having the basic certificate such as caste certificate, income certificate, Below Poverty Line card or other technically required documents is a major hindrance in accessing government schemes. Constant follow up of submitted legal claims needs to have formal support to the applicants. The time required for following up the applications with the concerned officers is very long. Money is required for travel to the government offices (located in the towns). Engaging in this travel, means losing a day's wages, which the poor cannot afford. The practice of bribe affects their ability to make networks.

Since Dalits and landless are in minority numbers as well in terms of recourses they do not feel empowered to encroach available grazing land. Dalits do not feel comfortable to encroach grazing land because of the presence of civic amenities on the *gairans* such as cremation ground, school, social forestry, temple etc. Use of *gairan* for Cropping and other commercial purposes and is also used to keep the dalits away from occupying the land.

There are various disputes which can be seen with various stake holders in this process. The revenue officer resists recognizing and recording occupation of land by cultivators. In couple of cases it seen that the higher level policy maker/ bureaucracy is proposing developmental plans such as electricity substation, Government guest house, other government establishments as well as cooperative sugar factories and cotton mills.

Secondly the major conflict can seen at village level where one can see the binary between grazing land holders Dalits and land lords who is having very close nexuses with local politicians and bureaucracy. The outcome of this conflict can be seen in the police cases and court cases among themselves. To take up this legal fight with landlords and local politicians is not possible for dalits.

There are daily fights because Landless / Dalits get organized because of JAA and are facing severe opposition from the landholders. It can lead to social boycott, when dalits are not allowed to come in the village functions. Dalit women are not allowed to fetch water from common wells. Grazing the cultivated *gairans* can also lead sever dispute. Dalits are also often denied agriculture labor.

Endnotes

1 As the term is used by Nancy Fraser.

2 As the term is used by Gopal Guru.

3 http://www.censusindia.gov.in/Census_Data_2001/India_at_Glance/scst.aspx.

4 http://dacnet.nic.in/eands/LUS-2007-08/1998-99%20to%202007-08/tab(1.1).pdf.

5 Ibid.

6 Report prepared by Jamin Adhikar Andolan.

7 Ibid.

8 Ibid.

9 Report prepared by Jamin Adhikar Andolan.

10 Report prepared by Jamin Adhikar Andolan.

11 Ibid.

12 Ibid.

13 Report prepared by Jamin Adhikar Andolan.

14 Report prepared by Jamin Adhikar Andolan.

15 Training modules of Jamin Adhikar Andolan.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

No. 33 OF 1989

[11th September, 1989.]

An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fortieth Year of the Republic of India as Follows:

Chapter I: PRELIMINARY

1. Short title, extent and commencement

1. This Act may be called the Scheduled Castes and the Scheduled extent and Tribes (Prevention of Atrocities) Act, 1989.
2. It extends to the whole of India except the State of Jammu & Kashmir.
3. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

1. In this Act unless the context otherwise requires -
    a. "atrocity" means an offence punishable under section 3
    b. "Code" means the Code of Criminal Procedure, 1973 (2 of 1974)
    c. "Scheduled Castes and Scheduled Tribes" shall have the mean-ings assigned to them respectively under clause (24) and clause (25) of article 366 of the Constitution
    d. "Special Court" means a Court of Session specified as a Special Court in section 14
    e. "Special Public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in section 15
    f. words and expressions unsed but not defined in this Act and de-fined in the Code or the Indian Penal Code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code.
2. Any reference in this Act to any enactment or any provision thereof shall in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER II: OFFENCES OF ATROCITIES

3. Punishment for offences of atrocities

1. Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -
    i. forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance
    ii. acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste, or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

iii. forcibly removes clothes from the person of a member of a Schedul-ed Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity

iv. wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

v. wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water

vi. compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government

vii. forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law

viii. institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe

ix. gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe

x. intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view

xi. assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty

xii. being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed

xiii. corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or a Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used

xiv. • denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to

xv. forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

- Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

i. gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death

ii. gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled

Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine

iii. commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine

iv. commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine

v. commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine

vi. knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

vii. being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence

4. Punishment for neglect of duties

Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

5. Enhanced punishment for subsequent conviction

Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

6. Application of certain provisions of the Indian Penal Code

Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, Section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

7. Forfeiture of property of certain persons

1. Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any

property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.

2. Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realisation of any fine imposed under this Chapter.

8. Presumption as to offences

In a prosecution for an offence under this Chapter, if it is proved that -

a. the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence
b. a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regard-ing land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

9. Conferment Powers

1. Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it consider it necessary or expedient so to do -
    a. for the prevention of and for coping with any offence under this Act, or
    b. for any case or class or group of cases under this Act,

    in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

2. All officer of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.
3. The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

CHAPTER III: EXTERNMENT

10. Removal of person likely to commit offence

a. Where the Special Court is satisfied, upon a complaint, or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in 'Scheduled Areas' or 'tribal areas', as referred to in article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding two years, as may be specified in the order.
b. The Special Court shall, along with the order under sub-section (1) communicate to the person directed under that sub-section the grounds on which such order has been made.
c. The Special Court may revoke or modify the order made under sub- section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order

has been made or by any other person on his behalf within thirty days from the date of the order.

11. Procedure on failure of person to remove himself from area and enter thereon after removal

1. If a person to whom a direction has been issued under section 10 to remove himself from any area -
    a. fails to remove himself as directed; or
    b. having so removed himself enters such area within the period specified in the order,

    otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

2. The Special Court may, by order in writing, permit any person in respect of whom an order under section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.
3. The Special Court may at any time revoke any such permission.
4. Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unexpired portion specified under section 10 without a fresh permission.
5. If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

12. Taking measurements and photographs, etc. of persons against whom order under section 10 is made

1. Every person against whom an order has been made under section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer.
2. If any person referred to in sub-section (1), when required to allow his measurements or photographs to be taken resists or refuses to allow his taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof.
3. Resistance to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).
4. Where an order under section 10 is revoked, all measurements and photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

13. Penalty for non compliance of order under section 10

Any person contravening an order of the Special Court made under section 10 shall be punishable with imprisonment for a term which may extend to one year and with fine.

CHAPTER IV: SPECIAL COURTS

14. Special Court

For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

15. Special Public Prosecutor

For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER V: MISCELLANEOUS

16. Power of State Government to impose collective fine

The provisions of section 10A of the Protection of Civil Rights Act, 1955 (22 of 1955) shall, so far as may be, apply for the purposes of imposition and realisation of collective fine and for all other matters connected therewith under this Act.

17. Preventive action to be taken by the law and order machinery

1. A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behaviour and maintenance of public order and tranquility and may take preventive action.
2. The provisions of Chapters VIII, X and XI of the Code shall, so far as may be, apply for the purposes of sub-section (1).
3. The State Government may, by notification in the Official Gazette, make one or more schemes specifying the manner in which the officers referred to in sub-section (1) shall take appropriate action specified in such scheme or schemes to prevent atrocities and to restore the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.

18. Section 438 of the code not to apply to persons committing an offence under the Act

Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act

19. Section 360 of the Code or the Provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act

The provisions of section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this act.

20. Act to override other laws

Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

21. Duty of Government to ensure effective implementation of the Act

1. Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.
2. In particular, and without prejudice to the generality of the foregoing provisions, such measures may include -
    i. the provision for adequate facilities, including legal aid to the persons subjected to atrocities to enable them to avail themselves of justice
    ii. the provision for travelling and maintenance expenses to witness-es, including the victims of atrocities, during investigation and trial of offences under this Act
    iii. the provision for the economic and social rehabilitation of the victims of the atrocities
    iv. the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act
    v. the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures
    vi. provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provision of this Act
    vii. the identification of the areas where the members of the Schedul-ed Castes and the Scheduled Tribes are likely to be subjected to atro-cities and adoption of such measures so as to ensure safety for such members
3. The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under sub-section (1)
4. The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

22. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

23. Power to make rules

1. The Central government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
2. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be make, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

V. S. RAMA DEVI,
Secy. to the Govt. of India.

International Convention on the Elimination of All Forms of Racial Discrimination

Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965

entry into force 4 January 1969, in accordance with Article 19

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,
Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of Al l Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to en sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case en tail as a con sequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems. 2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5.

(a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;

(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and

(b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure. 2. The Committee shall elect its officers for a term of two years.

3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. 2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the

case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention; (b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention. 3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute. 2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. 2. Any State Party which makes a declaration as provided for in paragraph I of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6.

(a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7.

(a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations. 9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

Article 15

1 . Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies. 2.

(a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports. 4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention. 2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession. 2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it. 2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. 2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

(a) Signatures, ratifications and accessions under articles 17 and 18;

(b) The date of entry into force of this Convention under article 19;

(c) Communications and declarations received under articles 14, 20 and 23;

(d) Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations. 2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

Sixty-first session (2002)

General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent)

The Committee on the Elimination of Racial Discrimination,

Recalling the terms of the Universal Declaration of Human Rights according to which all human beings are born free and equal in dignity and rights and are entitled to the rights and freedoms therein without distinction of any kind, including race, colour, sex, language, religion, social origin, birth or other status,

Recalling also the terms of the Vienna Declaration and Programme of Action of the World Conference on Human Rights according to which it is the duty of States, regardless of political, economic and cultural system, to promote and protect all human rights and fundamental freedoms,

Reaffirming its general recommendation XXVIII in which the Committee expresses wholehearted support for the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,

Reaffirming also the condemnation of discrimination against persons of Asian and African descent and indigenous and other forms of descent in the Durban Declaration and Programme of Action,

Basing its action on the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination which seeks to eliminate discrimination based on race, colour, descent, or national or ethnic origin,

Confirming the consistent view of the Committee that the term "descent" in article 1, paragraph 1, the Convention does not solely refer to "race" and has a meaning and application which complement the other prohibited grounds of discrimination,

Strongly reaffirming that discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights,

Noting that the existence of such discrimination has become evident from the Committee's examination of reports of a number of States parties to the Convention,

Having organized a thematic discussion on descent-based discrimination and received the contributions of members of the Committee, as well as contributions from some Governments and members of other United Nations bodies, notably experts of the Sub-Commission for the Promotion and Protection of Human Rights,

Having received contributions from a great number of concerned non-governmental organizations and individuals, orally and through written information, providing the Committee with further evidence of the extent and persistence of descent-based discrimination in different regions of the world,

Concluding that fresh efforts need to be made as well as existing efforts intensified at the level of domestic law and practice to eliminate the scourge of descent-based discrimination and empower communities affected by it,

Commending the efforts of those States that have taken measures to eliminate descent-based discrimination and remedy its consequences,

Strongly encouraging those affected States that have yet to recognize and address this phenomenon to take steps to do so,

Recalling the positive spirit in which the dialogues between the Committee and Governments have been conducted on the question of descent-based discrimination and anticipating further such constructive dialogues,

Attaching the highest importance to its ongoing work in combating all forms of descent-based discrimination,

Strongly condemning descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention,

Recommends that the States parties, as appropriate for their particular circumstances, adopt some or all of the following measures:

1. Measures of a general nature

(a) Steps to identify those descent-based communities under their jurisdiction who suffer from discrimination, especially on the basis of caste and analogous systems of inherited status, and whose existence may be recognized on the basis of various factors including some or all of the following: inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanizing discourses referring to pollution or untouchability; and generalized lack of respect for their human dignity and equality;

(b) Consider the incorporation of an explicit prohibition of descent-based discrimination in the national constitution;

(c) Review and enact or amend legislation in order to outlaw all forms of discrimination based on descent in accordance with the Convention;

(d) Resolutely implement legislation and other measures already in force;

(e) Formulate and put into action a comprehensive national strategy with the participation of members of affected communities, including special measures in accordance with articles 1 and 2 of the Convention, in order to eliminate discrimination against members of descent-based groups;

(f) Adopt special measures in favour of descent-based groups and communities in order to ensure their enjoyment of human rights and fundamental freedoms, in particular concerning access to public functions, employment and education;

(g) Establish statutory mechanisms, through the strengthening of existing institutions or the creation of specialized institutions, to promote respect for the equal human rights of members of descent-based communities;

(h) Educate the general public on the importance of affirmative action programmes to address the situation of victims of descent-based discrimination;

(i) Encourage dialogue between members of descent-based communities and members of other social groups;

(j) Conduct periodic surveys on the reality of descent-based discrimination and provide disaggregated information in their reports to the Committee on the geographical distribution and economic and social conditions of descent-based communities, including a gender perspective;

2. Multiple discrimination against women members of descent-based communities

(k) Take into account, in all programmes and projects planned and implemented and in measures adopted, the situation of women members of the communities, as victims of multiple discrimination, sexual exploitation and forced prostitution;

(l) Take all measures necessary in order to eliminate multiple discrimination including descent-based discrimination against women, particularly in the areas of personal security, employment and education;

(m) Provide disaggregated data for the situation of women affected by descent-based discrimination;

3. Segregation

(n) Monitor and report on trends which give rise to the segregation of descent-based communities and work for the eradication of the negative consequences resulting from such segregation;

(o) Undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in housing, education and employment;

(p) Secure for everyone the right of access on an equal and non-discriminatory basis to any place or service intended for use by the general public;

(q) Take steps to promote mixed communities in which members of affected communities are integrated with other elements of society and ensure that services to such settlements are accessible on an equal basis for all;

4. Dissemination of hate speech including through the mass media and the Internet

(r) Take measures against any dissemination of ideas of caste superiority and inferiority or which attempt to justify violence, hatred or discrimination against descent-based communities;

(s) Take strict measures against any incitement to discrimination or violence against the communities, including through the Internet;

(t) Take measures to raise awareness among media professionals of the nature and incidence of descent-based discrimination;

5. Administration of justice

(u) Take the necessary steps to secure equal access to the justice system for all members of descent-based communities, including by providing legal aid, facilitating of group claims and encouraging non-governmental organizations to defend community rights;

(v) Ensure, where relevant, that judicial decisions and official actions take the prohibition of descent-based discrimination fully into account;

(w) Ensure the prosecution of persons who commit crimes against members of descent-based communities and the provision of adequate compensation for the victims of such crimes;

(x) Encourage the recruitment of members of descent-based communities into the police and other law enforcement agencies;

(y) Organize training programmes for public officials and law enforcement agencies with a view to preventing injustices based on prejudice against descent-based communities;

(z) Encourage and facilitate constructive dialogue between the police and other law enforcement agencies and members of the communities;

6. Civil and political rights

(aa) Ensure that authorities at all levels in the country concerned involve members of descent-based communities in decisions which affect them;

(bb) Take special and concrete measures to guarantee to members of descent-based communities the right to participate in elections, to vote and stand for election on the basis of equal and universal suffrage, and to have due representation in Government and legislative bodies;

(cc) Promote awareness among members of the communities of the importance of their active participation in public and political life, and eliminate obstacles to such participation;

(dd) Organize training programmes to improve the political policy-making and public administration skills of public officials and political representatives who belong to descent-based communities;

(ee) Take steps to identify areas prone to descent-based violence in order to prevent the recurrence of such violence;

(ff) Take resolute measures to secure rights of marriage for members of descent-based communities who wish to marry outside the community;

7. Economic and social rights

(gg) Elaborate, adopt and implement plans and programmes of economic and social development on an equal and non-discriminatory basis;

(hh) Take substantial and effective measures to eradicate poverty among descent-based communities and combat their social exclusion or marginalization;

(ii) Work with intergovernmental organizations, including international financial institutions, to ensure that development or assistance projects which they support take into account the economic and social situation of members of descent-based communities;

(jj) Take special measures to promote the employment of members of affected communities in the public and private sectors;

(kk) Develop or refine legislation and practice specifically prohibiting all discriminatory practices based on descent in employment and the labour market;

(ll) Take measures against public bodies, private companies and other associations that investigate the descent background of applicants for employment;

(mm) Take measures against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for members of affected communities;

(nn) Ensure equal access to health care and social security services for members of descent-based communities;

(oo) Involve affected communities in designing and implementing health programmes and projects;

(pp) Take measures to address the special vulnerability of children of descent-based communities to exploitative child labour;

(qq) Take resolute measures to eliminate debt bondage and degrading conditions of labour associated with descent-based discrimination;

8. Right to education

(rr) Ensure that public and private education systems include children of all communities and do not exclude any children on the basis of descent;

(ss) Reduce school drop-out rates for children of all communities, in particular for children of affected communities, with special attention to the situation of girls;

(tt) Combat discrimination by public or private bodies and any harassment of students who are members of descent-based communities;

(uu) Take necessary measures in cooperation with civil society to educate the population as a whole in a spirit of non-discrimination and respect for the communities subject to descent-based discrimination;

(vv) Review all language in textbooks which conveys stereotyped or demeaning images, references, names or opinions concerning descent-based communities and replace it by images, references, names and opinions which convey the message of the inherent dignity of all human beings and their equality of human rights.

Equality and Human Rights Commission
Research report 91

Caste in Britain: Socio-legal Review

Meena Dhanda, Annapurna Waughray, David Keane, David Mosse, Roger Green and Stephen Whittle

University of Wolverhampton
Manchester Metropolitan University
Middlesex University
SOAS, University of London
Goldsmiths, University of London

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Dr Meena Dhanda (University of Wolverhampton)
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Executive summary

Background and aims of the project

In April 2013, the Enterprise and Regulatory Reform Act was enacted. Section 97 of the Act requires government to introduce a statutory prohibition of caste discrimination into British equality law by making caste 'an aspect of' the protected characteristic of race in the Equality Act 2010. In light of this, the Equality and Human Rights Commission (EHRC) contracted a team of academics drawn from different research institutions to conduct an independent study in two parts:

- a review of existing socio-legal research on British equality law and caste; and
- two supporting events (for experts and stakeholders).

This report (Dhanda et al, 2014a) details the findings from the first part of the study and is best read alongside the report of the experts' seminar and stakeholders' workshop (Dhanda et al, 2014b).

Methodology

The review of socio-legal research was conducted between October and December 2013. Desk research was undertaken to provide a detailed review of existing legal research literature on caste and the law in Britain and internationally. As well as academic works, this included 'grey' literature. Case reports, court and tribunal judgments, legislation (including commentaries and explanatory notes), and academic commentaries on legislation and caselaw were also reviewed.

The material gathered was analysed and used to inform both this report and to prepare the questions for participants invited to attend the experts' seminar and the later stakeholders' workshop (see Dhanda et al, 2014b). The deliberations at these events, together with the subsequent discussions with legal experts and the written statements from the seminar, fed into this review.

Main findings

The meaning of caste and its manifestations in Britain

Caste is a form of identity that is used as a basis for social differentiation and usually involves inequality. It is generally accepted that caste is acquired by birth and sustained by endogamy, in which marriage is restricted to individuals of the same caste. Caste has considerable fluidity and also a global reach. In Britain, caste is positively a form of association and social capital among communities of South Asian

origin, but negatively a form of social separation, distinction and ranking. In predominant usage in Britain, caste is used interchangeably for *varna*, *jati*, and *biradari*. The most typical usage, though, is of caste as *jati*.

Varna, the four-fold division of Indic populations, is widely used in Sanskrit texts: Brahmin (priest), Kshatriya (warrior and ruler), Vaishya (trader or producer) and Shudra (servant, labourer). *Varna* is considered by some as hierarchical and by others as a classification of functions only. Excluded from the *varna* system, comprising a fifth category, are the Dalits, formerly known as 'Untouchables'. Dalit is a political term of self-identification adopted by many, but not all, persons of so-called 'Untouchable' origin. It embraces a variety of distinct castes, the names of which individuals may or may not choose to use, but which when used by others may be regarded as offensive.

The second meaning of caste is rendered by the South Asian term *jati*. *Jatis* are not fixed units and may be divided into 'sub-castes' which are the socially significant identities and status groups. Unlike *varna*, the concept of *jati* is not connected to any one religious grouping, but is found in all the major South Asian religious communities.

Finally, caste encompasses *biradari* (brotherhood), also referred to by the term *zaat*, used interchangeably with *biradari* or in combination with it (*zaat-biradari*). *Zaat* is in turn related to '*nasal*' (lineage), meaning race.

As a form of social identification, caste is distinct from class, race, and various forms of ethnicity. Caste and race have long been interlinked, but caste hierarchy cannot have originated in social gradations based on skin colour.

Academics writing on caste in the UK present it as dynamic, but having resilient features of social distinctions between caste groups. There is a potential for caste-based conflict to be masked as religious conflict. Research shows that caste is also manifest within new youth culture including music and social media.

Caste and protected characteristics

The Equality Act 2010 prohibits specified types of conduct or behaviour, in specified spheres of activity and because of certain protected characteristics only. Conduct must meet all three criteria in order to amount to actionable discrimination. For example, under the Equality Act, discrimination which is not in a regulated sphere, or which is not because of a protected characteristic, is not unlawful. Legally regulated fields include employment but do not include the private sphere, such as marriage.

Prohibited types of conduct can be direct or indirect discrimination, harassment or victimisation, which have relatively high standards of proof.

Section 97 of the Enterprise and Regulatory Reform Act 2013 requires that caste be made ‘an aspect of’ the protected characteristic of race in the Equality Act 2010, not a protected characteristic in itself. It does not indicate how this is to be achieved, meaning it is open to deem caste to form part of an existing sub-category of race; or to name caste as a specific sub-category (with colour, nationality, national and ethnic origins). Until caste is introduced into legislation, legal protection against caste discrimination depends on establishing in the courts that caste is subsumed within an existing characteristic. Of the nine protected characteristics in the Equality Act 2010 only race, and religion or belief, contend as possible ‘legal homes’ for caste.

Caste as a characteristic is distinct from religion or belief. Caste discrimination is motivated by the known or perceived caste status of the victim, not the religion or belief to which the victim is known or thought to subscribe to, and it is therefore misconceived to conflate caste status with religious identity.

There are, however, situations where caste has been said to be subsumed under the protected characteristic of religion. Prohibitions on discrimination connected with religion or belief provisions may be relied on in cases of caste discrimination where the victim is a member of a religious group whose members are seen as largely of one caste or sub-caste such as the Ravidassias or Valmikis; hence religion and caste overlap sufficiently for the religion provisions to be relied on even though the discrimination may be in whole or in part because of caste. Nevertheless, using religious discrimination provisions masks rather than exposes the caste-based nature of the discrimination. Alternatively, where discrimination is because of religion and caste, the religion or belief provisions may be relied on where religion is a significant even if not the only reason for the discriminatory treatment.

Race as currently defined in the Equality Act 2010 includes four aspects: colour, nationality, and national or ethnic origins, with ethnic origins potentially open to interpretation as including caste. Sociological literature shows that caste groups do not correspond to culturally, linguistically or historically coherent groups defined by reference to the legal meaning of ethnic origins. Following international law, it could be argued that because ‘descent’ has been interpreted to include caste at the international level, so it could be said to include caste at the domestic level; but this involves a number of interpretative leaps. In 2012, in the first case in which a decision has been reached where the meaning of caste for the purposes of existing discrimination legislation has been examined, it was held that caste in that particular

case could not be subsumed under ethnic origins. However, in a subsequent case in January 2014, an employment tribunal reached a different decision. It held that race in the Equality Act 2010 could, in the context of that case, be construed as providing for caste discrimination to be part of the protected characteristic of race discrimination.

Caste and exceptions

The Equality Act 2010 lists a number of exceptions, including a Genuine Occupational Requirement where an employer can apply, in relation to work, a requirement to have a particular protected characteristic. The test is set high and an employer would have to meet these standards in order to defend successfully a requirement that an employee has a particular protected characteristic. Caste is not yet an aspect of the protected characteristic of race in the Act, but it is expected that when it is included, the question of whether the existing exceptions are adequate, or whether specific exceptions are required to deal with caste, will be addressed. Being of a particular religious belief can also be a Genuine Occupational Requirement in the case of employers with an ethos based on religion or belief, which may be established by reference to such evidence as the organisation's founding constitution. The 'religious organisations' exception would allow, for example, a Valmiki organisation to restrict key posts to Valmikis.

Further exceptions apply to services, in which it is possible to provide services generally used by groups who share a protected characteristic, including race, although to deny services and to dispose of premises on the basis of race is not permitted. This allows preferences to be shown on the basis of protected characteristics such as sex or religion, but not on the basis of race. A general exception in relation to organisations based on religion or belief provides for restrictions on membership and other allowable constraints, but does not extend to race, this means that, for example, a Ravidassia organisation which meets the criteria of a religious organisation may restrict its membership or the use of its facilities, services or premises to adherents of the Ravidassia religion, but it could not impose restrictions on the basis of race. In relation to education, religious exceptions apply to schools of a religious character, but restrictions on admissions to schools on the basis of race, which will include caste, are not allowed. As with the Genuine Occupational Requirement exception, when caste is made an aspect of race, the question of whether the exceptions currently applying to race should also apply to caste will need to be addressed. Associations, meaning groups of 25 members or more, as well as charities, are allowed to restrict on the basis of all protected characteristics, including race, with the exception of colour. Therefore caste associations and charities would continue to be permissible without additional

legislative exceptions being required, with only colour excluded from these exceptions.

That caste is to be made an aspect of race, rather than another protected characteristic such as religion, means that the zone of operation of the exceptions generally is as narrow as it can be. There is, furthermore, a Public Sector Equality Duty which applies to caste as an aspect of race, whereby public bodies are required to have due regard to the need to eliminate discrimination and to promote equality and good relationships between groups defined by reference to the various protected characteristics, which will include caste. However, it is widely agreed that collecting data on the basis of caste would be counter-productive.

Overall, caste is to be made an aspect of race which can be done by interpreting ethnic origins to include caste, or by naming caste as a fifth sub-category of race. The latter approach appears to provide more clarity and fits with the wider understanding of the meaning of caste as distinct from ethnic origins.

Caste in the international context

The international context is relevant to caste in Britain from two perspectives. First, the United Nations has examined the question of caste discrimination in its international treaty law, finding that it is a form of descent-based discrimination and therefore a form of racial discrimination for the purposes of the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD), to which the UK is a signatory. Second, the domestic systems of a number of other States have legislated on caste, potentially providing models for the Equality Act 2010 as well as affirming that caste can occur outside of the South Asian context. Overall, the international sphere provides a benchmark against which to assess the current requirement contained in s.97 of the Enterprise and Regulatory Reform Act 2013.

The United Nations experience informs the present discussion. The Committee on the Elimination of Racial Discrimination (CERD), in its examination of the UK's State Report under ICERD (a requirement which assesses the extent to which a State is implementing its treaty obligations), concluded that the inclusion of caste in the Equality Act 2010 was a treaty obligation. Furthermore, CERD has looked at caste from an international perspective, viewing it as a form of descent-based discrimination seen in a number of States such as India, but also in the wider South Asian region, for example Bangladesh, and in a small number of other States, in which groups suffer from discrimination which is strongly associated with caste-like structures. Therefore the potential application of the grounds of caste beyond the

South Asian paradigm could find support in the investigations of CERD at the international level. In addition, CERD has issued General Recommendation 29, which provides a definition-like description of descent-based discrimination, including caste and analogous systems of inherited status. It needs to be emphasised that this is an international understanding that requires modification for the British experience. Finally, ICERD affirms that caste discrimination is a form of racial discrimination. It supports the British legislature's approach that caste be made an aspect of the protected characteristic of race.

Further, the Indian Constitution underlines the notion that a periodic review is applied to affirmative action provisions rather than to non-discrimination grounds. The ground 'caste' in the Constitution's non-discrimination provisions is permanent. This supports the argument that the proposal for a review in the British legislative provision on caste is legally without precedent and goes against the approach of other States.

However, the British formula, to treat caste as an aspect of race, more readily reflects the international approach in which it is considered a form of racial discrimination in ICERD.

Conclusion

This review examines how caste can best be made an aspect of race under the Equality Act 2010 and outlines why making caste an aspect of race also fits within a broader international context. It notes that there is an absence of an accepted legal standard at the domestic or international level and sets out the proposed characteristics of such a definition. Linked to findings of academic research on caste, which shows the specificity of the reproduction of caste in Britain, this review also suggests elements for a definition. It shows that there are dangers in adopting too precise, or too broad a legal definition of caste, but that there is a value in using a minimum definition of caste in terms of: (1) endogamy (2) inherited status, and (3) social stratification.

Caste rules and prohibitions have always displayed strong legal characteristics, and clarity, thoughtfulness and sensitivity are required to articulate the meaning of caste in the context of the proposed legislation. This report, along with the companion study (Dhanda et al, 2014b), is offered as a contribution to such an articulation.

1. Introduction

This chapter first sets out the aims of the project. Second, it describes the legal developments that led to the duty to include caste as an aspect of race in the Equality Act 2010, drawing extensively on Waughray (2013). Third, it looks at the meaning of caste. Fourth, it provides detail on the available knowledge and current research on caste in Britain. Finally, it explains the methodology adopted in the 'Caste in Britain' project, and sets out the scope of this report and a guide to its structure.

1.1 Aims of the project

In September 2013, the Equality and Human Rights Commission (the Commission) contracted a team of academics drawn from different research institutions to carry out an independent study on caste in Britain. This involved a detailed review of the law and caste, together with two separate invitation-only events: an experts' seminar and a stakeholders' workshop. This report (Dhanda et al, 2014a), constitutes the first part of the study; the two events are examined in Dhanda et al (2014b).

The rationale for the project is the requirement contained in section 97 of the Enterprise and Regulatory Reform Act 2013 that caste be made an aspect of race for the purposes of the Equality Act 2010. The aim of the report is to chart the background to this decision and the emergence of the issue of caste within the framework of British equality law. It describes the difficulties in interpreting caste within existing protected characteristics as currently defined. It assesses the lessons that can be drawn from legal approaches to caste adopted in other jurisdictions. It considers how caste will work as a legal concept within the Equality Act 2010.

1.2 Background context

In April 2013, the Enterprise and Regulatory Reform Act was enacted. Section 97 of the Act requires government to introduce a statutory prohibition of caste discrimination into British equality law by making caste an aspect of the protected characteristic of race in the Equality Act 2010.

Until 2005, when the then Labour Government announced a major overhaul of Britain's equality framework, caste had been largely invisible as a social phenomenon and as a ground of discrimination. The prospect of a new, single, Equality Act provided a rallying point for British Dalits (see Section 1.3 for the meaning of this term) and a springboard for debate on the inclusion of caste in domestic discrimination law. In 2007, the Labour Government decided against including protection against caste discrimination in the Equality Bill, on the grounds

that there was ‘no strong evidence’ of such discrimination in Britain. During the passage of the Bill through Parliament in 2009-10, the government was not persuaded of the need to amend the Bill to include an immediate, express prohibition of caste discrimination.

Section 9(5)(a) of the Equality Act 2010, however, allowed for discretionary ministerial intervention to enact legislation against caste discrimination by making caste ‘an aspect of’ the protected characteristic of race in section 9 of the Act, provided it was established through research that caste discrimination does exist in Britain. This section was added following a last-minute amendment to the Bill in the House of Lords, which the government decided not to oppose because to do so would have jeopardised the successful passage of the Bill through Parliament.

The decision to include the enabling power in section 9(5)(a) rather than an immediate prohibition of caste discrimination was described by the government as a proportionate approach which would allow appropriate action to be taken if future research showed evidence of caste discrimination in Britain. There were four main reasons for this approach: a perceived lack of evidence of a problem requiring a legislative solution; the argument that caste discrimination was already covered by existing law on racial and religious discrimination; a wish to avoid the ‘proliferation of the protectorate’, i.e. an unjustifiable extension of the list of protected characteristics based on which discrimination is prohibited; and possible undesirable socio-political consequences, including negative impacts on community cohesion (Waughray, 2013).

The Equality Act received Royal Assent in April 2010, but the power under section 9(5)(a) allowing ministerial intervention was not used for more than two years. However, in January 2013, three peers proposed an amendment to the Enterprise and Regulatory Reform Bill in the House of Lords making caste a new subset of race under section 9(1) of the Equality Act. This amendment was withdrawn, but a subsequent amendment proposing the addition of caste to the definition of race was adopted by the House of Lords in March 2013. The Lords amendment was defeated in the House of Commons on 16 April 2013, but six days later, following further debate, the House of Lords again voted for their amendment. Following this latest vote, the Coalition Government proposed a government amendment in lieu.

This amendment replaced the discretionary power in section 9(5)(a) of the Equality Act 2010 with a *duty* to make caste an aspect of race for the purposes of the Equality Act 2010. It also provided for the possibility of review, amendment or repeal of the caste legislation after five years. It committed the government to introducing

secondary legislation to prohibit caste discrimination. The government's amendment in lieu was agreed by the House of Lords on 24 April 2013 to become section 97 of the Enterprise and Regulatory Reform Act 2013.

In the light of the new legislation, and as part of its statutory remit under the Equality Act 2010, the EHRC commissioned new research to develop the available evidence and analysis.

1.3 The meaning of caste

Caste is a form of identity that is used as a basis for social differentiation and usually involves inequality. It is generally accepted that caste is acquired by birth and sustained by endogamy, in which marriage is restricted to individuals of the same caste. According to Dr B.R. Ambedkar, a British-educated lawyer and one of the principal architects of the Indian Constitution, writing in 1916, '... [a] caste is an enclosed class' and 'endogamy is the only characteristic of caste' (Ambedkar, 2002). Historically, and in some Sanskrit texts, caste involves the notion of 'innate characteristics' (Doniger, 2011: 211).

The origins of caste and the mechanisms of its perpetuation are a matter of controversy. Sometimes the inherited identities are occupational in origin; or derived from the clans, guilds, religious sects or tribes historically integrated into Indian society as castes (Doniger, 2011). Sometimes orders of rank and discrimination are related to issues of ritual purity and pollution. As noted by Bayly (1999: 7): 'Caste was and is, to a considerable extent, what people *think* of it, and how they act on these perceptions'. Sociologists have tended to see caste as a system of social ranking, with recognised regional variations and considerable fluidity (Jodhka, 2012). Historians have charted the pre-colonial antecedents, colonial constructions and post-colonial variations of caste (Bayly, 1999; Dirks, 2002; Doniger, 2011). Finally, alongside castes, there are South Asian social identities categorised as 'tribes' and known collectively as Adivasis. These have a different history of non-integration, but also suffer inequality, marginalisation, and social separation and represent a *sui generis* or separate legal category broadly equivalent to an international concept of indigenousness (Gilbert, 2005). Sociologically speaking, the distinction between caste and tribe is to some extent arbitrary and reified by law.

Today caste is often represented as a matter of cultural identity and community rather than inherited status and inequality (Gupta, 2000). This emphasis on 'culture' has, however, also been explained as an adaptation, in modern economic and democratic circumstances, of caste as a form of social differentiation that still serves to keep people in their socio-economic place (Natrajan, 2012).

In South Asia, where caste division is acknowledged as a part of life, it invariably involves unequal access to valued resources (e.g. land and water), to opportunities (education and employment) and to political power; and involves the humiliation of certain groups considered socially inferior. Such groups are deemed 'untouchable' and especially in rural society are often residentially segregated, excluded from public spaces and services (e.g. temples, teashops, village wells), and denied social respect. Caste is also a global structure and form of discrimination (or 'opportunity hoarding') that shapes labour, credit, rental and other markets, access to services (health, justice) and entrepreneurship (e.g., Iyer et al, 2013; Kumar, 2006; Lanjouw and Stern, 2003; Natrajan, 2012; Thorat and Newman, 2010). Caste has been a factor determining patterns of migration and is in turn altered by these patterns (for the UK, see Ballard, 1989; Dhanda, 2013a; Taylor, 2013).

Globally, discrimination on grounds of caste is not strictly religious, nor 'Hindu'; it exists among Christians, Muslims, Sikhs and other groups (Zene, 2002, O'Brien, 2012, Mosse, 2012, Singh, 2012). An independent Indian commission pertinently noted that caste is a 'general social characteristic' regardless of 'whether the philosophy and teachings of any particular religion recognise it or not' (Ministry of Minority Affairs, 2009: 153-54).

In Britain, as in India, the term 'caste' subsumes three concepts. First, there is *varna,* the hierarchical order of the four social functions or 'classes' of ancient India: Brahmin (priest), Kshatriya (warrior and ruler), Vaishya (trader or producer) and Shudra (servant, labourer). (The other meaning of *varna* as 'colour' has led to the misleading simplification that it denotes a racial hierarchy, see below). Excluded from the *varna* system, comprising a fifth category, are the Dalits, formerly known as 'Untouchables'. Dalit is a political term of self-identification adopted by many but not all people of so-called 'Untouchable' origin. It embraces a variety of distinct castes the names of which individuals may or may not wish to use, and which when used by others may be regarded as offensive because of the painful histories of subordination and humiliation they recall. 'To call oneself Dalit, meaning "ground down", "broken to pieces", "crushed" is to convert a negative description into a confrontational identity' (Rao, 2009: 1).

Second, there is the South Asian concept of *jati*, signifying birth group. These are smaller scale, regional, endogamous groups, which are hierarchically ranked, within a geographical locality and are effectively the operational units of a system that varies with region and with historical periods. Unlike *varna*, the concept of *jati* is not connected to any one religious grouping, but is found in all the major South Asian religious communities. It is important to recognise that a *jati* (a caste) is not a fixed

unit. That is to say, different *jatis* may unite to form a larger grouping with shared status and identity (the group of *jatis* in effect being the 'caste' group with social significance), but also a *jati* may be divided into 'sub-castes' which are individually the socially significant identities and status groups. Which social groups are significant, and at which level (a group of jatis, a single jati/caste or a sub-caste) will vary between region, historical period, and social-political context. Any of these can appropriately be described as the caste in question.

Third, caste also encompasses *biradari*. *Biradari* is a regional (largely Punjabi) term, in the UK mostly used by Muslim groups (in application to Sikhs in Britain, see Singh and Tatla, 2006: 29). O' Brien (2012: 127-28) helpfully explains that: 'Identity is found in relationships that fan out in concentric circles: parents, siblings, family, Biraderi, *gotra*, village, and tribe....A Biraderi will be united against another Biraderi but within it, two families will struggle for power.' In Pakistani languages, caste is also referred to by the term *zaat* used interchangeably with *biradari* or *biraderi* or in combination with it (*zaat-biradari*). *Zaat* is in turn 'related to '*nasal*' (lineage), or quite literally, race' (Gazdar, 2007).

In everyday usage in Britain, caste is used interchangeably for *varna*, *jati*, and *biradari*. The paradigmatic usage, though, is of caste as *jati*. This usage is inclusive and in common parlance is also extended to include clan/tribe.

Caste is also sometimes related to concepts of ethnic identity, race and religion. Some sociologists have described an 'ethnicization' of caste in recent decades; that is the transformation of caste from a 'system' of hierarchical inter-dependence, to a set of separate competing identities (Dumont, 1980; Gupta, 2000, see also Reddy, 2005). This is a process encouraged, for example, by the role of caste in electoral politics in India. Caste as competing identities manifests itself in a unique way in Britain. However, despite the idea of caste as different cultural identities or 'communities', whether in South Asia or in the UK, for the most part the salient divisions of caste occur *within* not *across* cultural divides. For example, Dalits have the shared experience of discrimination and subordination by dominant castes but do not form a distinct cultural group, being divided by language, religion, region, cultural practices and caste identities (Waughray, 2009). On this basis it can be said that, in sociological terms, caste is not equivalent to ethnic identity.

Caste and race have long been interlinked. The predominance of racial theories in the nineteenth century led to the characterisation of caste as in essence corresponding to racial divisions, supplemented by the fact that *varna* translates as colour, leading to observations that the hierarchy must have originated in skin colour

differentiations. This has been strongly contested not least with evidence that skin colour gradations are irrelevant to caste distinctions (Keane, 2007; Waughray, 2009). Scholars have pointed out that the colour element of *varna* means colour symbolism reflecting the social hierarchy rather than skin colour or racial characteristics (Flood, 1998). This narrow formulation of race as corresponding to skin colour broadened in the twentieth century when different forms of racial discrimination were recognised. Thus, caste came to be more readily understood as a separate or distinct form of racial discrimination. Indeed given its pre-dating of theories of race, caste has been labelled the oldest form of racial discrimination (Keane, 2007).

Attitudes and practices of caste have always been regulated or modified by religion. Egalitarian traditions in Indic religions challenge caste hierarchy, while Dalits and others have formed sects or converted to other faiths as expressions of equality, such that identities of caste and religion intersect in complex ways. In the UK context, caste identities tend to be enclosed within, or muted by, publicly expressed religious identities (Leslie, 2003; Singh, 2012). In consequence, the forging of a positive identity in British society by Dalits may involve emphasising distinct religious identities. Conversely, successfully building a composite religious community (as in the 'British Hindu community') may require playing down caste separation in the public sphere, even when caste groupings remain important in networking, marriage and caste-based organisations.

Finally, caste rules and prohibitions have always displayed strong legal characteristics (Waughray, 2013), with Ambedkar in particular viewing the caste system as a legal system misnamed as religion. His insight was to re-name the discriminatory effects of caste as legal rather than religious, hence subject to legal oversight, thereby introducing the possibility of reform (Ambedkar,1989: 76).

1.4 Research on caste in Britain

Research on caste in Britain has been multifaceted. Influential academic writings on caste have been produced by historians, philosophers, anthropologists and sociologists, and more recently by a very small handful of lawyers. These writings have featured within different contexts including religious education, the study of ancient texts, the political economy of migrant settlements and the effects of globalisation on the patterns of exchanges between resident populations in the UK and sending countries. What emerges is an understanding of caste as dynamic, but having resilient features of hierarchy between caste groups with the potential for caste-based conflict often masked as religious conflict.

Views on the existence and nature of caste prejudice, discrimination and harassment in Britain vary considerably. Some stakeholders believe that such discrimination exists, that it is highly destructive and should play no part in contemporary British social life; others take the view that caste is a positive form of association or social capital and that any social restrictions, prejudice or discrimination related to caste is limited to the private sphere and to personal social relations, for example, matrimonial arrangements (see further, Dhanda et al, 2014b).

However, when one considers socialisation into caste identity, the border between the private and the public sphere is not very clearly defined. Further, the improved economic status of Dalits in the UK is not matched by the expected change in their cohesion with non-Dalits of South Asian origin (Dhanda, 2009, 2013b). In the case of inter-marriages, this caste barrier remains hard to breach and often comes with high costs for transgression (Dhanda, 2012a).

Through their religious education in schools in the UK, children and young people learn to understand caste in terms of a textbook notion of *varna*. Through their experience in the school playground, they may learn to understand caste as *jati* when subjected to caste-based bullying, and confirm such an understanding by questioning their parents. In his study of Southall, Baumann (1996: 152) writes that by ‘school age, most children are aware of their own caste and of some version, at least, of its relative purity and status. Many indeed feel curious about the caste of peers at school’, and according to Nesbitt (1997), awareness of caste amongst the younger generation of South Asians living in Britain is heightened once they start school. Examples of bullying and name-calling are found in the work of Ghuman (2011) and Dhanda (2009).

The relationship between caste and religion is complex as shown in recent overviews of Sikhism and Hinduism in Britain (Singh, 2012; Zavos, 2012). With regard to Sikhism, Singh (2012) notes that while the religion strongly emphasises equality, the immigrant population is caste-divided (between ‘upper’ Jat and ‘lower’ Dalit castes). Different sections of the Sikh community are organised by caste to a greater or lesser extent. The majority (80 percent) Sikh ‘mainstream’ is socially diverse, and while caste is not a major marker of identity, this mainstream has a Jat cultural complexion. Other sects or religious orders give expression to the desire for equality and the erasure of caste stigma through independence of worship and religious identity.

This is the case with the Ravidassias (followers of the 15th century saint poet Ravidass) and Valmikis. In the UK, Ravidassias of Punjabi origin have staked a

claim to recognition as a religious group separate from the Sikhs. In the latest British Census, 11,045 people of England declared themselves as Ravidassias in the ‘any other religion’ category (Dhanda, forthcoming). As some Ravidassias, have never identified as Sikhs, for example in Varanasi, the birth place of Ravidass ji (Ram, 2008), it is a mistake to describe them as a Sikh sect. Likewise, the constitutions of various Ravidass Sabhas in the UK lodged with the Charity Commission do not restrict Ravidassias to any specific caste (Dhanda, 2013b). Conversely, in a case concerning Ravidassias and Hindus in British Columbia, it was argued by the Ravidassia respondents that the Ravidassia religion was caste-specific (see Section 2.4).

In the UK, caste-related tensions within the Sikh community were noted in one of the earliest studies specifically focused on Dalits in Wolverhampton by Juergensmeyer (1982). Echoing the same, Ballard (1989) argued that in Britain, whilst the traditional hierarchies within the Sikh community may have been reversed in economic terms, in some cases (‘lower castes’ being more prosperous that ‘upper castes’), this ‘has not undermined casteism but rather reinforced it’ (Ballard, 1989: 225). More recently, Singh and Tatla (2006) have provided a nuanced study of the Sikhs in Britain that indicates how caste differentiations exert a pressure on the ‘boundaries of Sikhism’.

In her study of Valmikis, Leslie (2003: 69) notes that ‘one of the first actions of the group in Britain was to abandon the stigmatic *jāti* names...in favour of the religious name "Valmiki"’. In a similar vein, the recent attempt by Ravidassias to stake a claim for a separate religious identity is the result of an accumulation of unaddressed grievances (Dhanda, 2013b).

Studies of religious sectarianism in the UK show evidence of underlying caste prejudice (Kalsi, 1992; Sato, 2012), which may or may not amount to caste discrimination, but is nonetheless a source of tension within South Asian communities. However, there is an ambiguity in identifying caste or religion as the cause of discontent in the British context, where seeking a separation of religious identity has become a way of talking about caste.

In the case of Hindus in Britain (in the majority Gujarati, with a significant numbers from East Africa), caste groupings remain important in networking, marriage and caste-based organisations (Zavos, 2012). However, the development of an ecumenical composite ‘British Hindu’ community involves the submerging of caste identity and a public rejection of negative (colonial) representations of Hinduism.

Amongst Muslims of South Asian origin in Britain, caste identity expressed as *biradari* or *zaat*, is maintained as a system of endogamous, extended family or kinship grouping (Shaw, 2000; see also Ahmad, 1978; Bhatty, 1996; Hussain, 1999).

There are notable generational differences in the experience and acknowledgement of caste prejudice. Dalit youth do not identify with caste as a hierarchical system; they are confident in facing prejudice, and associate discrimination with those who perpetuate it; they expect the law to be used to combat such discrimination (Dhanda, forthcoming).

Young people learn, through popular music, to take 'pride' in their endogamous birth groups (*jatis*), further accentuated when parental socialisation directs them to find life-partners from their 'own' *jati*. The older, first generation of migrants from South Asia, might take caste as a 'best forgotten' cultural memory of a system they left behind (Ballard, 1994), but which nonetheless haunts them (Dhanda, forthcoming). Pride in one's caste, amongst young people, also springs from a desire to recuperate religious space for a separate identity positioned to challenge the hegemony of dominant religious groups (Sato, 2012; see also Ram, 2008).

In conclusion, research on caste in Britain shows the specificity of the reproduction of caste in the diaspora. A hitherto ambiguous understanding of what caste is now faces a challenge, when public discourse must respond to the legal change, which demands clarity, thoughtfulness and sensitivity in articulating the meaning of caste in the context of the proposed legislation. On the legal aspect, this report draws on groundbreaking work by Waughray (2009, 2013) and Keane (2007). In terms of the way the dynamic public discourse on caste is responding to legislative change, the parallel report on the expert and stakeholder events (Dhanda et al, 2014b) sets out the present situation. It explains alternative viewpoints on caste from different social positions and the desires and concerns regarding the law on caste and its implementation that exist among a range of stakeholders (including professional groups).

1.5 Methodology

The review of socio-legal research was conducted between October and December 2013. The aim was to explore socio-legal definitions of caste within the framework of the Equality Act 2010. Desk research was undertaken to provide a detailed review of existing legal research literature on caste and the law in Britain and internationally. As well as academic works, this included 'grey' literature such as reports from NGOs and reports from faith-based community organisations that were not widely accessible nor in the public domain, working papers from academics, conference

proceedings, Hansard reports and parliamentary debates, internet websites and United Nations documents. Case reports, court and tribunal judgments, legislation (including commentaries and explanatory notes), and academic commentaries on legislation and caselaw were also reviewed. Current research on caste discrimination being undertaken by academics and PhD students was also included under this category.

The material gathered was then interrogated applying a critical analysis approach and used to inform both this report and to prepare the questions for participants invited to attend either the experts' seminar or the later stakeholders' workshop (see Dhanda et al, 2014b).

Subsequent discussions and the written statements from the experts' seminar fed into this comprehensive review of legislation and caselaw. In addition, a number of meetings were undertaken with legal experts specialising in discrimination law, both practising lawyers and academics.

1.6 Scope of the report

The structure of the present report reflects the range of meanings attached to caste as a legal term and emphasises its scope. It is not an investigation as to the extent of caste discrimination in Britain and operates instead as a review of the law on caste as presently understood. The focus is on the legal parameters of caste discrimination, in particular how caste is best incorporated within the Equality Act 2010. This can be usefully informed by existing research on caste in Britain reported in Section 1.4.

1.7 Guide to the report

Chapter 2 focuses on the Equality Act 2010, exploring the extent to which caste can be captured by existing protected characteristics, as well as the small number of attempts in caselaw to argue that caste discrimination is subsumed within these characteristics. It further reviews the relevance of the exceptions in their potential application to caste as well as the application to caste of the Public Sector Equality Duty. Chapter 3 looks at the emergence of caste discrimination as an issue in international treaty law by United Nations bodies and the experience of legislating for caste discrimination in the national jurisdictions of other States. India is the paradigmatic example, but other States such as Mauritius have included caste as a ground for non-discrimination in their domestic orders. Chapter 4 offers a snapshot of the current state of the law on caste in Britain. It proposes a legal formulation of caste as an aspect of race, the pathway to a definition on caste, and highlights areas for future research to carry forward.

2. Caste in British law

This chapter addresses the legal status of caste in domestic law. Section 97 of the Enterprise and Regulatory Reform Act 2013 requires that caste be made an aspect of race in the Equality Act 2010, although it does not indicate how this is to be achieved. This chapter proceeds on the basis that caste will be made an aspect of race in the legislation, although, at present it is not included. First, the chapter will outline the principles underpinning domestic discrimination law and their relevance to caste. Second, it will consider the potential for caste to be read into the existing protected characteristic of race, specifically ethnic origins. Third, it will consider the potential for caste to be read into the existing protected characteristic of religion or belief. Fourth, it will detail the small body of caselaw relevant to caste. Fifth, it will consider the possible application to caste of the exceptions in the Equality Act 2010. Caste is not yet an aspect of the protected characteristic of race, but when it is included in the legislation, the question of whether the existing exceptions are adequate, or whether specific exceptions are required to deal with caste, will need to be addressed. Sixth, it will consider the possible application to caste of the Public Sector Equality Duty contained in the Equality Act 2010, once caste is made an aspect of race.

2.1 Key features and principles of British discrimination law

Discrimination in its legal sense has a technical meaning (Bamforth et al, 2008). The Equality Act 2010 does not guarantee that equality will be achieved and prohibits discrimination in certain areas of activity only. Outside these areas discrimination is not unlawful. Domestic discrimination law is designed largely to respond to individual claims with individual remedies made on the basis of legally defined characteristics, in relation to certain types of regulated behaviour and relationships and social goods (Bamforth et al, 2008). However, the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 extends this by imposing a duty on public bodies to have due regard to the need to eliminate discrimination and to promote equality of opportunity and good relations between persons or groups defined by reference to protected characteristics.

To amount to unlawful discrimination, behaviour must meet three criteria. First, the behaviour must be because of a protected characteristic. Second, it must occur in a legally regulated field such as employment, the provision of goods, facilities and services, education and vocational training, management or disposal of premises, or the exercise of public functions. Discriminatory behaviour occurring in non-regulated fields is outside the ambit of the Equality Act (e.g. ‘private sphere’ relations such as intimate social interactions or marriage). Third, it must amount to a prohibited type of

conduct (e.g. direct or indirect discrimination, harassment or victimisation). Behaviour which does not meet these criteria may be objectionable but it is not unlawful discrimination (Waughray, 2009).

The UK adopts a ‘grounds-based’ approach to discrimination law, meaning that legislation affords protection from discrimination on specified grounds. In domestic and European Union (EU) discrimination legislation, the grounds on which discrimination is regulated – termed ‘protected characteristics’ in the Equality Act 2010 - are enumerated in a closed list. Inevitably this leads to demands for the list of protected characteristics to be extended, or for the existing categories to be interpreted so as to include forms of discrimination which are not expressly covered (McColgan, 2007). In some cases, categories have been added in response to the obligation to implement EU anti-discrimination law - for example religion or belief, and sexual orientation (McColgan, 2005, 2007).

Section 97 of the Enterprise and Regulatory Reform Act 2013 requires that caste be made ‘an aspect of’ the protected characteristic of race in section 9 of the Equality Act 2010. Until this happens, legal protection against caste discrimination depends on establishing in the courts, on a case by case basis, that caste is subsumed within an existing protected characteristic. The Equality Act 2010 lists nine protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Caste is not in this list (neither is descent). Of these nine, the only possible ‘legal homes’ for caste are race, or religion or belief (Waughray, 2009).

2.2 Equality Act 2010: race, ethnic origins and caste

Section 9 of the Equality Act 2010 prohibits discrimination on grounds of race. The previous legislation, the Race Relations Act 1976, prohibited discrimination on ‘racial grounds’ or by reference to membership of a racial group. Racial grounds were defined in the 1976 Act to include colour, race, nationality, or ethnic or national origins. In the Equality Act 2010, race is defined in section 9 as including colour, nationality, or ethnic or national origins. The Explanatory Notes to section 9 explain that persons who share characteristics of colour, nationality, ethnic or national origins can be described as belonging to a particular racial group. There is no detailed explanation or definition of colour, nationality, or ethnic or national origins, but the Explanatory Notes provide the following examples: colour includes being black or white; nationality includes being a British, Australian or Swiss citizen; ethnic or national origins include being from a Roma background or of Chinese heritage (the Explanatory Notes imply that ethnic or national origins are a single category but this

is incorrect); a racial group could be 'black Britons' which would encompass those people who are both black and who are British citizens.

There is no link between caste and nationality, or national origins, and the link between caste and colour is not sufficient to argue that people of Dalit origin are members of a group or groups defined by reference to this ground (Waughray, 2009). Historically, however, there has long been overlap in the usage and application of the terms race, caste and ethnic origins (Reddy, 2005). For these reasons, it is necessary to consider whether caste could be subsumed within the existing concept of ethnic origins, which is a subset of the protected characteristic of race.

The leading case of *Mandla (Sewa Singh) and another v Dowell Lee* (1983) established that ‘ethnicity’ was not synonymous with ‘race’ in a narrow, biological sense but was to be construed ‘relatively widely’ in a broad cultural/historic sense. Lord Fraser held that, for a group to constitute an ethnic group, it must regard itself and be regarded by others as a distinct community by virtue of certain characteristics, two of which are essential: a distinct, living and long shared history as a group; and a cultural tradition of its own, including family and social customs, often but not necessarily associated with religious observance. Additional but non-essential characteristics include: common geographical origins or descent; a common language (although not necessarily peculiar to the group); common literature peculiar to the group; a common religion different from that of neighbouring groups or the surrounding community; and being a minority or an oppressed or dominant group within a larger community. Based on these criteria the House of Lords found in *Mandla* that Sikhs were a group defined by reference to ethnic origins.

A recent approach to the meaning of ethnic origins, has opened up arguments that caste is subsumed within ethnic origins, by virtue of the descent aspect of ‘ethnic’. In *R (E) v JFS* (2009), the Supreme Court revisited the *Mandla* meaning of ethnic origins (Donald, 2012; Cranmer, 2010; Graham, 2012). It held that ethnic origins was defined not just in the wide *Mandla* sense, but also in the narrower, more traditional sense of a person’s lineage or descent; indeed, prior to *Mandla*, a narrow test based on birth or descent would have been regarded as required in order for there to be discrimination based on ethnic origins (Waughray, 2013).

On the meaning of descent, Lord Mance referred, *obiter*, to the definition of racial discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD) which lists five grounds, race, colour, descent or national or ethnic origin, and to the interpretation of the third ground ‘descent’ by the Committee on the Elimination of Racial Discrimination (CERD) as including caste.

CERD held in its General Recommendation 29 that ‘descent’ includes communities who suffer from discrimination ‘on the basis of caste and analogous systems of inherited status.’ This crucial interpretation by CERD is discussed further in Chapter 3, but for the purposes of British discrimination law it is important to emphasise that Lord Mance was not declaring that caste is subsumed within the descent element of ethnic origins. Rather, his point was to illustrate that descent has been given a broad construction at the international level in support of his view that it ought to extend sufficiently widely to cover the situation presented in the *JFS* case.

Since *JFS*, there have been two rulings on the question of whether caste is subsumed within race in domestic law as currently stated. In *Naveed v Aslam* (2011), the Claimant contended that he had been racially discriminated against by the Respondents because of his membership of the Pakistani caste known as Arain, on account of which he was ridiculed and abused. The Employment Tribunal ruled that:

> ... the Claimant’s complaint of discrimination based on his caste was doomed to fail for two reasons. First, no order has yet been made extending section 9 of the Equality Act 2010 so as to provide for caste to amount of itself to an aspect of race. Second, we consider that it is quite impossible for the Claimant’s caste to fall under the existing definition of ethnic origins because of the Claimant’s clear acceptance that movement within the Arain caste is possible and that it was the claimant’s *status* within the same caste as the Aslam brothers [the Respondents, also members of the Arain caste but, according to the Claimant, of a higher category within the same caste] which he claims led to his treatment. In the Tribunal’s judgment the substance of the Claimant’s allegations is that he was being treated differently on account of his ‘class’.

What the Tribunal did not consider was the possibility that the term ‘caste’ has many meanings and that the Claimant and the Respondents may have been of different sub-castes or *jatis* - with ensuing differences of status - within the wider Arain group or caste. It attributed the discrimination to be class-based rather than caste-based as a result (Waughray, 2013). The complexity of caste may be more readily acknowledged if caste is included as an independent aspect of race, rather than being subsumed under ethnic origins.

Leaving aside the decision in *Naveed v Aslam*, arguments that caste is an aspect of ethnic origins face a number of hurdles. A fundamental element of caste is the separateness of caste groups. It was not until the early twentieth century that Dalits emerged in India as a nationally identifiable political and social entity. Dalits in India

are linked by a common experience of oppression and 'Untouchability', but are not otherwise a culturally, linguistically or historically coherent group. For centuries they were separated from each other geographically, regionally, linguistically and culturally, with the distinctions and hierarchies between Dalit *jatis* sometimes enforced as rigorously as those between Dalit and non-Dalit *jatis*. Although in India Dalits have become an increasingly important political category, it is not clear that British Dalits could collectively fulfil the *Mandla* criteria. In *Nyazi v Rymans* [Employment Appeals Tribunal 6/88, unreported], Muslims were denied recognition as an ethnic group due to their linguistic, geographical and racial heterogeneity. Individual *jatis* (castes or sub-castes; see Section 1.3), including Dalit *jatis,* could possibly fulfil the *Mandla* criteria; but taken as a broad category, Dalits might struggle to demonstrate sufficient commonality of geography, language, religion and culture, and a sufficiently distinct, long shared history *as a group* to pass the *Mandla* test for ethnic group (Waughray, 2009, 2013).

JFS reaffirmed descent as an integral element of ethnic origins in domestic law; and Lord Mance noted the broad construction given to 'descent' at the international level, which extends to caste (see Chapter 3). In order to construe caste as part of race in domestic law following the *JFS* route, a three-fold interpretive leap must be made; caste must be viewed as part of descent, itself part of ethnic origins, which in turn is a sub-set of race. Whatever the possibilities of interpreting the existing legislation in this way, an interpretation can be overruled until it is determined by the Supreme Court. Legal clarification in the form of a statutory provision is thus still required.

Very recent caselaw has seen such an interpretive approach. *Tirkey v Chandok* (2013) concerned complaints of race and religious discrimination, including caste discrimination as part of these complaints. In December 2013, in a preliminary hearing, an Employment Tribunal met to consider striking out the claim of caste discrimination on the basis that it had no reasonable prospect of success because it had no jurisdiction to consider it. In January 2014, the Tribunal concluded that, in the context of the case, section 9(1) of the Equality Act 2010 can be and should be construed in such a way as to provide for caste discrimination to be part of the protected characteristic of race discrimination. The Tribunal noted that:

> [T]here is no comprehensive and exhaustive definition of race in Section 9(1) of the Equality Act. It “includes” ethnic origin. This in itself is a wide concept, as is clear from the authorities. It can therefore be argued that “caste” is already part of the protected characteristic of race, purely by reference to section 9(1). Further, the domestic case law - in particular the cases of *Mandla* and the *Jewish Free School* case - provide authority for

the proposition that discrimination by descent is unlawful as it is direct race discrimination.

The Claimant's case was that she is lower caste by birth and therefore descent, a position in society that she cannot change. In contrast to *Naveed,* the Tribunal concluded that the fact that the government has decided to legislate to make it clear that caste is an aspect of the protected characteristic of race, does not determine whether race can be construed to cover caste.

This ruling - that caste is already protected under race by virtue of ethnic origins - may be appealed; the Employment Appeal Tribunal may take a different view. Added to the different decisions in *Naveed* and *Tirkey*, in both of these cases caste arose in situations that did not match the stereotypical caste discrimination case (see Section 2.3). This highlights the importance of avoiding an overly narrow definition of caste in the Equality Act 2010.

2.3 Equality Act: religion or belief and caste

Caste is to be included in the Equality Act 2010 as an aspect of the protected characteristic of race. Nevertheless, in some situations religion or belief discrimination might be considered a more appropriate approach. Section 10 of the Equality Act 2010 prohibits discrimination on grounds of religion or belief. Religion is defined in section 10 as 'any religion' or 'lack of religion'; and belief as 'any religious or philosophical belief' or 'lack of belief'. The Explanatory Notes to the Act explain that it is 'a broad definition in line with the freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention on Human Rights (ECHR). The main limitation for the purposes of Article 9 ECHR is that the religion must have a clear structure and belief system. Denominations or sects within a religion can be considered to be a religion or belief, such as Protestants and Catholics within Christianity. The Equality Act's Explanatory Notes set out five criteria for a 'philosophical belief' to qualify for protection. These are contained in paragraph 52.

Caste as a characteristic is distinct from religion or belief. By definition, caste discrimination is motivated by the known, perceived or assumed caste status of the victim, not the religion or belief to which the victim is known or thought to subscribe or belong. It is misconceived to conflate caste status with religion, notwithstanding the fact that caste differentiation finds support in Sanskrit texts (Doniger, 2011). Caste discrimination is captured by religious discrimination provisions only in those limited situations where the victim's ascribed caste status is considered 'part of' or integral to their religion or belief (Waughray, 2009). Caste distinctions more usually operate

within rather than between religions, and caste distinctions do not usually correspond to separate religion or belief identities, although this can occur. A paradigmatic caste discrimination case is perceived as involving ‘high caste’ and ‘low caste’ individuals of the same religion. Yet it is worth noting that the handful of cases on caste discrimination (see Section 2.4) has not followed this pattern.

Historically, religion has been a means to remove oneself from the stigma of caste identity, particularly for Dalits, through the creation of religious groups such as the Ravidassias (Juergensmeyer, 1982; Ram, 2008) or the Valmikis (Nesbitt, 1990; Leslie, 2003; Dhanda, 2012b). If such groups are found by the courts to be distinct 'sects' within existing religions, or alternatively to be independent religions with clear structures and belief systems, caste discrimination against members of such groups (although motivated by caste rather than religious affiliation) could theoretically be captured by religious discrimination provisions as caste and religious identity may be perceived to be sufficiently related.

Yet, using religious discrimination provisions in such cases would mask rather than expose the caste-based aspects of the discrimination. For example, someone who discriminates against an Ambedkarite (Dalit) Buddhist may not discriminate against a Sri Lankan Buddhist, the underlying reason for the discrimination against the Ambedkarite Buddhist being caste, not Buddhism (Waughray, 2009). By collapsing religion and caste into each other, the distinct nature of each can be lost.

Section 14 of the Equality Act 2010 provides for the concept of combined discrimination on grounds of dual characteristics, where discrimination occurs in a combination of two relevant protected characteristics (such as race and religion). However, the Coalition Government decided not to bring forward section 14 and it is not in force. Nevertheless, caselaw has clarified that where treatment is on the grounds of more than one protected characteristic, where one of these is a significant element rather than the only element, it may be relied upon (*MoD v DeBlique [2010] IRLR 471* at 165; *O’Reilly v BBC*; ET Case No. 2200423/10).

2.4 Existing caselaw relevant to caste

The caselaw on caste is limited. Certain cases have already been discussed in Section 2.2. Nevertheless, it is useful to draw together the body of caselaw where the issue of caste has been raised in the context of equality law.

In the only pre-Equality Act 2010 case involving a claim of caste discrimination, *Begraj and Begraj v Heer Manak Solicitors and others* - Britain’s first caste discrimination case - the claimants alleged religious and/ or racial discrimination,

arguing that caste fell within race or ethnic origins under the Race Relations Act 1976. However the case collapsed in February 2013 due to judicial recusal. Caste has also arisen in other areas, for example in immigration law; see *MA (Galgale Sab clan) Somalia CG* [2006] UK AIT 00073 where 'caste' was construed to include the concept of 'clan'. In this case, the appellant was a member of the Galgala clan in Somalia. The Immigration Appeal Tribunal found that the Galgala were a 'sab' or low caste clan. Elsewhere in the decision the Galgala are described as a small, low status group or low caste group.

At the time of writing, there are only two domestic cases in which a decision has been reached on the question of whether race as currently defined in the Equality Act 2010 can be construed to include caste; and the Tribunals came to different conclusions. As stated above, in *Naveed*, the lack of an order 'extending section 9 of the Equality Act 2010 so as to provide for caste to amount of itself to an aspect of race' was one of two reasons why the Employment Tribunal considered a claim of caste discrimination 'doomed to fail'. The argument was that Parliament would not have included the power in section 9(5)(a) if it thought caste was already covered by an existing protected characteristic. The second reason - that on its facts the Claimant's case was about class rather than caste and so could not fall under the existing definition of ethnic origins in any event - is addressed in Section 2.2.

In contrast, in *Tirkey*, as discussed in Section 2.2, it was ruled in January 2014 in a preliminary hearing that, in the context of that case, race could and should be construed as including caste; race includes ethnic origins, which is a wide concept; moreover, caselaw has held that discrimination by descent is direct race discrimination (*Mandla*, *JFS*); and caste is based on descent. The fact that the government has decided to legislate to make caste an aspect of race is not determinative of the issue. *Tirkey* may be appealed, and the Employment Appeal Tribunal may take a different view. *Naveed* and *Tirkey*, however, signal that the functioning of caste in the Equality Act 2010 will be played out in caselaw.

Two reported cases, one in Britain and one in Canada, illustrate the use of religious discrimination provisions by possible or alleged victims of caste discrimination in the absence of caste-specific provisions. In both cases the complainants were 'high caste' Hindus and the respondents were Ravidassias. In *Saini v All Saints Haque Centre & Others* (2009) the Employment Appeal Tribunal found that the respondents had subjected the claimant to discriminatory harassment based on religion. The case report notes that Ravidassias 'form a distinct group with distinctive religious beliefs that distinguish them from both the Sikh and Hindu communities'. Caste was not brought up before the Employment Appeal Tribunal, but in the earlier, unreported

Employment Tribunal hearing, caste arose indirectly in a reference to an article referring to the 'discriminatory treatment meted out in parts of medieval India to lower castes such as Ravidassias by high caste Hindus.' This case illustrates the sometimes complex interrelationship between caste and religion.

The second case, *Sahota and Shergill v Shri Guru Ravidass Sabha Temple (Vancouver)* (2008), involved a complaint brought before the British Columbia Human Rights Tribunal (BCHRT) by two ‘higher caste’ Hindus alleging discrimination contrary to the British Columbia Human Rights Code 1996 (the Code), based on ancestry, race and religion in the provision of an accommodation, service or facility customarily available to the public by the Shri Guru Ravidass Sabha Temple of Vancouver (the Sabha). The Sabha had denied them membership because they were not Ravidassias of the Chamar caste (formerly an ‘Untouchable’ caste). The complainants argued that discrimination on the basis of caste is religious, cultural and economic discrimination and that therefore the discrimination against them was *inter alia* discrimination based on religion, a form of discrimination covered by the Code, whereas discrimination based on caste was not; specifically, they complained that they were refused membership because of their caste ‘and the religious background of the caste’.

The BCHRT dismissed the complaint as outside its jurisdiction, accepting the respondents’ arguments that membership of the Sabha was restricted to the Ravidassia community who by definition were members of the Chamar caste, and that the Code did not apply to membership of the Sabha because it was a private, purely social, religious and cultural organisation. As such it had chosen to restrict its membership to persons in the Ravidassia community and had defined that community to include only those of the Chamar caste (although in Britain, research on the Ravidassia community has shown that membership of Ravidassia Sabhas is not restricted by caste) (Dhanda, 2013b; see Section 1.4). This case also indicates the complex interrelationship between caste and religion, and that in the absence of caste-specific provisions complainants might seek to bring complaints under other characteristics where possible.

Overall, the caselaw indicates that in the absence of specific provisions on caste the issue will nevertheless be raised. Although race is the more relevant characteristic, arguments around religion will also occur, and courts and tribunals will be obliged to make interpretive decisions. The existing cases serve to mark the issue as present and subject to being litigated.

2.5 Equality Act: exceptions and caste

The Equality Act 2010 contains certain exceptions and exclusions to the prohibition of discrimination, victimisation and harassment on grounds of the protected characteristics. This means that in prescribed circumstances it will be lawful to treat someone differentially because of a protected characteristic. The exceptions and exclusions are set out in the main body of the Act and in in Schedules relating to work (Schedule 9), services and public functions (Schedule 3), premises (Schedule 5), education (Schedules 11 and 12), and associations (Schedule 16). Schedule 23 contains several general exceptions. These include provisions permitting certain organisations relating to religion or belief to impose restrictions relating to religion and belief and sexual orientation when offering membership or participation in activities of that organisation; in the provision of non-commercial services in the course of their activities; and in the use or disposal of premises owned or controlled by the organisation.

As mentioned in Section 2.4, there are two rulings on whether caste already falls within the protected characteristic of race in the Equality Act 2010. In the most recent of these, *Tirkey,* the Tribunal found in that case that race as currently stated can and should be construed to include caste. In cases such as this, in the circumstances prescribed, the exceptions applicable to race would also apply to caste, where appropriate. Also, exceptions applying to religion could, where relevant, potentially apply to certain religious groupings provided religion and caste are sufficiently related (see Section 2.3). At the time of writing, the government has indicated that it will consult on what exceptions should apply to caste under new provisions prohibiting discrimination because of caste which will clarify the position.

Exceptions applying to work

The exceptions applying to work which are relevant to race, and hence to caste once it is made an aspect of race, are contained in Schedule 9 Paragraphs 1 and 3, discussed below. To date the handful of cases on caste discrimination have all involved work situations.

Genuine Occupational Requirement

Schedule 9 Paragraph 1 allows employers to rely on a ‘genuine occupational requirement’ (GOR) exception in relation to all the protected characteristics whereby the employer can apply, in relation to work, a requirement to have a particular protected characteristic, provided that, having regard to the nature or context of the work, three conditions are met: (1) it is an occupational requirement; (2) the application of the requirement is a proportionate means of achieving a legitimate aim; and (3) the person to whom the requirement applies does not meet it (or the

employer has reasonable grounds for not being satisfied that the person meets it). It follows that under the GOR exception, a work requirement to be of a particular caste would only be allowed if the three conditions above are met. According to the Equality Act Explanatory Notes, the requirement must be crucial to the post and not merely one of several important factors. It must also not be a sham or pretext. The Explanatory Notes provide a number of examples. Based on these it is apparent that the justifications for the exception are set relatively high, and the burden of showing that the exception applies rests clearly on the employer seeking to rely on it. An employer seeking to rely on the GOR exception in relation to race, including caste, once it is made an aspect of race, will have to meet this very high threshold.

Other requirements relating to religion or belief and work

In addition to the normal GOR discussed above, Schedule 9 Paragraph 3 allows an employer with an ethos based on religion or belief to discriminate in relation to work by applying a requirement to be of a particular religion or belief if, but only if, having regard to that ethos, being of that religion or belief is a requirement for the work; and applying the requirement is proportionate so as to achieve a legitimate aim. It is for an employer to show that it has an ethos based on religion or belief by reference to such evidence as the organisation's founding constitution. This exception differs from the normal GOR because there is no requirement for the characteristic to be an occupational requirement. The 'religious organisations' exception would allow, for example, a Valmiki organisation to restrict key posts to Valmikis. This must be based on the religious ethos of the organisation. Caste is to be made an aspect of race, not religion or belief, and consequently the exception does not mean that restrictions can be made on the basis of caste. It would not allow an employer with an ethos based on religion or belief to restrict key posts such as priests on grounds of race, which will include caste.

Exceptions applying to services and public functions

Schedule 3 Paragraph 30 allows services to be generally provided only for persons who share a protected characteristic. It follows that, once the secondary legislation making caste an aspect of race is in force, it would be permissible under Schedule 3 to provide services in such a way that the service is commonly used by people of a specific caste, although it would not be permissible to refuse to provide the service to people of other castes unless it was impracticable to do so.

Schedule 3 Paragraph 15 exempts from the prohibition of discrimination in the provision of services those people providing care within their own home, whether paid or unpaid. It follows that once caste is made an aspect of race, it might be

permissible for a person to restrict the provision of care in their own home to persons of a particular caste.

Exceptions applying to premises

Under Schedule 5 Paragraph 1, an owner-occupier who disposes of part of premises privately can refuse to dispose of premises on grounds of religion, but not on grounds of race. The Explanatory Notes give examples whereby a refusal to rent or sell privately on the grounds of race is unlawful, whereas a refusal to rent or sell privately on grounds of religion is lawful. Similarly, in relation to lodgers, where the owner-occupier shares some facilities with the tenant such as a kitchen, the prospective tenant can be refused if they are of a different religion, but cannot be refused on grounds of race, which will include caste. The religion exception does not apply if the discrimination is on grounds of race, which will include caste. For example, it would be lawful for an owner-occupier who is a Hindu (or a Sikh) to refuse, on grounds of religion, a prospective tenant of the Valmiki or Ravidassia religion, but only if the refusal is on grounds of religion; it cannot be on grounds of the prospective tenant's caste, which will become an aspect of race.

Exceptions applying to organisations relating to religion or belief

Schedule 23 Paragraph 2 contains a general exception in respect of organisations relating to religion or belief ('religious organisations') which allows them to discriminate on grounds of religion or belief in certain circumstances. The definition of a religious organisation for the purposes of this exception is set out in Schedule 23; the types of organisation that can use this exception are those that exist to practice, advance or teach a religion or belief; allow people of a religion or belief to participate in any activity or receive any benefit related to that religion or belief; promote good relations between people of different religions or beliefs. This exception allows religious organisations to impose restrictions on membership, participation in their activities, the use of goods, facilities or services they provide, and the use of their premises, by reference to religion or belief; but not on grounds of race, which will include caste. The restriction on grounds of religion or belief is only permitted if it is imposed to comply with the purpose of the organisation, or to avoid causing offence to members of the religion or belief that the organisation represents. If the main purpose of the organisation is commercial, it cannot rely on this exception. This means that a Ravidassia organisation which meets the criteria of a religious organisation may restrict its membership or the use of its facilities, services or premises to adherents of the Ravidassia religion; but once the secondary legislation making caste an aspect of race is in force, it could not impose restrictions on the basis of caste.

Exceptions applying to education

It is unlawful under the Equality Act 2010 for education bodies to discriminate against school pupils, students, or applicants, subject to a number of exceptions. These exceptions cover well-known matters such as admission to single-sex schools (Schedule 11 Part 1). Similarly, schools with a religious character are permitted to give preference in admissions to members of that religion (Schedule 11 Part 2). However as per *JFS* (see Section 2.2), no school can discriminate on grounds of race, which will include caste. There are no recognised exceptions relating to schools and race, and further exceptions to provisions on harassment do not extend to race, which will include caste.

In section 85(2)(a) of the Equality Act 2010, schools must not discriminate against a pupil in the way they provide education. In addition, section 89(1)(b) of the Education and Inspection Act 2006 requires that head teachers must determine measures to be taken with a view to encouraging good behaviour and respect for others on the part of pupils and in particular preventing all forms of bullying among pupils. Preventing caste-based bullying would fall under this statutory obligation.

The National Curriculum (NC) requires schools to provide a broad and balanced curriculum for all pupils, and to take account of their duties under equality legislation, which include providing protection from discrimination and harassment on the grounds of race. The Education Act 2002 section 29 also requires schools to promote the ‘spiritual’ development of its pupils. Furthermore, the Equality Act 2010 section 149 (the Public Sector Equality Duty) requires public sector bodies such as schools and others exercising public functions (including those providing state maintained education) to eliminate discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations between persons having different protected characteristics. As such, schools must adapt the National Curriculum programmes of study so as to meet the specific needs and provide effective learning opportunities for all pupils, including individuals and groups of pupils. The Citizenship Programme of Study for example, requires pupils to learn about ‘diverse national, regional, religious and ethnic identities in the United Kingdom and the need for mutual respect and understanding' which can be adapted to take account of local circumstances, such as community mix. Section 29 of the Education Act 2002 requires the governing body of all maintained schools to have a complaints procedure and to publicise such a procedure. A parent can pursue their complaint to the Secretary of State if after using the local procedure they believe the school is still failing to carry out its statutory duties. In light of the above, it could be suggested that schools review their religious education text-books to ensure that they meet the criteria above in relation to caste (see also Dhanda et al, 2014b).

Exceptions applying to associations
According to section 107(2) of the Equality Act 2010, an association is an association of persons which has at least 25 members and admission to membership of which is regulated by the association's rules and involves a process of selection. It does not matter whether an association is incorporated or whether its activities are carried on for profit. A small private club with less than 25 members which is not open to the public and which has no formal rules, such as a book club run by a group of friends, is not an association for the purposes of the Equality Act 2010. Commercial clubs which require membership as a condition of admission, but with no selection process, such as gym clubs, are not associations for the purposes of the Equality Act 2010. Under the exceptions in Schedule 16, it is permissible for an association to restrict membership and guests to people sharing a protected characteristic, for example religion or belief, nationality, and national or ethnic origins; but not colour. Associations for particular castes would therefore be permissible under the present provisions of the Equality Act 2010.

Exceptions applying to charities
S.193 of the Equality Act 2010 permits charities as defined by the Charities Act 2006 to restrict the provision of benefits to persons sharing a protected characteristic, with the exception of colour, if the restriction is contained in its charitable instrument and if the provision of benefits is a proportionate means of achieving a legitimate aim, or to prevent or compensate for a disadvantage linked to the protected characteristic.
It follows that a charity providing benefits to members of a particular caste is permissible given that race, excluding the subset of colour, can operate as an exception, provided this is in line with the charitable instrument and it is objectively justified, or is to prevent or compensate for disadvantage.

Charities must not restrict benefits consisting of employment, contract work or vocational training to people who share a protected characteristic, except in relation to disability in limited cases. A charity may insist on acceptance of a religion or belief as a condition of membership, or may restrict access to its benefits and services to members who do not accept a religion or belief even where membership itself is not subject to such a condition, if this has been the case since before 18 May 2005.

2.6 The Public Sector Equality Duty and caste

The current Public Sector Equality Duty (PSED) was introduced in the Equality Act 2010 and the Equality Act (Specific Duties) Regulations 2011, and came into force on 5 April 2011. The duties require public sector bodies, or private sector organisations when performing public functions, to pay due regard to the statutory needs of eliminating discrimination, harassment and victimisation, advancing equality, and

fostering good relations between persons defined by reference to the protected characteristics.

The PSED is made up of a General Duty and Specific Duties. The General Equality Duty is contained in section 149(1), and requires public sector bodies to give 'due regard' to three statutory needs; (a) the elimination of discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (b) the advancement of equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) the fostering of good relations between persons who share a relevant protected characteristic and persons who do not share it. What is meant by giving 'due regard' is explained further in section 149(3) and in the significant caselaw which has developed in this area. Public sector bodies are no longer obliged to have equality schemes or to carry out equality impact assessments, which were requirements of the now repealed race, disability and gender duties (Seery, 2011). The Specific Duties do not require the collection of information from employees, or their customers or users, on their race, religion or belief etc.; rather it is for the public sector bodies to demonstrate how they propose to meet their obligations under the PSED. Many public sector bodies collect data to enable them to comply with the PSED. In relation to caste there appears to be widespread agreement, however, that the collection of data on caste would be counter-productive (see also Dhanda et al, 2014b).

2.7 Conclusion

This chapter has addressed the legal status of caste in British law. Section 97 of the Enterprise and Regulatory Reform Act 2013 requires that caste be made 'an aspect of race' but it does not specify how this is to be done. A number of approaches are possible. Caste can be made an aspect of race via an existing sub-category of race such as ethnic origins; this can be termed the interpretative approach. Alternatively, caste can be made an aspect of race as an independent sub-category; this can be termed the iterative approach, in which caste is expressly iterated or named as a fifth sub-category under race.

Although it has been ruled by the Employment Tribunal in one case that caste is already incorporated within the protected characteristic of race, the interpretative approach is at present not established. A lower court or tribunal decision is not binding precedent, consistency of outcome in future cases would not be guaranteed, and the principle will remain somewhat precarious. Even a binding precedent can be overturned until a decision is made at the Supreme Court. A successful argument that caste is a subset of race as currently defined might in time result in a body of caselaw emerging, such that caste will simply become treated in Britain as another

aspect of race, both sociologically and in law. Nevertheless, the introduction of the statutory prohibition of caste discrimination will simplify the process of dealing with caste discrimination claims, reducing costs and providing legal certainty (Waughray, 2013).

3. Caste in international law and other jurisdictions

3.1 Introduction

This chapter examines the experience of caste outside Britain with a number of aims. It first seeks to describe the critical developments in international law which saw caste discrimination declared as a form of descent-based discrimination and therefore a form of racial discrimination, and as such a violation of international human rights law. In this regard, it will chart the emergence and location of international prohibitions on caste discrimination. Second, it will look at the extent to which caste is a ground for non-discrimination in the legal jurisdictions of other States, focusing on constitutional protections in which caste is a named ground in non-discrimination clauses. Third, it will highlight the experience of India as the paradigmatic example of domestic caste discrimination legislation through the 1950 Indian Constitution. Fourth, it will chart the relevance of the international examples for the current proposals to legislate against caste discrimination in Britain, including the impact on the proposed sunset clause. In conclusion, the chapter will highlight the mandate provided by international human rights law for the current legislation and how its interpretation ought to be subject to the parameters set out in key international documents.

3.2 International human rights law and 'descent'

The word 'caste' does not appear in any international treaty. India did propose its inclusion in the drafting of the Universal Declaration of Human Rights (UDHR) in 1948, but dropped the idea when it was pointed out that 'caste' could be read into other grounds in the UDHR non-discrimination clause, notably 'birth'. Subsequently, the issue of caste became dormant and re-emerged only in 1996 in the context of a State Report by India to the Committee on the Elimination of Racial Discrimination (CERD), which monitors the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD). In this session, CERD interpreted the meaning of 'descent', one of five grounds in the definition of racial discrimination (race, colour, descent and national or ethnic origin) in Article 1(1) ICERD, to include caste. This did not occur in a vacuum, but was the result of a long period of lobbying by various Dalit organisations to have international recognition that the Indian Constitution had not eliminated *de facto* caste discrimination, and that caste was an international as well as a national problem.

The identification of caste as a form of descent-based discrimination had a layered rationale. Firstly, it was a practical approach, in that descent was considered the ground in the definition of racial discrimination under which caste best fit. Secondly, the drafting history of the treaty, or *travaux préparatoires*, indicated that India had in

fact suggested the inclusion of the word ‘descent’ as one of the five grounds. This led the Committee to surmise that India must have meant caste when proffering descent, although this is contested (Keane, 2007; Waughray, 2013). Finally, the Committee did not wish to target India, or be seen to be doing so, and descent-based discrimination afforded it the means to broaden the discussion to groups outside the Indian caste structure and draw in other communities in other States who were suffering from analogous systems of inherited dehumanisation. For example, the *Buraku* community in Japan were quickly subsumed under the descent-based discrimination movement.

CERD subsequently began a process of investigating whether descent-based discrimination can be found in other States Parties to the treaty. It has questioned among other States Bangladesh, Nepal, Senegal, Ghana, Mali and the Yemen, for the existence of caste or descent-based groups who suffer from discrimination. In view of the internationalisation of caste and descent, the Committee drafted General Recommendation 29 on Descent-based Discrimination which set out its understanding of descent-based discrimination. The legal status of a General Recommendation is not settled; but they are usually considered authoritative interpretations, and UN treaty bodies will consistently refer to them as required standards for State adherence to treaty obligations. It is important to note that while broader than caste, the concept of descent-based discrimination is not without limits, and General Recommendation 29 provides a guide as to the types of discrimination subsumed by the concept. It is essentially an international reading of caste, broader than the South Asian paradigm, but confined to practices which involve discrimination on the basis of caste-like structures.

General Recommendation 29 also implicitly delineates who is not covered; it is not concerned with types of discrimination on the basis of class, or ethnic groups such as the Roma (the subject of another, separate General Recommendation), focussing instead on an international understanding of caste hierarchies as a form of descent-based discrimination. It includes a cogent but lengthy definition-type description, which requires States Parties to take:

> Steps to identify those descent-based communities under their jurisdiction who suffer from discrimination, especially on the basis of caste and analogous systems of inherited status, and whose existence may be recognized on the basis of various factors including some or all of the following: inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public

> spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanizing discourses referring to pollution or untouchability; and generalized lack of respect for their human dignity and equality.

This is a distinct form of discrimination in which the international understanding ties closely with the experience of caste discrimination in South Asia, but is of clear relevance outside that context too.

The movement against descent-based discrimination has seen some States oppose CERD's interpretation, with India and Japan in particular arguing that caste is not a form of racial discrimination as interpreted by the Committee. Nepal, by contrast, has readily reported on caste discrimination to CERD, evidently considering it to fall clearly within the Committee's remit. Furthermore, the CERD approach has found consistent support within the UN structures and mechanisms, including the appointment of UN Special Rapporteurs on discrimination based on work and descent, and thus caste and descent-based discrimination as a global practice are affirmed within the international human rights architecture (Keane, 2007).

From a terminological viewpoint, the term 'descent-based discrimination' is broader than, but includes, caste, and as such, the Committee investigates caste structures in many States beyond South Asia. Much of this work is in its early stages, factoring in the slow-moving nature of international human rights law. The Committee will ask a State to provide details on certain groups who may be experiencing descent-based discrimination – such as the *al-Akhdam* in Yemen – and require the State to report back, upon which further questioning will occur as to whether legal measures are needed to eliminate discrimination against such groups.

Overall, the movement against caste discrimination in international human rights law through the targeting of descent is relatively recent and its effect, as well as State responses, is still being distilled. It is apparent however that caste discrimination among diaspora communities is firmly part of treaty obligations under ICERD. It is notable that the Special Rapporteurs identified caste discrimination among diaspora communities as indicative of the global nature of descent-based discrimination, with one report concentrated solely on this question (Eide and Yokota, 2004). In its response to the most recent State Report of the UK to CERD (2011), the Committee cited information from NGOs on caste discrimination in the UK, and concluded:

> Recalling its previous concluding observations and its general recommendation No. 29 (2002) on descent, the Committee recommends that the Minister responsible in the State party invoke section 9(5)(a) of the Equality Act 2010 to provide for 'caste to be an aspect of race' in order to provide remedies to victims of this form of discrimination. The Committee further requests the State party to inform the Committee of developments on this matter in its next periodic report.

Therefore the statutory provision requiring caste to be added to the Equality Act 2010 is consistent with CERD's General Recommendation that State parties enact legislation to outlaw discrimination based on descent, and with CERD's 2012 recommendations to the UK. This point was echoed in a recent address to the House of Lords by the UN High Commissioner for Human Rights, Navi Pillay, who called for 'strong, swift implementation by the UK government of its new legal obligation [a reference to section 97 of the Enterprise and Regulatory Reform Act 2013] to extend the reach of the UK's equality legislation…to cover caste-based discrimination' (Pillay, 2013).

3.3 Caste in the legal jurisdictions of other States

India is the paradigmatic example of caste as a ground for non-discrimination within the domestic legal system or constitutional order of other States. However, there are a number of other examples. Firstly, within South Asia, there are a number of States with caste as a ground for non-discrimination. Thus the Constitution of Bangladesh forbids discrimination on the grounds of religion, race, caste, sex or place of birth (Article 28). The Constitution of Pakistan includes caste as a ground for non-discrimination in access to educational institutions (Article 22), public places (Article 26) and services (Article 27). The Constitution of Sri Lanka lists caste alongside race, religion, language, sex, political opinion and place of birth (Article 12(2)), as well as forbidding restrictions on access to shops, restaurants and places of public worship and other services, on the ground *inter alia* of caste (Article 12(3)). The Interim Constitution of Nepal 2007 offers extensive provisions on caste, largely drawn from the example of India. However, it remains a contested text with little indication of what provisions will remain at the end of the constitutional process. Nepal's status is rare as the only State to have formally institutionalised a legal caste system in its foundational texts, with the caste hierarchy cemented through the *Muluki Ain* of 1854, a foundational legal text that regulated public and private law and protected social and religious values along caste divisions. The current Interim Constitution thus has many references to caste and untouchability, and support for their abolition. Overall, within the South Asian Association for Regional Cooperation,

the regional grouping, provisions on caste are only absent from the constitutions of the Maldives and Bhutan.

Outside South Asia, there are a handful of examples. Article 16(3) of the 1968 Constitution of the Republic of Mauritius describes ‘discriminatory’ as affording different treatment to different persons attributable wholly or mainly to their respective descriptions by caste and a number of other grounds such as race. The most isolated example, geographically, is the State of Yap in the Federated States of Micronesia, which has a recognised and complex caste system. The 1982 Yap State Constitution provides leadership roles to groups who have been historically excluded, including lower castes. In West Africa, which is strongly associated with descent-based discrimination by CERD, the Constitution of Burkina Faso includes caste in its non-discrimination clause grounds in Article 1, as well as including caste in a clause on non-discrimination in marriage and family life in Article 23. No other West African state has a constitutional or statutory reference to caste. There are no references to caste in the constitutions of Canada, Fiji or South Africa, all States with large South Asian diaspora communities.

3.4 Caste and India

The Indian example remains the best known and the most significant in terms of law. It was India that first sought to address caste discrimination through law, and the 1950 Indian Constitution is a pivotal document. It has four features in relation to the legal approach adopted. The first is the inclusion of caste as a ground for non-discrimination, seen in the non-discrimination clauses in its Articles 15 and 16. The second is the abolition of untouchability, considered the worst effect of caste hierarchies, in its Article 17. The third is a system of reservations, or affirmative action policies, scattered across the document (and in its amendments) but grouped into three prongs: in education, public services and in electoral seats to the lower house and State legislatures. This combination of non-discrimination and affirmative action is a legal technique that is now standard within the tools of domestic and international law, but the Indian Constitution is the first founding document to undertake such an approach. The final feature is that the Constitution mandates the enactment into statutes of laws which tackle untouchability and hate crimes, known in India as atrocities, on the basis of caste.

As a result, legislation has been introduced to protect Dalits from degrading and humiliating customs and employment practices, and from economic exploitation, for example manual scavenging. Untouchability practices and caste hate crimes are punishable under the Indian Penal Code or under special ‘hate crimes’ legislation. The Protection of Civil Rights Act 1955 defines certain acts as criminal offences if

committed because of Untouchability, while the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 prohibits specified acts, or hate crimes, where the victim (but not the perpetrator) is a Dalit or an *Adivasi* (see Section 1.3).

There is no definition of caste or untouchability in the Constitution of India or in legislation (Waughray, 2013). 'Scheduled Caste' is the constitutional, legal and administrative term for Dalits in India. It is used to identify the beneficiaries of affirmative action and other legal and policy measures. The term refers to those formerly 'Untouchable' castes listed in a Schedule to the Constitution. Scheduled Castes are defined in the Constitution simply as those castes notified as such by Presidential Order. The Constitution contains no criteria for identifying the Scheduled Castes, but India's Ministry for Social Justice and Empowerment gives the following administrative criteria: 'extreme social, educational and economic backwardness arising out of traditional practice of Untouchability'. Scheduled Caste status is established by a Caste Certificate issued by the authorities attesting to the bearer's membership of a Scheduled, or Untouchable, caste, thereby entitling them to the benefit of affirmative action policies and other legal and policy measures. Although context-specific, 'Scheduled Caste' has entered UK usage, for example, on matrimonial websites (Waughray, 2009).The original Schedule was drawn up by the British in India in 1936. It was incorporated into the Constitution of India in 1950 and has remained in use, little changed, ever since. In his seminal work on India's reservations system, Marc Galanter explains that the basis for inclusion in the original colonial Schedule was 'Untouchability', 'measured by the incidence of social disabilities' accruing from 'low social and ritual status in the traditional social hierarchy' (Galanter, 1984: 122-35). There is no accepted test for 'Untouchability'; in the 1930s the British tried to specify an all-India test for identifying Untouchable groups, but this proved impossible due to variations in regional practices (Galanter, 1984).

Definitions of caste and untouchability can be found in Indian caselaw. In the leading case of *Indra Sawhney v Union of India* [1993], the Indian Supreme Court defined caste as a socially homogenous class and also an occupational grouping, membership of which is involuntary and hereditary: 'Lowlier the hereditary occupation, lowlier the social standing of the class in the graded hierarchy.' Even where the individual does not follow that occupation, 'still the label remains and his identity is not changed'.

In *Soosai v. Union of India* [1985], Untouchability was characterised by the Supreme Court as involving deep and oppressively severe social and economic disabilities and cultural and educational backwardness and degradation, not mere material

deprivation. Significantly, the Court did not suggest that the concept and practice of Untouchability was restricted to Hinduism. Rather, the existence of Untouchability among non-Hindus was treated as a factual question, subject to a threshold test (Waughray, 2010).

Despite widespread recognition that the ideology and practice of caste exists in other religions, the Indian constitutional framework treats it as a Hindu phenomenon. Under the Constitution (Scheduled Castes) Order 1950, only Hindus, Sikhs or Buddhists can be classified as Scheduled Castes. Muslim and Christian Dalits are excluded on grounds of religion from the Scheduled Caste category and hence from accessing Scheduled Caste reservations. Lack of Scheduled Caste status also means that Muslim and Christian Dalits who are victims of caste hate crimes cannot file a criminal complaint as the victim must be a member of a Scheduled Caste for caste hate legislation to be triggered, a situation that has been criticised by the UN as well as by academics and activists within India and elsewhere (Waughray, 2010).

3.5 Relevance of international examples

While clearly the Indian and the UK experience of caste cannot be equated, legally, the non-discrimination clause technique is equally applicable and relevant. Similarly, caste appears as a ground for non-discrimination in Mauritius, where it has not had the same historical and social impact as in India. Thus caste could appear as a ground for non-discrimination under equality legislation in the UK, drawing on the Indian precedent, which is not a judgement as to the history or scale of caste discrimination in Britain. The differentiation in the legal orders is also discernable. India lists caste alongside race as a ground for non-discrimination, similar to the other South Asian States, which list caste in their constitutional texts alongside race, religion and other grounds. In the UK, the legislative duty under s.97 of the Enterprise and Regulatory Reform Act 2013 is that caste be made an aspect of race, therefore subsuming it under this ground.

ICERD distinguishes between racial discrimination and race, viewing race as one of five grounds which make-up the definition of racial discrimination. Hence caste and race can both be considered forms of racial discrimination for the purposes of the ICERD definition. If the UK were to follow the international approach, it would find caste as an attribute of racial discrimination, rather than race. However, in the UK, the term race maps closely to the international term ‘racial discrimination’. Therefore making caste an aspect of race within the Equality Act 2010 will contribute to a legal process begun in India, replicated in other jurisdictions, and continued at the international level, of including caste either as a named or as an interpreted ground

for non-discrimination. But this is not to equate the experience of caste across jurisdictions.

There is a further point in relation to reservations or affirmative action that the Indian example provides, and which impacts upon the proposal to insert a ‘sunset clause’ into the proposed equality legislation in Britain. Section 97 of the Enterprise and Regulatory Reform Act 2013 provides for the possibility of review and repeal of the caste legislation after five years. The Indian system employs two types of legal techniques; non-discrimination and affirmative action through the reservations system, with the former cemented within the Indian legal system while the latter requires periodic renewal every ten years. As a result, the Indian constitution has a non-discrimination clause on caste (permanent) and reservations/affirmative action measures (temporary, renewed every 10 years). This is in line with every other equality text in the world, under which grounds for non-discrimination are immutable while affirmative action provisions, should there be any, are put in place for a period of time until the required equalisation process is complete. The proposed ‘sunset clause’ for a non-discrimination ground is legally without precedent and goes against this key differential. In law, affirmative action provisions are acknowledged as temporary but grounds for non-discrimination are always permanent, as reflected in the Indian Constitution in relation to caste.

3.6 Conclusion

Caste has been recognised by the UN as an international issue of concern which includes, but is not limited to, the South Asian experience. Caste as a ground for non-discrimination appears in the legal order of a number of States, largely in South Asia but also outside this region. Similarly, the question of diaspora communities has been specifically raised as part of the UN movement against descent-based discrimination. There are differences in terms of the experience of caste, as well as the legislative response, but broadly there is a mandate from ICERD, to which the UK is a State Party, to legislate for caste discrimination where the circumstances warrant.

The understanding of descent-based discrimination seen in General Recommendation 29, including the types of groups and States considered to experience this form of discrimination, may provide guidance as to who could access the proposed UK legislative provisions. For example, in addition to Dalit and other communities, a member of the *Buraku* community or the *al-Akhdam* experiencing discrimination in the UK may fall within the ambit of the proposed legislative provision, given that these groups are considered by CERD to be within the sweep of descent-based discrimination.

4. Conclusion

4.1 Introduction

This report has examined the issue of caste in Britain with a specific aim to establish the manner in which caste can be made an aspect of race for the purposes of the Equality Act 2010. The process of consultation with stakeholders (detailed in Dhanda et al, 2014b) has provided insights into how communities, experts, practitioners and victims, among others, have viewed the legislative proposals; these have informed the analysis throughout. Caste has long defied categorisation, and its manifestations in Britain are a source of continued analysis across disciplines and cultures.

The report emphasises that the current state of the law is contested, with emerging judicial decision-making clouded by the absence of clear guidance on the status of caste within British law. It questions whether the existing law, as set out in the Equality Act 2010, is sufficient to engage with caste discrimination and provide judicial oversight and remedies. While situated in a national context, the report has also sought an international perspective, drawing on the experience of legislating for caste discrimination in other jurisdictions. It has similarly drawn on the precedents set at the international human rights level. It has located the present proposals within a wider international push towards greater legal recognition of caste discrimination, with the UK potentially providing a template that may be followed by other States.

With this in mind, we conclude that implementing the statutory requirement that caste be made an aspect of race is a question of great import. It requires reflection as to how the law can respond to the complexity of caste in Britain, and provide sufficient flexibility to address the experience of victims, while ensuring clarity for those who will engage with the legal procedures.

4.2 The legal formulation of caste as an aspect of race

The report has sought precise answers as to the correct legal formulation of caste as an aspect of race, taking as its departure point that the legislative duty in section 97 of the Enterprise and Regulatory Reform Act 2013 reads only that caste be made an aspect of race, and does not specify how this is to be done. It has outlined the options available to legislators in this regard, weighing these against the experience or practice of caste as witnessed in a marginal group of specific cases, or in wider caselaw on aspects of race and religion or belief. The available pathways are an interpretative approach, whereby caste is read into existing subsets of race, in particular ethnic origins; or an iterative approach whereby caste is named as a fifth subset of race, additional to the four existing subsets. A further pathway is to employ the international term ‘descent’, although this option has been rejected by legislators;

descent already has its own meaning within UK equality legislation and it is a feature of caste but does not capture all the elements of caste. It does not appear as a statutory term in the UK, and the fear has been voiced that to introduce it as an express term could open the door to claims based on other grounds such as social class, which Parliament has rejected.

The caselaw at present is divided as to whether caste can be read into ethnic origins. The report has outlined differences in kind between the concept of ethnicity and the concept of caste. Similarly, it has indicated the shortfall in other characteristics, notably religion or belief. Caste is a complex and evolving concept in Britain, and as such, it seems that the judicious path is to name caste as a fifth subset of race. This would provide legal clarity, situate caste within the Equality Act 2010, and avoid complex and rebuttable interpretative arguments.

The proposed “sunset clause” is without precedent in discrimination law. Specific timeframes are usually reserved for affirmative action policies rather than non-discrimination clauses. The spirit of the Equality Act 2010 is to combat specific instances of discrimination as it arises, and generate attitudinal change. If caste discrimination is to recede, it ought nevertheless to remain within the ambit of the Equality Act 2010 to guard against future practices, rendering it congruent with the other characteristics and subsets within the legislation, and with the nature of equality and non-discrimination law.

4.3 The definition of caste

Currently there is no consensus on how a definition of caste should be formulated. The existing Equality Act Explanatory Notes on caste (2010) provided the first elaboration of caste in British equality law, although the text is now perceived as unsatisfactory by experts and stakeholders (see Dhanda et al, 2014b). Consequently there is a need to elaborate a new formulation or definition that more accurately reflects the experience of caste in Britain. The international experience is largely unhelpful, with the question of a definition sidestepped in other jurisdictions that have a legal engagement with caste. A starting point for a definition is provided by CERD General Recommendation 29, quoted above, but this document is of an international character and its formulation is consequently wide-ranging.

The present report has explained both the complexity of caste and the need for separate treatment of caste in law, for example by way of express iteration of caste as an independent sub-category of race. We conclude that any definition – whether on the face of the Act or in the Explanatory Notes - ought to be expressive of caste in Britain and should draw on key terms. It needs to be sufficiently open to cover caste

as understood and experienced in Britain; it should delineate the boundaries of the category but should not be overly prescriptive. In this regard, it is suggested that the definition, whether forming part of the wording of the Act or its Explanatory Notes, could include the following elements: endogamy, social stratification, and (inherited) status and examples could be provided in the Explanatory Notes as is currently the case with race and religion.

4.4 Future work

There is a growing research community on caste in Britain, exploring its facets and manifestations. This is multi-disciplinary and asserts a variety of perspectives. Caste has a long legal history in a range of jurisdictions, and the present research in Britain is linked to the wider international study of caste discrimination. At the international level, the UN literature emphasises the indicative nature of its present standards, notably General Recommendation 29, which is exploratory in tone as it seeks more information on the nature of caste and descent-based discrimination as experienced by a number of States and regions, and the form and efficacy of legal remedies.

Given the particular focus of the present report, it is perhaps appropriate to signal that the functioning of caste in the Equality Act 2010 will be played out in caselaw. At present, resources are being diverted in terms of legal analysis towards arguments as to how existing characteristics can be interpreted to include caste. With greater legal clarity provided by the legislative amendment, the focus will shift to how caste is manifested, the forms discrimination may take, and the experience of victims of caste discrimination.

The present report is a contribution to an emerging area of discrimination law, outlining the context and legal pathways available to situate caste within the Equality Act 2010. It is intended to provide guidance as to the options available and generate discussion on potential legal pathways. The multi-layered experience of caste in Britain will emerge in the application of the Equality Act 2010, as more voices are added to this growing discourse.

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This report reviews socio-legal research on British equality law and caste in the context of the requirement in the Enterprise and Regulatory Reform Act 2013 to make caste 'an aspect of' the protected characteristic of race in the Equality Act 2010. The report examines the meaning of caste and its manifestations in Britain; caste and protected characteristics, such as race or religion or belief; caste and legal exceptions; and caste in the international context. The report concludes by considering the legal formulation of caste as an aspect of race and how caste should be defined for legislative purposes.

The report is a companion study to *Caste in Britain: Experts' Seminar and Stakeholders' Workshop* (Research report no. 92).

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Caste in Britain: Experts' Seminar and Stakeholders' Workshop

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Dr Meena Dhanda (University of Wolverhampton)
Professor David Mosse (SOAS, University of London)

Executive summary

Background and methodology

In April 2013, the Enterprise and Regulatory Reform Act was enacted. Section 97 of the Act requires government to introduce a statutory prohibition of caste discrimination into British equality law by making caste an aspect of the protected characteristic of race in the Equality Act 2010. In the context of this direction, the Equality and Human Rights Commission (EHRC) contracted a team of academics drawn from different research institutions to carry out an independent study on caste in Britain.

Alongside a detailed review of socio-legal research on this issue (Dhanda et al, 2014a), the project involved two events: an experts' seminar and a stakeholders' workshop reported on here (Dhanda et al, 2014b). The experts' seminar was aimed at experts on caste and discrimination from law and the social sciences, while the workshop brought together stakeholder groups including representatives from community and faith organisations, employers and service providers.

The aims of both events were:

- to bring together interdisciplinary expertise and a range of stakeholder views on caste, and discrimination on the basis of caste, in the UK;
- to explore views on UK and international law in relation to caste; and
- to identify concerns and find common ground in relation to the implementation of the amended equalities law when it includes caste as an aspect of race.

Both events addressed three specific questions: how caste should be defined in the Equality Act 2010; what Exceptions and Exclusions for caste should be placed in the Equality Act 2010; and how caste should be related to the Public Sector Equality Duty.

Key findings

The nature of caste in the UK

Among expert researchers at the seminar, caste was viewed as a complex and changeable institution, the significance of which varies across different regional and diaspora communities, generations and spheres of life. In the UK, caste is positively a form of association and social capital among communities of South Asian origin,

but negatively a form of social separation, distinction and ranking, that excludes certain groups historically regarded as ‘untouchable’. Caste involves endogamy (marriage within the group) and inherited status, and as a form of social identification is distinct from class, race, and various forms of ethnicity. While linked to classifications of ancient India (*varna*), the distinctiveness of caste does not reside in a connection to Hinduism or to any other religion. Caste manifests across religions, although the relationship between caste and religion is clouded because in the British public realm, religion has become a way of talking about caste.

Experts pointed out at the seminar that caste is not necessarily declining, or confined to an older generation. Young people may experience exclusion from religious or community spaces on the grounds of their cross-caste marriage, as well as discrimination in relation to work or public services. Research shows that caste is also manifest within new youth culture including music and social media; however, compared with an older generation recalling social humiliation experienced in South Asia, younger people manifest a confidence and assertiveness in the face of caste slights.

Stakeholder views on caste as expressed at the workshop divided sharply. On the one hand, ‘Dalit groups’ (Ambedkarite, Buddhist, Ravidassia, rationalist and anti-caste associations) regard caste as quite distinct from class, and as hereditary, hierarchical and originating in Hindu scripture and tradition, now transmitted elsewhere. On the other hand, representatives of Hindu organisations, regard caste in origin as a matter of inherited occupation, but in the UK today, as having merged with other kinds of socio-economic difference and certainly not linked to Hinduism. Sikh groups are equally firm that caste has no relation to Sikh faith.

Discrimination on the grounds of caste in the UK

Expert researchers attested to the fact that caste discrimination exists in the UK, whether as bullying in schools, ostracism following inter-caste marriage, in worship, employment and business, and in the rental market (of housing or hired venues). For legal purposes, it is necessary to separate caste practice in the public and the private domain or in family relationships, although from an sociological perspective there is no such clear separation. Much is understood about the nature of caste discrimination and its effects, but there are serious methodological challenges in attempting to quantify its extent.

In the stakeholders’ workshop, Dalit groups emphasised the pervasiveness of unequal treatment, harassment, verbal abuse or discrimination in the UK. They described a variety of cases in the fields of education, employment, the provision of

goods and services and access to temples, as well as in the private sphere of family and marriage. They consider legislation for protection and redress as necessary.
In contrast, representatives of Hindu organisations reported no knowledge of such caste discrimination, and consider this is unlikely and unprovable. They argue that legal change is unnecessary (either because they claim there is no evidence of caste discrimination, or because available equalities legislation sufficiently covers such cases). Among Sikh groups, there is acknowledgement of the problem of caste, but differences as to whether this should best be addressed through education or legislation.

The view of the employers and service providers who attended the stakeholders' workshop was that caste discrimination could be addressed through amendment to the Equality Act 2010.

The definition of caste for the purposes of Equality Act 2010
The experts' seminar explored the UK and international context of legislation on caste. A key conclusion emerging from the discussion at both events was that the best known jurisdiction, India, does not provide a useful model, because it lacks a definition of caste and is based on a Schedule to the constitution which lists named castes (known as 'Scheduled Castes' or SCs), a mechanism which is inappropriate in the UK context.

Expert opinion, as expressed at the seminar, is that there are dangers in adopting too precise, or too broad a legal definition of caste, but that there is value in using a minimum definition of caste in terms of (1) endogamy, (2) inherited status, and (3) social stratification. The focus of the law is on discrimination (not caste per se) and here issues of evidence will be prominent. The legal definition of caste would mostly be developed through case law in which the determination of identity and its relevance to behaviour would be subject to legal interpretation. Several of the issues involved in proving discrimination on the basis of caste might not be different from proving discrimination on the basis of other protected characteristics.

Exceptions and exclusions for caste in the Equality Act 2010
Experts debated the application to caste of the existing exceptions and exclusions in the Equality Act 2010, especially in relation to ‘race’ and ‘religion’ as protected characteristics. It was argued that as an aspect of race, caste would have fewer exceptions than religion. It was debated whether exceptions on the basis of religion (e.g., occupational requirement in relation to priests) might be used to conceal caste prejudice, and who would decide whether ‘religion’ or ‘caste’ applies.

The implementation of law

Expert opinion was that legislation against caste discrimination is a significant measure. The number of cases each year is not likely to be large, but as stakeholder groups also stressed, the law has an important educative and social reform impact in the public and private realms. It was recognised that protection from discrimination applied to *all* castes, and that the law's application was thus 'symmetrical'. 'Casteism' is also seen as a global form of discrimination against which the UK is developing protection, applicable for example to UK companies recruiting internationally.

Considering the relationship between 'caste' and 'religion' as protected characteristics, experts anticipated complications in the implementation of the law, and that lawyers would need to be aware of various pretexts for caste discrimination, which might be either direct or indirect.

Experts and stakeholders considered that victims of discrimination might face certain obstacles in gaining legal redress: a reluctance to register complaints that would reveal previously hidden identities; a fear of reprisals; community pressure against raising the 'caste issue'; and a difficulty in finding lawyers able or willing to take up their cases. For many experts, these issues suggested a need for training and education, but were not seen as very different from other discrimination causes (e.g., on the basis of sexual orientation).

Experts and stakeholder groups emphasised the importance of education, training and sensitisation on the issue of caste discrimination and the law - for potential victims, lawyers, public and private sector employers (schools, police, charities), and the wider community. Education should also correct the misperception that caste legislation is an attack on a particular faith group.

The central concern that emerged among experts and stakeholders alike was that, in order to meet the Public Sector Equality Duty (PSED), public bodies and organisations would start collecting data on caste in order, as they saw it, to fulfil their PSED obligations, thereby introducing 'caste consciousness'. The common view was that this has to be avoided, and that careful thought is needed on how any local authority would conduct consultation for 'caste equity'. Some stakeholder groups emphasised that the need to extend the PSED and related compliance monitoring should be proportionate to the issue and would not be relevant in all regions/organisations. For other stakeholder groups, the equality duty was proactive and national.

The present-day context of public sector resource constraints was in the mind of several stakeholders. While some argued for targeted government support (akin to the Racial Equality Councils), others advocated using e-learning and community education or a system of referral to target interventions to areas with likely higher incidences of caste discrimination.

The impact of legislation on caste

Many experts and stakeholder groups saw the legislation against caste discrimination as having an overwhelmingly positive protective, preventative and educative effect, as well as empowering those who today feel discriminated and silenced. It was argued that anti-discrimination legislation would reduce the taboo surrounding caste, reduce discrimination and help bridge-building for community cohesion within Asian communities.

However, other experts and stakeholder groups raised concerns that legislation might institutionalise caste in the UK, or introduce a consciousness of caste that would be damaging, especially to young people who, they claimed, have no idea about caste. This was a particular concern of Hindu organisations, who were fearful of new prejudice against themselves emerging as a result of legislation and a public discourse on caste as a 'Hindu problem', thereby undermining years of successful community integration in British society.

Another concern which was expressed was that legislation on caste risks creating a 'litigation culture' burdening the courts with vexatious caste discrimination cases, or, that family disputes around marriage, inter-sect rivalry, or disputes over the control of temples would fuel spurious caste cases. Some feared new suspicions and rifts between different caste groups.

It was argued at the experts' seminar that monitoring the impact of anti-caste discrimination law will present a challenge. Quantitative surveys present serious methodological challenges. Experts argued for developing a coherent body of robust and credible qualitative research regarding experience and case studies as a basis for further research to underpin monitoring.

While Hindu groups expressed concern about over-rapid legislative change, Dalit stakeholders were frustrated at the slow speed at which the law is being put into effect, given their view about the compelling evidence of caste discrimination in the UK.

In relation to the idea of time-bound review, it was noted by experts that it would be unusual for a non-discrimination clause to be treated as a temporary measure.

Conclusion

These experts' and stakeholders' workshops brought together a detailed expertise and a wide variety of stakeholder opinions. The dialogue between different viewpoints significantly enhanced knowledge and mutual understanding among the different participants, as well as honing understanding of caste in Britain in ways that will serve the needs of developing legislation. On the legislation itself, while differences of view remain, the experts' and stakeholders' events produced a shared understanding that the point of legislation is not to criminalise or remove caste (and certainly not to characterise particular communities negatively) but to challenge the discrimination associated with it. The events demonstrated the power of face-to-face dialogue in building knowledge for change on a controversial issue.

1. Introduction

In September 2013, the Equality and Human Rights Commission (EHRC) contracted a team of academics drawn from different research institutions to carry out an independent study on caste in Britain in the context of the legislative direction to include caste as an aspect of race for the purposes of the Equality Act 2010. The study involved a detailed review of the law and caste, together with two separate invitation-only events, an experts' seminar and a stakeholders' workshop, to debate issues of caste in Britain, and the implications of new legislation on caste discrimination.

This report (Dhanda et al, 2014b) covers the two events; it should be read in conjunction with the report of the review of socio-legal research (Dhanda et al, 2014a).

1.1 Aims of the events

Both the experts' seminar and the stakeholders' workshop had similar overall objectives, which were to:

- ensure that the inclusion of caste in the Equality Act 2010 is done in the best way possible;
- bring together interdisciplinary expertise and stakeholder views on caste and discrimination on the basis of caste in the UK;
- engage with a range of views on the meaning of caste and caste discrimination in everyday life in Britain (and its relation to race and religion or belief), and to provide a platform for communication of different opinions in order to facilitate a common understanding;
- explain and solicit views on caste in relation to UK law and international law; and
- identify issues of relevance for the implementation of the amended legislation in the different settings of the workplace, education, the provision of goods and services and associations.

Both events aimed to solicit knowledge, experience and opinions on the complicated and contentious issue of caste that should be taken into account, while at the same

time identifying areas where more information is required. The events sought to examine three key questions:

- How should caste be defined in the Equality Act 2010?
- What exceptions and exclusions for caste should be placed in the Equality Act 2010?
- How should caste be related to the Public Sector Equality Duty?

It was also made clear to participants that the purpose of these events was *not* to debate the case for or against amendment of the equality legislation further. Nor did these events form part of any public consultation by the Government on the issue of legislative change. Finally, the events did not seek to establish the extent of caste discrimination in the UK.

1.2 Methodology

Experts' seminar

The experts' seminar, which was held at SOAS (School of Oriental and African Studies), University of London, on 19 October 2013, was designed to bring together social scientists and legal experts to solicit views on caste discrimination and the law, and to discuss preliminary findings of the parallel review of socio-legal research (Dhanda et al, 2014a).

In total, 49 people were invited to attend the experts' seminar, besides the members of the project team. These were social scientists with published work on caste from a variety of subject disciplines, including Anthropology, Cultural Studies, Development Studies, Economics, Gender Theory, History, Human Geography, Religious Studies, Sociology, Philosophy and Psychology, as well as lawyers with expertise in discrimination, equalities and human rights law (including some practicing lawyers).[1]

The seminar was attended by 19 participants, in addition to the nine members of the project team and three observers from the EHRC (see Appendix 9). In all, participants came from 13 separate academic institutions, including one institution each in Denmark and Switzerland. Of the 11 lawyers invited, one practising and one academic lawyer attended alongside two lawyers on the project team. The expertise

[1] The two invitation letters sent to experts are outlined in Appendix 1 and 2 and their registration form is outlined in Appendix 5.

of those present spanned the following areas: British discrimination law, caste discrimination, caste and economic development, caste identity, caste and gender, caste in secondary education, caste violence, comparative equality law, cultural politics, Dalit Christians, Dalits in India and Bangladesh, Dalit social activism, diaspora studies, dignity, gift-giving, globalisation, the Gujrati community, international human rights law, labour relations, migration studies, the Punjabi diaspora, the politics of shame, religious conversion, religious education, sects amongst Sikhs, social movements, social stigmatisation, sociology of caste, South Asian diaspora and voluntary and public sector organisations.

All those invited were offered the opportunity to provide a written statement in the form of answers to 'Key questions for experts' (see Appendix 7), as well as to provide advice and references to further research. In total, 16 written statements were received before or after the event; of these, seven were submitted by those who were unable to attend the event in person.

Stakeholders' workshop

The stakeholders' workshop, which was held at the University of Westminster on 9 November 2013, was designed to bring together community stakeholder groups with differing views about caste in the UK and the legislation on caste discrimination, and also representatives of local authorities, service providers, colleges/universities and others who might be affected by this legislation.

Five factors influenced the selection of stakeholder organisations for invitation to the event. First, we aimed to maintain a balance between community organisations which had supported, or campaigned for, the inclusion of 'caste' in the Equality Act 2010 and those which had expressed opposition to, or reservations about, the inclusion of caste in the legislation. Second, we invited those organisations which had established a presence in the public debates in the run up to the legislation. Third, we sought to include other community organisations which had a stake due to their established work in the community. Fourth, we invited equality and diversity officers from local authorities and service providers. Finally, we were governed by the size of the venue and the available budget for the event.

We recognised that the issue of caste and legislation in the UK is controversial, and therefore that the process of participant selection and invitation had to be transparent, fair, and ensure a balance of viewpoints. This involved an extended and carefully handled pre-event process. We invited organisations not individuals, and where particular individuals showed interest, we asked them to suggest the organisation they would represent, and offered to include the organisation if space

allowed at a later stage.[2] Early responses from some stakeholders suggested further organisations for inclusion. In some cases, invitations were missed because the inboxes of publically available email addresses to which they were sent had not been attended to. The team leader followed up email invitations with personal phone calls and where necessary procured personal email addresses to send the relevant documentation a second time. A small number of organisations who sent unsolicited registrations were declined on the basis that they were beyond the remit of our definition of stakeholders or that they might skew the balance.

All those invited were offered the opportunity to provide a written statement in the form of answers to 'Key questions for stakeholders' (see Appendix 8). Those who registered by set deadlines and submitted written statements before the event were offered a travel bursary up to a maximum of £50.

In total, 60 organisations accepted the invitation, and the event itself was attended by 43 participants, from 43 organisations (excluding the project team and two observers from the EHRC) (see Appendix 10). Of the expected 60, 12 were unable to join for unavoidable personal reasons and sent their apologies. Regrettably, five organisations, of which four had initially registered and one had sent a written statement, chose to withdraw from the event the day before it took place; the one withdrawn written statement was not displayed and is not used in the report.

Structure of the events

The experts' seminar and stakeholders' workshop were structured to maximise opportunity for informed discussion, the airing of different perspectives (whether grounded in subject disciplines, social position or professional roles), and the identification of common concerns so as to facilitate forward movement of the process of legislation development. Each event involved a mixture of presentations drawing attention to the existing social science and legal knowledge on caste in the UK (based on the socio-legal research review), plenary discussions, and focused task groups addressing key themes and reporting back. In addition, at the workshop, the written statements that had been submitted by various invited organisations were displayed (in a separate room) and all participants given the opportunity to record their responses on post-it notes.

The following sections of the report deal with each event in turn. Chapter 2 reviews the content of the presentation, discussion and task groups at the experts' seminar. It then summarises the views from the experts' written statements before drawing

[2] The two invitation letters sent to stakeholders are outlined in Appendix 3 and 4 and their registration form is outlined in Appendix 6.

conclusions. Chapter 3 provides a similar presentation of the outcomes of the stakeholders' workshop, including a summary of the written post-it note commentary on organisations' written statements. The aim of both events was to capture salient points and variations in viewpoint, highlighting the significance for the development of legislation on caste discrimination in the UK.

2. Experts' seminar

2.1 Presentations

Overview of research on caste in the U.K

The first presentation by Dr Meena Dhanda examined both research on the manifestation of caste in Britain and research on caste done by researchers in the UK. She showed that caste had been examined by Indologists examining ancient texts (Lipner, 1994; Flood, 1996); by historians of the pre-colonial and colonial periods (Bayly, 1999); by religious educationists, as an aspect of socialisation (Nesbitt, 1990, 2009); and by social anthropologists focusing on the post-colonial transformations of caste in the UK (Bhachu, 1985; Ballard, 1994). Caste has been studied in respect of religious sects in the UK (Takhar, 2005, 2011), within 'faith guides' (Nesbitt, 2005; Warrier, 2006), and within particular communities (Juergensmeyer, 1982; Hardtmann, 2009; Dhanda, 2009). In addition, sociologists and political economists have studied caste in the context of globalisation (Thandi, 2010; Qureshi et al, 2012; Taylor and Singh, 2013). Other research has examined conversion related to caste (Dhanda et al, 2009); caste-related stigma (Jaspal, 2011; Jadhav, 2012); the experience of prejudice (Dhanda, 2009, 2012, forthcoming); caste-based sexual harassment at the workplace (Wilson, 2006); caste and migration (Dhanda, 2013); and Dalit cultural politics and activism (Gellner, 2009; Rafanell and Gorringe, 2010; Mosse, 2012; Steur, 2012.). In relation to law, Waughray (2009) is the first legal journal article on caste in British law and Keane (2007) is the first book on caste in international law (see Dhanda et al, 2014a for further references).

Dhanda also summarised the various reports published on caste discrimination in the UK or claims about the lack of it, beyond the oft-cited National Institute of Economic and Social Research (NIESR) report (Metcalf and Rolfe, 2010), including those by the Dalit Solidarity Network UK (2006), the Hindu Council UK (Sharma, 2008), the Anti Caste Discrimination Alliance (Green and Whittle, 2009), and the *British Sikh Report 2013* (British Sikh Report Team, 2013).

Dhanda also referred to research amongst young South Asians (Nesbitt, 1997); on bullying and name-calling (Ghuman, 2011; Dhanda, 2009); and on generational differences in attitudes to caste (Dhanda, forthcoming). She also noted that new social media has made reverberations of caste-related 'news' more acute than ever before, referring to the criticism of caste by the BBC Asian Network DJ, Bobby Friction, in 2012.

Dhanda concluded by noting the ambiguity of caste in the British context, where religion has become a way of talking about caste. Within the British public realm,

caste discrimination is not always self-evident; it is often masked. But, manifestations of caste in Britain are not disconnected from the interplay of caste dynamics in South Asia. She also suggested that the connection between defining caste legally and responding sensitively to inter-caste dynamics, including why some 'upper' castes persistently deny the existence of caste prejudice, needs to be explored further. Finally, she observed that the law is limited in some ways since a lot of the grief that people face is beyond the purview of the law as it is in the ‘private’ realm. Therefore, in combating casteism, the legally constructed rigid categories of the ‘private’ and the ‘personal’ also need to be challenged by similar arguments as those launched against sexism and racism, which effect the operation of the law.

In discussion, it was noted that in relation to caste because of migration in and out of Britain, people are affected by both what is happening ‘there’ (i.e. in South Asia) and ‘here’ and that the situation in the UK is not any less complex than it is in South Asia. It was suggested that to understand why there is denial of casteism by the ‘upper castes’, we have to understand caste as a ‘regime of truth’; it is productive of a form of solidarity. Some experts said that the research team should also look at the Pakistani Muslim community and at the notion of *biradari*. It was pointed out that the implications of the legislation which may make people of non-Asian background more aware of caste in their interaction with British Asians have to be borne in mind.

One expert reiterated that the public/private divide is crucial from a legal intervention point of view. Some of the sites of caste discrimination (endogamy and religious worship particularly) are outside the framework of the Equality Act 2010 – therefore the framework needs to be expanded in order more fully to include caste.

One expert commented that there is a striking difference in the way in which caste operates in the Gujarati community, where it has a much more corporate nature, compared to the Punjabi community. Caste is something that you choose to identify with; there are formal caste associations that represent particular *jati* groups – ‘a bit like selling a brand’. He commented that there is a direct link between caste, caste associations, and the broader Hindu agenda.

In response, Dhanda argued that the reason why caste has become the focus of discussion in research on the Sikh community is due to the community’s own preoccupation with the question of casteism. There exists a split consciousness amongst the Sikhs with regards to caste. Whilst there is no doctrinal support for casteism, there is growing acknowledgment in the community of its continuing existence in practice. This makes the removal of casteism a matter of concern for Sikhs, but Sikh organisations are divided as to how this should be achieved – by a

legislative or an educational route. In contrast with the Hindu Gujarati or Punjabi Muslim communities where the solidarity conferring role of caste is pointed out by some experts, some researchers argue that the Sikh community views caste pride or solidarity seeking, negatively, as a failing, and against the values of Sikhism (Singh and Dhanda, forthcoming).

Principles for a legal definition of caste

The second presentation by Dr Annapurna Waughray and Dr David Keane focused on the law, noting at the outset that the research had been commissioned following the statutory requirement that caste be made an aspect of race under the Equality Act 2010. They outlined the legal aspects of caste discrimination, which has had a complex history in the domestic and international spheres, examined the legislative history of caste within the Equality Act 2010, and asked the experts to consider the issues that arise from the legal direction that caste be made an aspect of race. Key issues included: how that is to be achieved, the need to draw up a definition of caste for the purposes of the legislation, and the necessity to consider any exceptions to the legislation that might be desirable or essential from a practical point of view.

Waughray and Keane outlined the international context to provide the background for the discussion. They argued that the interpretation of caste as a form of descent-based discrimination by the UN Committee on the Elimination of Racial Discrimination (CERD) was a key aspect. They also noted the importance of the legal orders of other States, notably India, but also in States outside South Asia, for example in Mauritius and Burkina Faso, as well as in case law. The international legal approach to defining caste has been to identify the salient or defining features of descent-based communities suffering from discrimination on the basis of caste and analogous systems of inherited status, an approach set out in detail by CERD in 2002. The experts were asked to consider the relevance of international examples for the current project, as well as how the exceptions under the Equality Act 2010 operate, and the potential for caste organisations successfully to invoke these.

The experts responded with a range of suggestions, although none provided any outstanding source for a legal definition, and some agreed that defining caste is a difficult task. Several experts pointed to the importance of distinguishing caste from ‘casteism’, asking whether, for legal purposes, it is possible to define casteism (e.g., as an ideology of *varna* ranking justifying discrimination) without having to define caste, or risking the stigmatisation of caste identification *per se*. In the case of caste, it was pointed out, the language of protected characterises (nouns such as race, gender, caste) presents difficulties, and would anyway be different from the actions (verbs) that would be the focus of interpretations in the courts. Another expert

concern was to avoid the dangers of, on the one hand, too narrow a definition of caste, which might overly restrict the application of the law, and, on the other hand, too broad a definition that would over-extend the scope of the legislation and risk merging caste with broad social inequalities such as class. On the first point, it was suggested that some difficulties associated with very narrow, detailed and complicated definitions of protected characteristics were exemplified in the case of disability. On the second point, it was suggested that use of the word 'caste' pre-empts the over-broadening of the concept given that, it would be quite difficult for a tribunal in the UK to move from caste to social class. On the issue of how caste is to be implemented in the legislation, there was some further discussion as to the meaning and differences between 'caste' and 'descent' and the relevance of this for Britain. It was concluded that the problematic legal questions generated by the inclusion of caste in the Equality Act 2010 needed to be referred to the task groups.

2.2 Task groups

Three separate task groups took place focusing, respectively on: (A) how to conceptualise caste for legal purposes; (B) evidence on new manifestations of caste in the UK; and (C) matters related to the implementation of law on caste discrimination. A final session solicited views from experts on the issues related to the measuring and monitoring of caste discrimination in Britain. Where consensus or agreement is reported in any group, it is on the basis of general or majority assent to propositions as the endpoint of discussion or to points made on the way.

A. Conceptualising caste

Convened by Professor David Mosse and Dr Annapurna Waughray, this task group considered two questions: what is 'caste' and how can it be defined within the context of contemporary Britain; and how caste is related to 'identity', 'race' and religion in Britain. The group provided an opportunity to air different views while identifying where a consensus could be reached on the conceptualisation of caste. Various suggestions were made about how caste might minimally be understood for the purposes of legislation. Dr Hugo Gorringe reported on the Task Group discussion to the plenary.

The group concluded that caste is a complex form of identification and not amenable to a stable definition. It was recognised that there would be dangers in attempting too precise a legal definition, although moving away from 'caste' to 'descent', risked stretching the definition towards 'class'. There was agreement that the law applies symmetrically (i.e. it is not just about discrimination against Dalits) and it cannot specify any named castes.

Accepting that as far as the legislation is concerned ‘caste’ is a characteristic upon the basis of which discrimination occurs or is alleged to occur, there was some consensus that at a minimum caste can be conceived in terms of: (1) social stratification; (2) inherited status; and (3) endogamy. Such a minimum definition would allow for further definition through case law. It was suggested that the definition should be worded in such a way that it does not exclude certain manifestations that are not mentioned (i.e. using a form of words such as 'caste manifests as…').

The point was made that caste in the UK is different from that in South Asia (or elsewhere), but is also subject to influences from real-time cultural exchanges with the sub-continent. Furthermore, the significance of caste varies between generations, but its hierarchical aspects have not disappeared. However, the traditional (sub-continental) association of caste with occupation has all but disappeared, so that occupation would not be a key feature of a definition of caste in contemporary Britain. It was also noted that given the international nature of business and labour markets, casteism is today a global form of discrimination, against which the UK is developing legislation that will create obligations for British companies.

Participants varied in their emphasis, but the group recognised the need to distinguish between, on the one hand, *discrimination* on the basis of caste, and, on the other, caste as a form of social capital (as ‘solidarity’, ‘belonging’ ‘self-esteem’, ‘collective interest’, ‘corporate identity’, ‘kinship’, ‘mutual cooperation’, ‘an Indian based way of organising’ etc.). The distinction between caste in its public manifestation and caste in the private or domestic sphere which falls outside of the field of legal action was also noted. It was acknowledged that significant differences existed in practices related to caste among diaspora communities with different backgrounds (e.g., Gujarati Hindu, Punjabi Sikh, Christian and Muslim), but that in all communities religious or ideological values reject forms of identification that have the consequence of excluding or stigmatising others.

The question of whether this debate was focussed on *varna* or *jati* was raised, the former being understood as a social hierarchy. One response was that in terms of legislation, we were concerned neither with *varna* nor with *jati per se*, since the legislation is not about social belonging but about the exclusionary consequences of certain types of behaviour.

The group also noted that the overlapping of caste and religious identities will make implementation of the new legislation complex, since the defence of restrictions (for example in relation to temple functions, marriages services etc.) allowed on the basis

of religion, may be challenged by those claiming that exclusion is actually on the basis of caste (as an aspect of race). Two perspectives were expressed: one, that religion would be used to conceal or justify caste prejudice; the other that (legal) claims of caste discrimination would be used to fuel what was essentially rivalry between religious sects or the politics of control over temples. The danger that the implementation of legislation on caste might encourage caste identification or produce caste as a kind of ethnic identity ('ethnicising caste') was also raised.

It was pointed out that, in practice, in legal cases dealing with alleged discrimination, the quality of *evidence* - from witnesses or documentary evidence - was likely to be as important as definitions. It was further noted that the law not only consists of litigation; the educative value of legislation and its capacity to bring issues into the open for resolution is equally significant. This point was also a response to the abovementioned view that new legislation could increase salience of caste in the UK. Most people in the group appeared to consider that this danger is offset by the positive value of legislation and the responsibility to protect against discrimination.

By the end of the discussion, there was a consensus: (a) that a sufficiently open rather than a prescriptive definition was needed (for reasons arising from the different points noted above); (b) that all reference to religion should be avoided; and (c) that no communities should be specified or singled out. It was pointed out that the approach to definitions of protected characteristics in British law is not consistent, and one suggestion was whether any definition of caste is needed at all.

B. New manifestations of caste

This task group was convened by Dr Meena Dhanda and Dr David Keane and Professor David Gellner reported to the plenary session. The group considered two main questions: whether there are new manifestations of caste in Britain impacted by, for instance, youth culture, social media and globalisation; and what are the forms of caste discrimination, if any, in Britain.

The discussion began with the suggestion shared by two experts that caste discrimination is perhaps confined to older migrants and that the present generation of British-born South Asians may be free from any association with caste. The opposite view was also suggested, namely that caste is reproduced by younger generations through caste-coloured popular culture. It was also noted that a comparison with work on the reproduction of caste identity in Europe might be useful to consider.

There was discussion on the new development of restrictions in mainstream Sikh Gurudwaras imposed by the community on young people wanting to use these premises to marry out of caste. The case of a Swindon Gurdwara was mentioned in which a cross-caste marriage was stopped by local Sikh youths, but there was disagreement about whether or not this case illustrates resistance to inter-caste marriages. It was suggested by two experts that the rule that only persons with Sikh surnames - 'Singh' (for men) or 'Kaur' (for women) - are allowed to marry in the Gurudwara is not linked to caste but is equally applicable to all Sikhs. In response, it was noted that Punjabi Dalits in the UK tend not to have Singh or Kaur as their surnames, and in some cases have been asked to change their name to 'Singh' or 'Kaur' in order to use a Gurudwara as a marriage venue. This case was linked to the question of the fair use of premises and to claims of discrimination that might arise from access being denied.

One expert referred to an example from his research in which a young woman was excluded from membership of an association because she married out of caste. It was suggested that, depending upon the details, such a case might count as gender discrimination.

It was suggested by one participant that cases of insubordination due to reversals in caste hierarchy, where a person who considers herself 'upper caste' refuses to take orders from a manager she takes to be 'lower caste', are liable to be dealt with by disciplinary procedures.

One expert asked if an assumption was being made that caste discrimination only happens within South Asian communities. It was suggested that non-South Asian associates of South Asians may pick up casteist language and repeat it without intent to humiliate. There was discussion about whether caste-abusive language will be covered under the proposed legislation and it was suggested that the particular legislation that covers hate speech, 'incitement to racial hatred', could cover such cases. In this context, other cases (e.g. of a music producer being harassed by abusive casteist language online) were also discussed.

It was also pointed out in this group, as in the first group, that anti-caste discrimination legislation would protect people of all castes, not just the so-called 'lower castes'. Any definition of caste in the law would have to be broad enough to capture a range of cases, across different religious communities and national groups. However, a line would have to be drawn somewhere, as one participant pointed out, so as not to overextend the legislation, for example to a Scottish clan. The group

ended with the observation that there will be grey areas as there are for existing protected characteristics.

C. Legal definition and implementation of caste

This task group was held in plenary (combining two earlier separated groups on legal definitions and law implementation). The principal issues discussed were: the relationship between caste and religion as protected characteristics in the context of equality law; the application to caste of the existing exemptions and exclusions in the Equality Act 2010; the application to caste of the Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010; the obstacles to tackling caste discrimination; and the so-called 'sunset clause.'

On caste and religion as protected characteristics, it was pointed out that race and religion as grounds of discrimination classically 'overlap' as illustrated in the *JFS* case (briefly discussed in Dhanda et al, 2014a) where the claimant had no grounds under religion and so brought his claim under race. However, under the Equality Act 2010, not all protected characteristics are protected equally; race, for example, is protected to a greater extent than religion. It was noted that lawyers needed to be aware of pretexts for caste discrimination and to be aware when indirect caste discrimination might be taking place. For example, policies, criteria or preferences relating to dietary observations or food preferences might exclude certain castes (the example of food or diet could equally be indicative of indirect religious discrimination depending on the circumstances). It was pointed out that most cases on religious discrimination have concerned indirect rather than direct discrimination.

Many issues were raised concerning exemptions and exclusions. There is currently a debate about exemptions and exclusions generally, and conflicting views as to whether the current exclusions are too wide or too narrow; this is the case with exemptions relating to religion or belief and there may be parallels in terms of caste.

One expert asked how exemptions and exclusions would work where 'lower' castes are defined as a religious group and are discriminated against on grounds of caste: would caste discrimination provisions therefore not apply? The question then arose of who decides what questions are covered by 'religion'; for example, who decides whether caste-based restrictions on entry to temples or to the priesthood are permitted under existing exemptions and exclusions. A reference was made to some Hindu temples in India which insist on having Brahmin priests as a religious requirement. In response, it was noted that if a religious organisation refused to employ priests of certain castes, this would be contrary to the prohibition of discrimination on grounds of race when caste is made an aspect of race. Churches

and temples can impose a genuine occupational requirement that a priest must be of the religion in question, but religions are not exempt from the prohibition of race discrimination in the Equality Act 2010 (although they are exempt from the prohibition on sex or sexual orientation discrimination).

It was noted that priests in Britain are increasingly drawn from all castes, citing the example of temples employing non-Brahmin priests. Another participant then posed the problem of a temple insisting on employing a priest of a particular caste, arguing that it is a doctrinal requirement, and refusing to employ a priest of another caste. If the matter goes to court, the judge would be required to decide whether the doctrines of the religion impose requirements as to the caste of the priest. Another expert questioned whether we should be legislating in this way for minority religions, but the point was made that we do already legislate.

On the PSED, one legal expert emphasised its purpose of fostering good relations between communities. The duty to have regard to the need to tackle prejudice and promote understanding, and to eliminate harassment, was seen as particularly useful in relation to caste. However, it was noted that the PSED is currently under government review and its future is unclear. A participant pointed out that in relation to caste and the PSED, the central concern that has emerged is whether public bodies and organisations will start collecting data on caste in order, as they see it, to fulfil their PSED obligations, thereby exacerbating or even introducing ‘caste consciousness’ in Britain.

One participant pointed out that the collection of such data is often related to policies on diversity and that there is no suggestion that caste will be part of diversity policies. Another pointed out that there is often pressure on bodies to collect data to show that they are fulfilling their PSED obligations (even though collection of such data is not mandatory), however, in practice race and ethnicity monitoring is disliked by many people as intrusive and monitoring forms are not completed, and this may prove to be the case for caste also. It is also important to avoid burdening public bodies unnecessarily or to have them collect data which invade privacy.

There seemed to be a consensus that the collection of statistics and the monitoring of caste identity should be avoided. It was pointed out that the Office for National Statistics has been reluctant to extend the census categories beyond basic ethnic categorisation due to cost, therefore, it was unlikely to want to include caste in the census. It was also pointed out that equality duties were different in England, Wales and Scotland.

Certain obstacles to tackling caste discrimination were pointed out. Dalit victims might be reluctance to report caste discrimination if in so doing they had to declare their own identity in caste terms (especially to ‘higher caste’ managers) which they may prefer not to do. It was noted that this is similar for sexual orientation discrimination and that, as in that case, training and education is required for employers, the judiciary and other actors to attune them to caste discrimination, alongside legislation itself.

On the ‘sunset clause’, it was noted that the clause permits, but does not mandate, a review of the caste provision, and that it is unusual for a non-discrimination clause to be treated as a temporary measure.

2.3 Concluding plenary

Measuring/monitoring caste discrimination in Britain: reasons, issues, and methods

The final session (moderated by Dr Steve Iafrati) focused on issues related to the measuring and monitoring of caste discrimination in the UK. The experts argued that caste discrimination is both an objective fact that can be measured independently, and a subjective experience for many people in terms of their understanding of discrimination and perceptions of discrimination and harassment. Mindful of this duality, it is important to have a similar duality in terms of methodology.

Caste does not have the same level of monitoring and data collection as other protected characteristics under the Equality Act 2010, such as gender, ethnicity and disability. Currently, there are no reliable baseline data on the extent of caste discrimination, which may be important when assessing the effectiveness of the legislation. It was noted however that other areas of discrimination, such as race and age, have been monitored successfully in terms of legal cases and their outcomes.

It was suggested that this is a difficult area to research as it is a sensitive topic for many people and entails some degree of stigma. Additionally, the concepts of discrimination and harassment are different, and it is important that people understand these terms. Simple survey instruments would be bedevilled with problems of misunderstood or over-extended terms and categories. As such, a survey might not be the ideal first step, a better start being a qualitative approach through targeting communities in particular geographies.

The case study evidence provided in the NIESR report on caste (Metcalf and Rolfe, 2010) was noted, although it was recognised that the majority of the incidents reported in that study would not lead to court cases under the Equality Act 2010. In addition to the NIESR report, experts mentioned the significant amount of other

research from various academic disciplines concerning the existence of caste discrimination. It was noted that some studies have found many cases of caste discrimination, but others have found far fewer cases whilst still showing some evidence of it. Consequently, it is important to develop a coherent body of robust and credible qualitative research regarding experiences and case studies as a basis for further research to underpin the monitoring of baseline data.

2.4 Experts' written statements

Experts were invited to send written statements in response to twelve questions (see Appendix 7).

In this section we summarise the key views and opinions expressed in the written statements, presented under three broad headings concerning opinions on:

- manifestations of caste in Britain, including forms of discrimination;
- conceptualising and defining caste sociologically and legally; and
- issues concerning the operation and implementation of caste legislation.

Manifestations of caste including forms of discrimination

In relation to discrimination, two approaches can be identified. On the one hand, it was pointed out that in the absence of legislation, caste discrimination may not come to light; furthermore, some prominent explanations of caste in Britain (such as that by the Hindu Council UK) present caste as a largely harmonious and interdependent system in a way which can silence the voice of its discontents. Caste harassment was described as 'wide-ranging', from bullying in schools to the banning of inter-caste marriage accompanied by social ostracism of those who defy the inter-marriage ban, and in some cases by violence (Roger Ballard). A number of experts identified the existence of caste discrimination in employment (prejudice by those familiar with caste distinctions against 'lower caste' job applicants), in professional and business activities, in the context of worship, and in the housing market in the avoidance of renting to persons known to be of 'lower caste' origin (Luisa Steur, Mary Searle-Chatterjee). The adverse impact of caste discrimination on children of so-called 'low caste' in areas of substantial South Asian communities was noted by several experts, and the importance of the role of schools in combating discrimination was emphasised. It was noted that caste-related bullying is a serious issue in a number of state and private schools. One suggestion as a starting point to get schools to think about how to address the issue would be to teach about B.R.

Ambedkar in the national curriculum alongside existing figures like Gandhi and Martin Luther King (Kalpana WIlson).

On the other hand, one expert questioned how lawyers would deal with situations where a conflict arises between freedom of faith and religion, and the kinds of discrimination banned in law such as discrimination in employment, for example where those in charge of a temple deem persons of specific castes or sub-castes to be the only individuals appropriate for a paid or honorary position as a priest, trustee or committee member (Susan Bayly).

Regarding manifestations of caste, there did not seem to be a sense among the experts that caste is declining; rather, caste was seen as important as a source of identity for many groups, with new manifestations of caste emerging. Thus several experts referred to social media and social networking sites being used innovatively to create and re-create caste group identities which are important and positive (‘cultural caste’) (Rusi Jaspal). In a different way, transnational marriages resulting from migration and the dynamics they entail are also a manifestation of caste (Hugo Gorringe). On the psychological aspects of caste, particularly caste and self-esteem, it was suggested that the younger generations of so-called ‘low caste’ do not have a sense of low esteem related to caste; but it is not clear whether the younger generation of so-called ‘upper castes’ have any less sense of superiority about their caste background. However, it was suggested that the increasing self-confidence of so-called ‘low castes’ is bound eventually to have an impact on changing views, behaviour and practices of the so-called ‘upper castes’ (Pritam Singh).

Conceptualising and defining caste

Most experts who commented explained that caste is unstable, dynamic and changeable; it is perhaps (as Susan Bayly put it) not a single phenomenon at all. Nor is caste ethically appraised in an unambiguous way. On the one hand, caste is positively valued as a form of identity, solidarity and social networking that provides individual and collective belonging and self-esteem (Susan Bayly, Rusi Jaspal). On the other hand, the psychologically empowering effects of self-esteem, social difference and distinction, of ‘in-group’ membership, also involve a distancing or inferiorising of ‘lower’ castes (Eleanor Nesbitt) in ways that may humiliate, disempower and undermine the sense of self-effectiveness of ‘out-group’ others (Rusi Jaspal). Caste is thus relational and hence can take new forms in the UK (Hugo Gorringe).

Caste is a ‘notional category’ that is not obviously visible. It is constituted through varied kinds of everyday social interactions and exclusions, including joking, that

appear in the UK (Hugo Gorringe). In the Indian sub-continent, caste inequality is strongly implicated in power and economic inequalities and exploitation amidst economic growth in ways that come to be visible as unemployment, low education, poor heath and other consequences of unequal opportunity faced by lower castes (Karin Kapadia, Steve Taylor). We do not have expert opinion specifically on the intersection of caste and class in the UK, although attention is drawn to the intersection of caste and gender in the instance of sexual harassment of Dalit women (Kalpana Wilson) and domestic violence (Roger Ballard).

Endogamy (marriage within caste) ensures that caste identities persist (Eleanor Nesbitt), but the practice of endogamy itself only arises because of the attitudes, aspirations and sense of self that give value to caste as a means of association, social networking and belonging (Vimal Patel). These attitudes are often taken for granted, and mostly go unnoticed (Hugo Gorringe). Even where caste seems more about identity than rank, these dispositions are informed by hierarchical values (Hugo Gorringe). Classically such values are manifest in ideas of *varna* and purity/impurity, although these may not inform present-day social attitudes (Gavin Flood, Pritam Singh). The effect is that caste can appear in the UK as a system of socially ascribed difference (ascribed to oneself or to others) (Steve Taylor) even though divorced from the occupations, sharp power inequalities and violence of the Indian sub-continent. Experts nonetheless note that caste solidarities and separations are influenced by political tensions on the sub-continent (e.g., the relevance of Punjab politics [Eleanor Nesbitt], or Hindu supremacist ideology [Kalpana Wilson]).

In the British context, religious groups (Hindu, Sikh, Christian, Muslim) are divided by caste (Roger Ballard), although in some cases (e.g., Valmiki, Ravidassia, some Gujarati *samajis* [associations]), caste and religion overlap (Mary Searle-Chatterjee, Vimal Patel). Indirectly this is also the case, for example, with Buddhist or Christian Punjabis who are mostly of ‘Dalit’ caste heritage (Eleanor Nesbitt)]. Moreover, some religious institutions (temples, gurudwaras) implicitly presume caste qualification for priesthood or committee membership (e.g., an unstated expectation that serving priests or religious institution leaders would be of a certain caste). While religious precepts mostly strongly reject caste distinctions, these might easily be overlooked for example in the pursuit of an ‘honourable’ marriage.

Finally, as regards a legal definition, two external legal experts warned of the ‘legal danger’ of clubbing together caste with ethnic origin, whilst acknowledging similarities to ethnicity.

Operation and implementation of caste legislation

Diverse views were expressed on the operation of caste as a concept in equality law. Respondents who expressed support for legislation, as well as one lawyer who described their organisation's position on legislation as neutral, suggested that protection against caste discrimination should function like protection against any other form of discrimination. However, it was also noted that since caste discrimination works in insidious and often hidden ways, education about its form and manifestations was essential, including concerning situations where discrimination is on grounds of both caste and another protected characteristic such as gender (intersectional or dual discrimination). As one respondent explained, in legal terms caste is no different and would be no different to other forms of discrimination already covered by equality legislation, but public understanding may lag behind. In this regard, the need for judicial training and education was referred to by several respondents (e.g. Steve Iafrati), and all respondents felt that existing levels of expertise would be an issue if lawyers and others do not know how to access pertinent expertise.

Conversely, some respondents took the view that caste is too diverse and complex a phenomenon to be captured by British discrimination law; and even if it could be, the likely result is the reification of caste, or the ‘casteification’ of law and public debate in this country. At the very least caste is a ‘difficult concept to operate with’, especially given that it can also be translated as ‘community’. One respondent felt that caste cases would generate ‘enormous difficulties’ and another that it would be a mistake to attempt to define ‘caste’ preferring the term ‘casteism’ instead (Mary Searle-Chatterjee).

Most respondents anticipated only a small number of cases although others felt there would be many cases. Some considered the number of cases was irrelevant, as ‘even one case of discrimination is too many’. The educative role of legislation - sending out a clear message of disapproval - was referred to. One non-legal academic expert thought caste would fall under existing legislation. Most respondents anticipated that cases involving claims of caste discrimination would be reported, initiated and proceed much as cases involving claims of other types of discrimination, and that such cases would be no more or no less sensitive than those involving other types of discrimination. Diverse views were expressed as to how judges might engage with caste as a ground of discrimination, ‘with difficulty’ being one response. Several respondents identified training as crucial.

In terms of proving allegations of caste discrimination, one respondent felt that even a small number of cases would present an ‘intractable problem’ due to the very

different views held by academics about the nature of caste (Susan Bayly). The 'invisibility' of caste and the lack of obvious 'caste markers' was mentioned as a potential difficulty given that courts might consider the parties to originate from the same community. Courts would look for discrimination which attributes or infers particular characteristics, behaviour or labour to individuals on the basis of their heritage, parentage or name/group affiliation. The significance and difficulty of establishing caste identity was raised especially, according to one respondent, given its fluid and changing nature. There may be a discrepancy between a person's subjective and ascribed caste identities, as in the case of a woman who takes on her husband's caste identity on marriage but continues to face discrimination on the basis of her own caste origins. Other respondents felt it would be no more difficult to prove caste discrimination than other forms of discrimination.

In terms of defences to claims of caste discrimination, it was suggested that some perpetrators may raise their own 'low caste' origins in defence in order to deflect allegations of caste discrimination; other defendants may argue that they lacked discriminatory intent, or that that they were acting on traditional or religious lines rather than 'against' someone.

A large number of obstacles for victims wishing to rely on the law were mentioned. These included a lack of confidence; a lack of English language skills; a lack of awareness of the law; a lack of knowledge on how to access legal representation; and a lack of funds to bring a case. In addition, it might be difficult to get a lawyer to understand the issues; there may be resistance to the notion of caste inequality among South Asian legal representatives, while non-Asian lawyers may not understand; and there may be few lawyers from the 'low castes'. Socio-psychological obstacles were also identified, including fear of reprisals or a backlash (including violence) from other caste groups within the South Asian community; fear of stigmatisation and 'outing' where caste identity had previously been hidden; pressure from the family not to pursue a claim; perceived community stigma in raising the issue at all ('washing dirty linen in public'); social pressures within the community to resolve within the community and not go to court; and internalisation of caste system-related norms leading to an inability to recognise caste-based discrimination. There could also be difficulty in securing evidence to prove subtle forms of discrimination or in establishing discrimination. It was also noted that some of the more painful forms of caste discrimination, e.g. ostracism for entering into a mixed-caste marriage, are beyond the remit of the law. Several respondents raised the similarities between the problems faced in reporting, claiming and proving sexual orientation discrimination and caste discrimination. On the other hand, legal experts stated that caste should not give rise to any difficulties not faced by other characteristics.

Several respondents mentioned the value of the application of the PSED to caste. Since public bodies must work to tackle discrimination on the basis of caste, this would become embedded and caste discrimination would be treated as seriously as other forms of discrimination. The danger would be if there is felt to be a need for the collection of caste data and statistics to implement the duty.

In relation to the exceptions to the Equality Act 2010, it was suggested that, as an aspect of race, caste would follow the exceptions pertaining to race. Alternatively, the religion or belief exceptions might apply, for example where it is argued that for reasons of religion a person of a particular caste is required for a particular duty. The complication of the religion-caste overlap, such as where Dalit castes have established religions (Hugo Gorringe) was raised; it was questioned whether caste discrimination would be exempted if presented as ‘religious’. The point was made that it is one thing to organise social life - particularly marriage - within caste boundaries, but another if caste becomes a criterion for employability rather than ability; the former would be lawful, the latter not.

Legislation against caste discrimination was seen as falling within the spirit of the Equality Act 2010, sending a message that certain behaviours and actions are unacceptable (Hugo Gorringe). Beneficial effects that were mentioned included reducing the taboo around the issue, reducing fear and pressurising people to change their behaviour. One respondent commented that ‘... [t]he long term effect of caste discrimination legislation would be similar in reducing caste discrimination to the effect of race discrimination legislation in reducing race discrimination. I must also add that the limits of the caste discrimination legislation in eradicating caste discrimination would also be similar to the limits of race discrimination legislation in eradicating race discrimination’ (Pritam Singh). In particular it was acknowledged that the law is not concerned with how communities organise themselves in terms of social transaction, marriage and commensality; the key thing is equality legislation (Gavin Flood).

Some respondents mentioned the possible damaging effects of legislation as including the embitterment of relations between caste groups; some might regard their own groups as being unfairly singled out as perpetrators of discrimination, yet themselves suffer discrimination from other groups. This could create an air of suspicion and cause rifts between groups. Other damaging effects mentioned by the experts included allegations of discrimination by ‘high caste’ groups against the traditionally 'lower' caste groups not being taken seriously; further reification of caste group identities, the consequences of legislation being to reify and reinvent caste, ameliorating and protecting the reinforcement of caste boundaries rather than

eroding them; abuse of caste discrimination legislation by members of particular groups; and an increase in caste consciousness and the sense of caste differentiation amongst South Asians in the UK. It was pointed out that the politicisation of caste identity in the Indian context highlights this possibility. Certainly in the short term, the legislation might serve to politicise caste identities, according to one respondent, but the law would make it clear that casteism is unacceptable and that there are consequences for hateful behaviour towards people from other castes. In this sense the law would be akin to other equalities legislation. One expert pointed out that one outcome of caste legislation in India has been the emergence of a form of reverse casteism in which dominant castes have mobilised to argue that they are discriminated against by the law. Should caste legislation provoke such a backlash in the UK, there may well be a need to introduce the concept of 'caste hatred' into criminal statutes.

Finally, on the argument that caste legislation will entrench caste, one of the legal experts pointed out that this is similar to the French official refusal to recognise the existence of minorities. It does not mean that they do not exist, simply that they are not recognised. Failing to address caste discrimination will not make it go away. The point of legislation is not to remove caste but to challenge the discrimination associated with a particular social fact which is caste status.

2.5 Conclusion

The experts' seminar was the first of its kind to bring together expertise across disciplines. It gave legal experts input from a range of up-to-date social science studies on caste and caste discrimination; and gave social researchers the opportunity to reflect on caste in terms of legislative change, which will, in one way or another, influence the experience of caste in the UK.

The seminar can be seen as pointing to some broadly shared conclusions. First, caste in the UK is a complex and changing phenomenon with varying significance among South Asian and other diaspora communities in Britain, across generations and spheres of life. For the purposes of legislation and the perception of this legislation, it is relevant that the experts share a view (a) that caste is a distinct form of identity separable from class, race, ethnicity, language and others; (b) but that what makes caste distinct is not its association with any one cultural tradition. In particular caste identification is separate from religion and not a feature of any specific religious group (e.g., Hindus). Any narrow cultural definition of caste would be impossible and undesirable, but equally caste is a distinctive form of social differentiation.

Second, it is necessary to distinguish between caste as a pervasive form of identity, belonging, or social capital, and discrimination on the basis of caste, but significant evidence exists that certain groups in the UK experience caste as a hierarchical and exclusionary institution, not only in the private domain or family relationships, but also in areas of employment, education or service provision that fall under the ambit of equalities legislation.

Third, legislation against discrimination on the basis of caste is a significant measure, likely to have an educative effect as well as providing redress in cases of discrimination. It is thought that in all likelihood the number of cases may be relatively few and the education impact especially important.

Fourth, new legislation presents important challenges, especially (a) in the definition of caste as a ‘protected characteristic’, and (b) in the implementation of legislation on caste:

- **Definition of caste**: there are dangers in too narrow and too broad a definition. Research suggests the value of a minimum idea of caste in terms of: (1) social stratification; (2) inherited status; and (3) endogamy.

- **Implementation of the law**: issues requiring particular attention are: the interface of caste and religion in certain contexts; how to determine the exemptions and exclusions around caste as a protected characteristic; the potential obstacles where victims have to declare stigmatised identities in seeking justice; and determining or limiting the impact of the PSED in relation to caste.

Fifth, the seminar drew attention to certain implications of new legislation, in particular the need to attend to the potential of legislation to enhance the significance of caste in the UK. Legislative change should not (and need not) make reference to any particular identities either in cases of discrimination or in fulfilling requirements under the PSED.

Sixth, researchers and legal experts were able to discuss and analyse the nature of caste, caste discrimination and the importance of legislation and its implications, irrespective of an accurate quantification of the extent of caste discrimination in the UK. Given the subtle and partly disguised nature of caste discrimination, and the different views and assumptions about caste in the UK, it is unlikely that an accurate quantification of its extent would be possible in the short term. Qualitative and

participatory research however, has (had) a major role in shaping the legislation in terms of understanding the nature of caste and its effects.

3. Stakeholders' workshop

3.1 Presentations

Four presentations were given by the project team at the stakeholders' workshop.

Introduction, aims and objectives

In the introductory presentations, Meena Dhanda welcomed the participants, shared the list of delegates and replied to queries about the event. She assured participants that the workshop was being organised with a genuine spirit of openness and that no ready-made positions would be offered for agreement or disagreement. David Mosse established the need to keep the interactions among participants relevant and focused on the legislative proposals. The aim was for stakeholders to provide an input to how caste can be included in the Equality Act 2010; to discuss caste with respect to UK and international law; to identify issues that might arise in the implementation of the legislation; and to acknowledge the breadth of viewpoints around the legal question of caste discrimination and its future realisation in the courts. He emphasised that the purpose was **not** to discuss the extent of caste discrimination in Britain, or whether there should be caste discrimination legislation, and that the event was not an official public consultation by the government.

A participant expressed concern about absent organisations who had 'pulled out' to which the team responded by reminding participants that it was their choice which must be respected, but that the focus of the event should be on the views of those attending. This position was supported by another participant who said that if one wants to take part one ought to be present.

Research on caste in Britain

Meena Dhanda presented an overview of the literature on caste in Britain to date. It differed from her presentation to the experts' seminar (Section 2.1) by focusing on the particular concerns of the stakeholders. First, she listed contributions of British academics to our understanding of caste in terms such as *jati*, underlining that there is no one fixed definition of these terms. Second, citing the work of Bayly, she mentioned the pre-British consolidation of caste identities in the Indian sub-continent (e.g. of Rajputs and Jats). Third, turning to the study of religious socialisation, she suggested how school text-books had been found to be misleading representations of Indic religions, especially in relation to knowledge about caste. Fourth, she noted that studies on the setting up of caste-based Gurudwaras in Britain (Kalsi, 1992; Sato, 2012), show that there is experience of caste discrimination, even though they do not measure the extent of it. Fifth, she suggested that how transnational migration has impacted upon inter-caste relations has begun to be studied, but needs further

attention. In this respect, new work on Nepali Gurkhas was cited, which shows evidence of caste discrimination. Sixth, reports by stakeholder organisations were cited and contrasting findings with respect to the existence of caste discrimination noted. Seventh, the difference between Gujarati and Punjabi patterns of migration and its impact on caste-based organisations was noted. Eighth, the point was made that the relationships of exploitation of cheap labour existed within migrant communities, and that these are also mediated by caste. It was noted that whether caste in Britain is becoming more important or less important is an open question, requiring further research. Finally, some quotations from the written statements of experts were shared to make the points that caste is fluid, acquires new forms in new settings and that its intersection with gender is difficult to capture in the equalities legislation; also that caste discrimination may be difficult to track and that the inclusion of caste in law will effect moral sensibilities.

In the discussion that followed, an objection was made to the use of terms ‘upper’ and ‘lower’ caste as humiliating; concerns were raised about disclosure of caste which might lead to victimisation; it was suggested that the research should be broadened to include the Nigerian communities in South London with caste-like structures; and emphatically one participant remarked that the very ‘patterns of resistance and complications that are being witnessed today in respect of caste’ are similar to ‘the ‘white phobia’ expressed as 'We don't need race discrimination in law. We don't commit race discrimination. What is race discrimination? It's a notion; it may happen a little but it doesn't happen that much.' One participant raised the issue of exceptions in the law and the need for a programme of education, in response to which another participant noted that the law itself can educate. One participant remarked that the younger generation do not understand caste differences, and that there is no need to highlight these. Further, one participant called the law a ‘living instrument’ which must offer protection to victims of discrimination. The session closed with brief responses to the comments made.

Principles for a legal definition of caste

Annapurna Waughray and David Keane presented the legal questions that arise from the legislative proposal to include caste as an aspect of race. They described the origins of the duty to make caste an aspect of race, and mooted how this could be achieved, via an interpretation of caste as a form of ethnic origins, or as a separate limb under race. They also set out India’s legal approach to caste and invited stakeholders to comment on its relevance for the UK’s treatment of caste discrimination. Waughray and Keane also outlined the international treatment of caste and invited stakeholders to comment on the relevance of international law and the treatment of caste discrimination in other jurisdictions. In discussion, it became

clear that stakeholders required clarification on the nature of exceptions and how they would apply to caste organisations and associations (see particular questions raised in the task group on definitions below).

3.2 Task groups

Three task groups were convened to address issues relating to legislation on caste discrimination, focused respectively on definitions, cases and implementation. The aim was to bring together diverse viewpoints represented by the range of groups and organisations attending the event, or who had contributed in advance via the submission of written statements. It was anticipated that official positions held by organisations might be questioned, or individual viewpoints changed in the groups, and that those with differing perspectives would engage with one other within the groups.

The organisers made it clear that the objective was to find shared understanding and common ground so as to contribute to the task of legislation development. In preparation for the task groups, participants had been asked to take into account the pre-posted written statements and to note: (a) those from which they had learnt something new; (b) common themes in definitions; (c) the most significant cases and the least relevant cases for the amended Equality Act 2010; (d) the cases that affected them most; and (e) concerns about implementation expressed in statements that they shared or disagreed with.

Two sessions were held for each group.

Definitions

This group facilitated by Annapurna Waughray and Professor Eleanor Nesbitt considered: how caste and caste discrimination should be defined in the Equality Act 2010; what should be included in the Explanatory Notes; and what exceptions should be noted.

In the first session, the relationship between caste and Hinduism was hotly discussed. A number of quite different positions emerged. One was that caste legislation per se stigmatises Hindus, equating Hinduism with prejudice (‘which itself is prejudice’), as well as risking reintroducing caste to a younger generation of Hindus who know nothing about it at all. It was stated that hierarchy is not part of Hinduism and that the legislation should not equate the two.

Another position was that the religious aspects of caste were central to it and should not be ignored. A slightly more nuanced position argued that although caste is seen

as ‘a Hindu problem’, it is also a problem of every other religion and should be recognised as such. A third position was that an excessive amount of attention had been paid to the ’religious’ aspects of caste and that a broader definition should be adopted which did not make explicit reference to any particular religion.

A participant asked how a court would classify his caste given that his parents were from different castes. It was explained that classifying a person’s caste was not necessary to establishing whether or not that person had been subject to caste discrimination.

The group then undertook an exercise involving each person putting forward one word that they identified with caste that might go into the legal definition or into the Explanatory Notes. The words offered were: birth; class; descent; endogamy; guild; hereditary; hierarchy; inherited status; imposed social stratification; origin; prejudice; religious, social and cultural discrimination; social construct; social status; social ranking; and stereotype.

Overall, there appeared to be a consensus that an elastic definition that addresses caste, without offending any religious group, was the best. The point was made that it would be useful for public sector organisations for there to be a definition of caste in the Explanatory Notes if not in the statute itself.

Questions were raised concerning the exceptions that could be applied to caste, for example could a temple stipulate that a priest must be a Brahmin? Could a Valmiki temple refuse membership to non-Valmikis? The need for clarity between the legal position of associations versus the legal position of charities emerged.

The issue of community-specific public (government) funding was also raised, for example black youth clubs receiving statutory funding: would this be available for different caste groups? Could a person be excluded from a publicly-funded caste based organisation? How would the legislation affect public funding? One representative felt that caste organisations do good work in the community and should not be discriminated against by the law. Conversely, it was pointed out that 'many organisations which claim to be charities are in fact exclusive caste organisations and that this needs to be addressed'.

The Public Sector Equality Duty (PSED) was also discussed. It was argued that educational measures are needed but these must be sensitive. It was suggested that case studies of good practice could be shared between local authorities. The issue of intersectional discrimination was also raised.

In the second session, widely differing views were expressed about the content of a definition. One representative felt the definition should link caste specifically to South Asian history and culture - but making clear that it cuts across religions. Conversely, the view was expressed that caste should not be localised to or solely associated with South Asia. Another participant argued that caste is not only a Hindu phenomenon nor limited to South Asia, and that only caste discrimination is negative but not caste itself.

It was suggested that caste should be seen as ‘a structural system of exclusion, domination and hierarchy’ based on notions of superiority, arguing that caste discrimination is about power and that any definition needs to refer to this.

Concern was expressed that the legislation would be used to discriminate against the ‘higher’ castes and that symmetry should apply i.e. the definition should allow caste discrimination to be challenged ‘both ways’.

The words offered by the group to capture their understanding of caste were: apartheid; cohesion; craft; exclusion; hereditary; identity; inferiority; involuntary; mindset; *not* hierarchy; perceived superiority; pollution; status; structural system of power relations; and subjugation.

There was a consensus at the end that caste in India and in Britain is multi-religious.

Cases of caste discrimination

This group facilitated by Meena Dhanda and David Keane sought examples of caste discrimination from the stakeholders and invited reflection on the extent to which these would, or would not conform with the requirements of the Equality Act 2010.

In the first session, a particularly detailed discussion centred on an example of a group of young men refused service by a taxi driver because of perceived caste differences. There was initially little agreement on the extent to which this example was typical of experience or practice across UK, although ultimately it was understood that the refusal of service on the ground of caste constituted actionable discrimination under the proposed legislation. The driver in question made statements pertaining to caste pride prior to a disagreement arising. He then refused to drive the group any further after the disclosure of caste was made. The point, at which unlawful discrimination occurred, was identified as not occurring in the expression of caste pride but from the moment the taxi driver refused service and asked the group to leave. This example underlined the precise nature of the operation of the Equality Act 2010.

In the second session, a case of an employee in a radio station who was subject to allegedly derogatory remarks and subsequent transfer to a job of lower rank following her complaint was discussed. Another case concerned the humiliating treatment of a female employee by her colleagues following the discovery of her caste. Some participants suggested that these cases might be covered under the existing aspect of ethnic origins in the equality legislation, whilst other participants disagreed with this interpretation. The facilitators shared information about existing case law and suggested that whether or not caste can be placed under ethnic origins had not yet been determined by the courts. It was suggested that it would provide clarity if caste were named as a separate aspect under race rather than be interpreted under the ground of ethnic origin.

It was pointed out by one participant that some of the cases discussed would fall under criminal law and not the legislation under present consideration. The question of the possibility of including caste as an aggravating factor under Offences against the Person Act 1861 was mentioned with the clarification that it was outside the remit of the present exercise.

The existence of ‘vertical hierarchy’ of caste and the fear of ‘entrenching’ it was discussed. One participant said that he had not lived his life according to any ‘vertical hierarchy’, but he accepted that others’ experience might have been different and he accepted that there are ‘people who have been abusing [vertical hierarchy], absolutely without a doubt’. It was noted that, as the legislation would apply symmetrically to all regardless of the caste hierarchy, there was no danger that it would be entrenched.

One participant raised the issue of community initiatives and grassroots level work to address caste discrimination. The educative role of legislation and its limitations were pointed out to emphasise other measures of addressing caste discrimination.

Some concerns were raised as to the potential creation of a litigation culture as a result of the legislation, although there were strong views that there were sufficient barriers to taking cases to prevent this. Overall, there was apparent division among stakeholders with one group clear that caste discrimination examples abound, and another more sceptical as to the relevance of the examples to the Equality Act 2010.

Nevertheless, consensus was reached on the appropriateness of legislation to address legally actionable instances of discrimination whether seen as sporadic or wide-scale, and the need to frame the legislation in the correct way to capture this.

Implementation of legislation

There was a general view expressed in both sessions that education, training and sensitisation on the issue of caste discrimination is necessary for effective implementation - for potential victims, for both the public and private sectors (including in terms of recruitment practices, and for workplace and service managers, charities, voluntary and community organisations, and religious organisations), and for the wider community. This might include the preparation of documents giving knowledge about the law, what is unacceptable behaviour, and practical courses of action that can be taken.

A programme of education, including equality and diversity training for both the public and private sectors, would help build consensus around the legislation and correct the misperception that it is an attack on one particular faith group. It was agreed that this will require the production of training literature, guidance notes and other resources for senior managers and a means to monitor dissemination and training. Some participants cited cases, for example, from education/schools and a county police force, illustrating the negative impact on victims of the current lack of awareness on the issue of caste discrimination, e.g. among managers or teachers. Some participants insisted on the importance of learning from victims, and importantly listening to victims.

Recognising the complexity of the issue of caste, and that many potentially harmful aspects fall outside of the provisions of the law (i.e. aspects that are ‘normalised’, ‘internalised’ or in the private sphere), it was pointed out that the law itself has limitations. However, it has a symbolic function not only as deterrent but positively in helping to raise the issue within Asian communities, especially among youth, with a view to bridge-building for community cohesion.

Opinions were expressed on what would constitute evidence in cases of caste discrimination, the potential complexities involved, including the intersections of caste/faith/race/gender, and the need to understand context (e.g. the variable significance of words or actions across different faith and regions of origin, including beyond South Asia). The need to understand the context of particular claims might mean that lawyers sought advice from ‘expert witness’ specialists. Lessons can be learned about evidence in this regard from the experience of other protected characteristics such as racial discrimination, and guidance can be offered from existing case study research (e.g., by that of the National Institute of Economic and Social Research (NIESR)).

Some participants pointed out that implementing the PSED in relation to caste would present real challenges. How, for example, would a local authority consult on caste equity in fulfilment of this duty in planning facilities (e.g., a leisure centre)? Is it proportionate to consider caste in relation to all (which?) public services or functions? What about outsourcing and procurement contracts, and the burden of compliance monitoring, which (some commented) might nonetheless be important in regard to the funding of certain groups funded for provision of community services who ought to have policies to deal with caste discrimination?

Questions were raised about how awareness raising on the issue of caste discrimination could be achieved without institutionalising caste in the UK, something all were keen to avoid, but some felt was a genuine risk. The purpose of the legislation (it was noted) is to preserve equality not caste identity. All the task group participants agreed that procedures that involved stating or recording caste identities should be avoided. On the question of the ‘symmetry’ of the law (the protection equally of ‘upper’ and ‘lower’ castes), different views were expressed but pointed to the conclusion that while caste is defined by social stratification, implementation of the law in the UK could not be by reference to any putative hierarchy of particular groups/identities. How to work within the constraint of the continuing reduction in public sector funding was a question raised in relation to both the education for the law, and the PSED.

Some participants argued strongly for community-based targeted government support (as with the Racial Equality Councils and their role in providing information and advice on equal opportunities, the Race Relations Act, equality issues and the educational role concerning race discrimination). Others noted that instead of waiting vainly for state support, use should be made of facilities for e-learning and community education to ensure dissemination of consistent information. Still others suggested that because the problem of caste discrimination was likely to be concentrated in particular geographical regions, or amongst employers having a large workforce of South Asian origin, scarce resources for education or to fulfil the PSED should be proportional and targeted. This could be achieved either on the basis of some cost-benefit analyses, or through a system of referral (evidence of a certain likely level of actionable complaints placing local authorities or employers under the duty). Others insisted that the duty is proactive, national and should not and could not be limited in this way.

3.3 Concluding plenary

The plenary session reported on the summaries of discussions in the three task groups. The comments in response to these included by a participant who noted that

as caste is going to be a part of the legislation, we have to think about what we are doing at the grassroots level as a community. There was also a vigorous discussion about whether or not the existence of matrimonial websites seeking caste-specific partners was against the spirit of the law; the consensus was that currently this matter was outside the remit of the equalities legislation. A third comment (in response to the discussion on the implementation of the legislation) was that it would be a good idea to target particular areas where there may be a high percentage of the Asian diaspora, rather than getting all public authorities to deal with the issue. One participant commented that we should also watch out for victims who may be double victims, for example, women who are being discriminated against because of their gender but also their caste. Another participant suggested that the use of good practice case studies to examine where community organisations have got it right in terms of overcoming caste barriers so that they have a much more inclusive community would be beneficial.

The session concluded with a summing up by Meena Dhanda. She thanked the participants for their generous offers of continuing the conversations begun in the workshop. The result that the organisers had wanted - of bridging differences and moving the conversation forward - had been achieved and in that respect the workshop had been a success.

3.4 Stakeholders' written statements

Participating stakeholder groups were invited to send written statements in response to six questions:

- What do you understand by 'caste'?
- What do you understand by 'caste discrimination'?
- What do you understand by 'harassment' in relation to caste?
- Have you directly or indirectly come across any instances of discrimination, harassment or victimisation related to the issue of caste in the UK? Please give examples if you can.
- In what way, if at all, do you think the proposed legislative change in the Equality Act 2010, making caste an aspect of race, is likely to affect you or your work?

- What is your organisation's view, if any, about the proposed change in the legislation in relation to caste?

Stakeholders were also invited to write any other comments they had on the issue of caste in connection with UK equalities legislation, and asked if they consented to the display of, and quotation from, their submissions. The statements were displayed during the workshop and participants were invited to read and to record their response using post-it notes.

In this section we summarise the key points of view and identify, in broad terms, the differences of opinion recorded in advance of the event and assess the extent to which the event achieved movement towards a common purpose.

The views in the 26 statements, including a few received after the event, are presented under three broad headings concerning opinions on: the understanding of caste; caste discrimination and harassment; and the impact of legislative change.

The understanding of caste:
It is possible to identify two different understandings of caste. The first group is represented by Ambedkarite, Buddhist and Ravidassia organisations, and rationalist and anti-caste groups.[3] Here caste is understood as a hereditary social division (into *jatis*), originating from Hindu scripture and tradition, which established a hierarchy with Brahmins at the top and Sudras and the 'Aadi-Sudras (Untouchables)' at the bottom. According to this group, while Hindu in origin, caste persists among people in the Indian subcontinent who converted to non-Hindu religions (Islam, Buddhism, Christianity, Sikhism), and among those who migrated out of the region, including the South Asian diaspora in the UK. As a world-wide phenomenon, caste has lost its association with occupational specialisation but retains its rules of endogamy, social exclusion and discrimination. Caste is regarded as distinct from class which allows individual social mobility.

[3] Ambedkar Mission Society, Bedford; Sri Guru Ravidass Sabha Bedford; Federation of Ambedkarite and Buddhist Organisations UK; Ambedkar Memorial Trust, London; Begumpura Foundation; Asian Rationalist Society (Britain); CasteWatchUK; Kesri Lehar (Coventry) & Sikh Community Action Network (Slough); The Panjabi Centre; British Organisation of People of Indian Origin; Voice of Dalit International; and South Asia Solidarity Group.

The second group is represented by Hindu organisations (including Hindu Lawyers').[4] Here, the predominant understanding is of caste as a system of social classification. Views differ on whether or not this is associated with *varna* categories, and whether these in turn are a matter of birth and inherited status, rather than role, occupation/craft, or acquired attributes or merit (or *karma*). Commentators mostly recognise the idea of caste as inherited status, but insist that this is not part of Hinduism (or *varna*) which stresses the unity and equality of all as a fundamental principle. Some regard the equation of caste with Hinduism/*varna* as 'deplorable' and note with regret the references made to caste as a Hindu institution in the parliamentary debates. A common view is that, whatever the case in India, in the UK caste is associated with a diversity of characteristics (based on socio-economic position, kinship, occupation) and that it is difficult to separate out caste as a basis of difference. Moreover, caste is an issue of decreasing relevance in India and in the UK.

A Sikh organisation[5] objects to any definition of caste that 'links the Sikh faith with the practice of ritual purity and [the] four *varna* system of caste,' and finds this 'incorrect' and 'deeply offensive.' Their strong preference is for encapsulation of caste within the broader category of 'descent.' Some others also argue that caste should not be defined narrowly as a South Asian phenomenon.

Advice and advocacy organisations and representatives from local authorities[6] had a clear understanding of caste as a hierarchical structure with an emphasis placed on discrimination rather than identifying caste groups.

Caste discrimination and harassment

Views on the nature and extent of caste-based discrimination also varied.

The first group of opinions (from Ambedkarite, Buddhist and Ravidassia organisations, and rationalist and anti-caste groups) considered discrimination on the basis of caste to be the same as in relation to any other of the 'protected characteristics' of the Equality Act, 2010. Labelling individuals by denying them

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[4] Alliance of Hindu Organisations; Hindu Forum of Britain; Hindu Council UK (.net); Hindu Council UK (.org); National Council of Hindu Temples UK; Hindu Lawyers' Association; Nepalese Hindu Forum; and National Council of Hindu Priests UK.

[5] Sikh Council UK.

[6] British Pakistani Christian Association; Employers Network for Equality and Inclusion; Service provider - Anonymous; Sikh Feminist Research Institute - representative's own view; Head of Equality and Human Rights, London Borough of Hounslow; Equality and Diversity Officer, University of St Andrews.

employment opportunities, from receiving goods or services equally, or promotion at work because an individual was seen as 'low caste'/or of Dalit heritage, was viewed not only as psychologically damaging to an individual but, equally, as promoting social exclusion and segregation within communities. Responses to the question, 'What do you understand by 'harassment' in relation to caste?' identified this as the refusal on the basis of their perceived caste to respect people or to treat them differently. This might be in the form of refusing someone entry to a temple, bullying at school, victimisation at the workplace, or behaviour against them such as name calling and the use of offensive, insulting or hostile language, all forms of humiliation. Discrimination and harassment in this sense has been described as '21st century pollution' and a violation of the individual and community human rights of UK citizens. This set of opinions regarded discrimination, harassment and victimisation relating to caste as widespread, and cited instances ranging from work colleagues treating an individual as a 'second class citizen' when their caste identity had been revealed, to the refusal of a venue to take the booking for a marriage reception, bullying at school, or an elderly women not receiving appropriate health care from a 'higher caste' care worker. In one opinion, caste discrimination is manifest more generally in marriage choices, the non-contact and engagement with 'low' caste people and stereotyping in everyday conversations.

In sharp contrast, none of the second set of opinions (represented by Hindu organisations as grouped in note 2 above) recorded knowledge of any instances of discrimination or harassment related to caste, excepting the vilification of Brahmins. Most regarded negative treatment on the basis of caste (independent of other characteristics) as both unlikely and unprovable. The issue of caste discrimination (as a separate category) was regarded as 'not clear, distinct or capable of being isolated to capture a particular form of discrimination affecting a particular category of persons'. It is argued that anything like caste-motivated harassment is already covered by the law. The Hindu Lawyers' Association statement refers to its experience of caste as being restricted to the context of marriage (e.g., where a divorcing party alleges verbal abuse or bad treatment in connection with caste). Its view was that these were opportunistic 'after the event' complaints, and that because the marriage took place with the blessings of both families (even if only grudgingly given), caste was probably not an issue prior to the marriage. One organisation recorded the view that 'caste discrimination' is 'one of the most successful creations of the Christian supremacist evangelists', and the legislation is 'malicious'.

For service providers who offered statements, understanding what constitutes discrimination was seen as unproblematic as there already are definitions of 'direct' and 'indirect' discrimination in the Equality Act 2010, although it was commented that

there was need to define a minimum requirement for discrimination. It was stated that a key element of including caste in the Equality Act 2010 will be the impact on employment and the provision of services, particularly addressing the denial of employment opportunities and the over-representation of ‘low-caste’ groups in ‘low paid menial subservient jobs’. In relation to public bodies, it is important to recognise the law’s impact on the PSED and how this might be manifest through monitoring, especially in relation to the awarding of grants and sub-contracting in areas such as social care. For service providers, too, there is the additional understanding of discrimination in terms of verbal or physical harassment, affecting ‘personal dignity’ and creating an intimidating, hostile and degrading environment. This latter element complemented experiences recounted from other stakeholders.

The impact of legislative change:
The statements by Ambedkarite, Buddhist and Ravidassia organisations, and rationalist and anti-caste groups (see note 1 above) were strongly in favour of the change in the Equality Act 2010, making caste an aspect of race, stating this would act as a deterrent to discrimination. In doing so, it would also educate actual and potential perpetrators, as has been the case with other areas of discrimination that have already been legislated against, such as racism and sexism. At the community level, knowing there is a legal basis for complaint would empower people, giving them the confidence to report harm instead of suffering in silence. At a personal level, legislation gives individuals the confidence that if facing caste discrimination at work, employers will be able to recognise and deal with it and that, if required, there is legal redress. Change in the legislation was expected to make it easier to process cases through the courts and tribunals, to provide advice and support to employers in dealing with workplace incidents, and to challenge existing practices within certain religious groups.

There was however criticism by these same groups of the speed at which the UK government's equalities legislation was proceeding in relation to clause 9 (5) (a) of the Equality Act 2010. The government’s proposed two-year timetable and continuing consultation process was seen as both unacceptable and influenced by the lobbying of some Hindu organisations. It was also suggested, in addition, that it ignored the compelling evidence already gathered that caste discrimination and prejudice was prevalent in UK society, for example, from the NIESR report (Metcalf and Rolfe, 2010).

The second set of opinions (represented by Hindu organisations) expressed concerns regarding the legislative change and the implications of including caste in equality law. These concerns were of four kinds. First, it was argued that legislation

will increase awareness, and thereby reinforce an institution that is dying out in the UK and about which third generation Asians in Britain have no idea. Raising the consciousness of caste would be especially damaging to young people. Second, the legislation raises the idea of caste as a 'Hindu problem' and 'tags' the Hindu community as having 'caste issues'. This negatively characterises Hindus in a way that threatens to undermine the achievement of particularly successful integration into British society, and of harmony within Asian communities. Third, legislation is unnecessary for two reasons: there is a lack of evidence of discrimination on the basis of caste today - the NIESR report drew on limited, sometimes historical, cases and the authors admitted that the evidence is inconclusive and existing equalities, race relations and human rights legislation suffices to cover any rare cases of caste discrimination. Finally, legislation on caste risks burdening the courts with vexatious caste discrimination claims, and, in the context of family law, creates tensions where none existed before (i.e., draws the issue of caste discrimination into family disagreements over proposed marriage as an 'unwarranted side-show').

Service providers (see note 3 above) primarily responded to the question of legislative change and the inclusion of caste in the Equality Act, in terms of the need for a campaign of policy awareness to provide employers with guidance on caste and caste discrimination to enhance awareness of the issues involved.

Post-it responses

The various views posted on the wall during the workshop attracted considerable 'post-it' note responses. Many comments simply agreed or disagreed. Some of the more common responses are summarised below.

In response to Ambedkarite, Buddhist and Ravidassia organisations, and rationalist and anti-caste groups' statements, the follow notes were posted:

- caste is not the key issue: 'the jobs that people have are a consequence of their economic and educational position' not their caste; caste is confused with class and distinctions that apply 'due to varied roles in society'; 'historically, we have and will move away from "caste"';

- the cases [of caste discrimination] mentioned would not be covered by law because personal or private matters;

- 'saddened to hear about these examples' [of caste discrimination];

- discussion of caste issue is ‘exclusively focused on Hinduism’ when there is ‘substantial evidence related to Jatt Sikhs’;

- education within the community is a preferred way to address the caste issue;

- ‘there is a very real danger of institutionalising caste - just look at India where now caste pervades all parts of life and society’; and

- ‘legislation will set in motion the dissolution of caste based discrimination’.

In response to Hindu organisations’ statements, the following comments were posted:

- ‘caste discrimination is deeply ingrained in social relations of South Asian communities. It deserves to be labelled specifically as a basis of discrimination’ those who are not victims cannot or will not see this discrimination and its effects, and cannot express credible views on its absence or disappearance;

- caste is a matter of human rights not religion; anti-legislation Hindu organisations themselves make the human rights issue of caste into a ‘Hindu problem’;

- there is no evidence for the misleading suggestion that legislation on caste will institutionalise caste; it will serve its elimination; and

- ‘if the higher castes don’t practice caste discrimination then why are they afraid of legislation?’

3.4 Conclusion

The stakeholders’ workshop was conducted with the aim of providing a platform for a ‘pooling of ideas’ from diametrically opposed perspectives. It was conducted in a spirit of openness, based on the principle of respecting difference and seeking common understanding for the most suitable definition of caste for the purpose of legislation. It created a non-threatening atmosphere within which victims of caste discrimination and their representatives, were brought face to face with those who deny that caste discrimination occurs, with a view to initiate a process of dialogue and mutual understanding. Finally, it set out to identify the obstacles that implementation of the legislation is likely to face.

The process of preparation for the workshop had been a difficult one. Fairness of procedure, transparency of the exercise and respect for the sensitivities of mutually opposed stakeholders were maintained amidst suspicion of bias and lack of trust. The result was evidently a positive one in that several stakeholders from both sides of divided opinion on the matter of caste in Britain, left the workshop with the feeling of having been heard and sent written feedback to state their satisfaction with the proceedings of the day.

The written statements sent before the event evoked strong and opposed responses, but as the day progressed especially after presentations had been heard and after engagement in the task groups, some common ground was established. Considerable agreement on several themes emerged, whilst some disagreements persisted.

It was agreed that caste is a complex and changing phenomenon, but undeniably an aspect of diaspora communities in contemporary Britain. Aspects of caste are benign but there is evidence of discrimination on the basis of caste of different kinds in a variety of settings which is not confined to first generation migrants. Disagreement persisted on the extent of discrimination, as well as on the relevance of the reported examples to the Equality Act 2010. However, it appeared to be the case that there was some movement towards an acceptance by participants as a whole that caste discrimination did occur in Britain, and that in targeted areas, it would merit local authority intervention in provision of education to victims, authorities and the wider public.

It was agreed that caste and religion intersect in complex ways and, in any definition of caste for the purpose of legislation, it ought not to be associated with any particular faith group. There was disagreement about whether caste should be linked solely to South Asian communities or extended beyond it. There was also disagreement evident in the stakeholders' written statements about whether caste should be seen as a merely classificatory system or a hierarchical one.

There was near unanimous agreement that disclosure of caste should be avoided in any process of monitoring generated by the implementation of the legislation. Stakeholders raised several questions about where exceptions might apply: e.g. in the selection of temple priests and in the continuation of caste-specific organisations. The stakeholders were reassured to learn that the equality legislation would apply symmetrically and it could not be used to target or protect people of any particular caste. It was largely agreed that the new legislation is not expected to produce large amounts of litigation, but it is expected to have an important educative effect.

4. Conclusion

The two events were unique in bringing together a range of stakeholder opinions and academic expertise across disciplines for a direct reflection on the legal aspects of the inclusion of caste in the Equality Act 2010. In turn, legal experts had input from social science studies on caste as well as an opportunity to listen to the views of stakeholders.

At both events, caste was acknowledged to be a complex and changing phenomenon with varying significance among South Asian and other diaspora communities in Britain, across generations and in different areas of life.

That caste, whilst being distinct, is not a feature of any specific religious group, but pervasive across cultural traditions was the consensus view amongst academics and it appeared to be widely accepted amongst stakeholder groups. It was generally agreed that such breadth of manifestation of caste would make a specific definition of caste impossible or undesirable. On the other hand, the question of how open a definition caste should have, met with disagreement, with some linking caste solely to South Asian communities and others arguing for an extension beyond these communities to other nationalities.

There was near unanimous agreement that disclosure of caste should be avoided in any process of monitoring generated by the implementation of the legislation. Questions about where exceptions might apply: e.g. in the selection of temple priests and in the continuation of caste-specific organisations, were raised by both experts and stakeholders.

It was largely agreed that the new legislation is not expected to produce large amounts of litigation, but it is expected to have an important educative effect. As in the view of most people, evidence of discrimination on the basis of caste exists, even though the spread and extent of such discrimination is contested, most experts considered it an appropriate measure to legislate against caste discrimination. Stakeholders disagreed about the usefulness of legislation in combating caste discrimination, with some clearly welcoming it as a long-awaited remedy for curtailing humiliating experiences of caste prejudice and others claiming that it would be redundant or counter-productive, by entrenching awareness of caste otherwise on the decline. Non-religious community groups and local authority functionaries were more concerned about the resourcing of, and the best methods for, implementation of the legislation.

The events helped to clarify the concerns of stakeholders about the operation of the Equality Act 2010 with respect to caste. The stakeholders' workshop removed certain misconceptions about the scope of the Equality Act 2010 and thereby allayed fears amongst previous opponents of the inclusion of caste in the legislation regarding any disruptive impact it might have on associations and organisations. On the other hand, some enthusiasts for the use of the law realised the limitations of equalities law in dealing with the variety of manifestations of casteism.

Given the subtle and partly disguised nature of caste discrimination, and the different views and assumptions about caste in the UK, it is unlikely that an accurate quantification of its extent will be possible in the short term. According to the experts, any attempt made to quantify caste discrimination, would however, benefit from being informed by qualitative research.

Both the events were conducted in the spirit of ‘a pooling of ideas’: hence the present lengthy report takes care not to limit the inclusion of the range of views expressed by experts and stakeholders. The evidently positive effect of the exchanges, especially at the stakeholders’ workshop, was palpable from the change in the mood as the day progressed. In the spirit of openness, and by creating an environment for an unfettered, respectful and reflective exchange of views, both the events highlight the importance of face-to-face interaction.

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Appendices

1. Letter of invitation to experts
2. Second letter to experts with the programme
3. Letter of invitation to stakeholders
4. Second letter to stakeholders with the programme
5. Registration form - experts
6. Registration form - stakeholders
7. Key questions for experts
8. Key questions for stakeholders with consent form
9. List of invited experts
10. List of invited stakeholders' organisations

Appendix 1: Letter of invitation to experts

Dear (Name)

We would like to invite you to take part in a day-long seminar addressing the inclusion of Caste in the Equality Act 2010.

We have been commissioned by the Equality and Human Rights Commission to lead a research project on 'Caste in Britain', with a team of researchers from Manchester Metropolitan University, Middlesex University, School of Oriental and African Studies, Goldsmiths, University of London and University of Wolverhampton, with a view to reaching conclusions on:

- How should Caste be defined in the Equality Act 2010?
- What Exemptions & Exclusions for Caste should be placed in the Equality Act 2010?
- How should Caste be related to the Public Sector General Equality Duty?

The question of whether Caste should be included within the Equality Act 2010 is now a settled matter; section 97 of the Enterprise & Regulatory Reform Act 2013 requires the government to make caste 'an aspect of' the protected characteristic of Race in the Equality Act 2010. Our research is designed to ensure that the inclusion of caste in the Equality Act 2010 is done in the best way possible.

We want our work to be guided by the best available academic and legal understanding of the concept of caste and its manifestations in cases of discrimination.

We aim to bring together social scientists and legal experts with specialist knowledge of caste, anti-discrimination and equality law, and the workings of the Equality Act 2010, to help us reach our conclusions.

We therefore extend this invitation to you to join us in a day-long seminar on:

Date: 19 October 2013
Time: 9:30am – 5:30pm
Venue: School of Oriental and African Studies, University of London, Thornhaugh St, Russell Square, London WC1H 0XG.

We have limited funds for reimbursement of travel costs by standard class and will be able to offer reimbursements to those participants who are unable to secure travel funds from their own institution. There is no registration fee for the seminar and it would be our pleasure to offer you refreshments and lunch on the day.

Further information including the programme, key questions for the seminar and directions to the venue will be sent after you confirm your participation. Please complete the attached registration form and email your reply by 3 October, 2013 to me and Jessie Kate Mundy (xxxx@soas.ac.uk).

If we have not heard from you by 3 October, we may have to offer your place to others on our waiting list. Likewise, should you initially accept the invitation but are unable to attend, please let us know as soon as possible so that we can offer your place to someone else.

We do hope that you will be able to accept our invitation.

Yours sincerely,

Meena

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http://www.wlv.ac.uk/default.aspx?page=28288
http://www.wlv.ac.uk/default.aspx?page=36892

Appendix 2: Second letter to experts with the programme

Dear colleagues,

Thank you for registering for the experts' seminar of the EHRC project 'Caste in Britain'. We've had a very positive response and look forward to a fruitful day of discussion.

The seminar will take place in the Main Building Room 116 (First Floor), School of Oriental and African Studies, Thornhaugh Street, Russell Square, London WC1H 0XG, from 9:30 to 17:30 on Saturday, 19th October, 2013.

Please see the attached programme for the day. For directions to the venue, please check:http://www.soas.ac.uk/visitors/location/maps/#RussellSquareCampusMap

Also attached is a set of 'key questions', which will be the focus of our discussions. To help us document views on the research topic, we request you to send us your comments on any of the listed questions, or provide us a brief statement guided by the questions, in advance of the seminar. We would be grateful if you allow us to share your views at the seminar and also to use your statements in our report. Please indicate clearly if you would like your replies to be kept confidential and only used anonymously in our report.

If you have any further queries, or if there has been a change in your plan to attend the event, please let us know by email. For emergency contact on the day, you may call Jessie Kate Mundy on xxxx.

We look forward to our collective deliberations on Saturday, 19th October 2013.

Yours sincerely,

Meena

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EHRC Project on 'Caste in Britain'

Experts' Seminar

Venue: SOAS, Thornhaugh Street, Russell Square, SOAS Main Building Room 116

Timing: 9:30- 17:30

9:30: Arrival and Registration (with Tea/Coffee)

10:00: Welcome and Introduction (David Mosse)

- Background to the workshop
- The aims and objectives of the workshop

10:30: Background Presentation 1:

Research on caste in the UK (30 mins) (Meena Dhanda)
Discussion (20 mins)

11:20: Tea/Coffee Break

11.40: Background Presentation 2:

Principles for a legal definition of caste (30 mins)
(Annapurna Waughray, David Keane)
Discussion (20 mins)

12:30: Lunch

13.30: Task Groups in parallel sessions: Conceptualising caste in Britain

Task Group A: Conceptualising caste

- What is 'caste' and how can it be defined within the context of contemporary Britain?
- How is caste related to 'identity, 'race' and religion in Britain?

Task Group B: New manifestations of caste

- Are there new manifestations of caste in Britain, for instance, in relation to youth culture, impact of social media, globalisation?
- What are the forms of caste discrimination, if any, in Britain?

14:20: Comfort break

14:30: Reporting back
- Hugo Gorringe (Conceptualising caste in Britain)
- David Gellner (New manifestations of caste)

15:00: Task Groups in parallel sessions: Towards a legal definition of caste in the UK

Task Group C: Legal definition of caste

- What is an appropriate definition of 'caste' for implementing the legislation?
- How can 'caste discrimination' be defined in the UK?

- Should there be exemptions and exclusions in relation to caste in the legislation?
- Would proving caste discrimination be any different to proving other forms of discrimination, such as, on the grounds of ethnic origin?

Task Group D: Implementation of legislation

- What might be the obstacles, if any, to victims of caste discrimination accessing legal remedies?
- What might be the long-term effects of caste discrimination legislation, and are there any parallels with race?
- How is caste related to other aspects of law/law enforcement?

16:00: Tea/Coffee Break

16:20: Caste and the UK Equality Act: Reporting back

16:50: Open Discussion:

Measuring/monitoring caste discrimination in Britain: reasons, issues, and methods – (Moderator: Steve Iafrati)

- What does it mean to measure/monitor the extent of caste discrimination in Britain?
- Is it necessary?
- Can it be done? What are the best methods?
- What problems are likely to occur in any such measurement?

17:20: Closing remarks

17:30: End

For directions to the venue, please check:
http://www.soas.ac.uk/visitors/location/maps/#RussellSquareCampusMap

Appendix 3: Letter of invitation to stakeholders

Dear Representative,

We would like to invite you to take part in a day-long workshop addressing the issue of the inclusion of Caste in the Equality Act 2010.

We have been commissioned by the Equality and Human Rights Commission to lead a research project on 'Caste in Britain', with a team of researchers from Manchester Metropolitan University, Middlesex University, SOAS, University of London, Goldsmiths, University of London and University of Wolverhampton, with a view to reaching conclusions on:

- How should Caste be defined in the Equality Act 2010
- What Exemptions & Exclusions relating to Caste, if any, should be included in the Equality Act 2010
- How Caste would operate in relation to the Public Sector Equality Duty.

The question of whether Caste should be included within the Equality Act 2010 is now a settled matter; section 97 of the Enterprise & Regulatory Reform Act 2013 (see attached) requires the government to make caste 'an aspect of' the protected characteristic of Race in the Equality Act 2010.

Our research is designed to ensure that the inclusion of caste in the Equality Act 2010 is done in the best way possible and to allow opportunity for open discussion of implementation issues. We are consulting with academics as well as with stakeholders in two separate workshops. By stakeholders we mean:

- community organisations who support or have campaigned for the inclusion of 'caste' in the legislation;
- community organisations who have expressed opposition to or reservations about the inclusion of 'caste' in the legislation;
- units within service providers (for example, local government, NHS, education, ACAS, Equality Challenge Unit, NCVO, Tribunal Service, employers, trade unions, advice services, amongst others) responsible for implementation of the amended Equality Act 2010.

We extend this invitation to you to join us in a day-long workshop for stakeholders on:

- Date: 9th November 2013
- Time: 9:30am – 5:30pm
- Venue: University of Westminster, 309 Regent Street, London W1B 2HW (020 7911 5000; Nearest Tube: Oxford Street).

The aims of the workshop will be:

- to engage with the range of opinions on the meaning of 'caste' and 'caste discrimination' in everyday life in Britain;
- to provide a platform for communication of different opinions in order to enable a common understanding of the terms - 'caste' and 'caste discrimination'; and
- to identify potential issues concerning the implementation of the amended legislation in different settings of the workplace, education, the provision of goods, services and associations.
- to discuss some of the key issues emerging out of a review on caste in Britain and at the academic event.

We will offer a limited number of travel subsidies to cover actual travel expense to a maximum of £50 per organization represented at the seminar, on a first-come-first-served basis, provided that:

- you register for the workshop by 25th October 2013;
- your travel claim is supported by receipts, which may be submitted at the meeting;
- your travel is by standard class train/bus travel and,
- you send a written statement with answers to key questions (attached) latest by 5th November, 2013.

Further information on the programme and directions to the venue, will be sent after you confirm your participation. Please complete the attached registration form and email it to me and Jessie Kate Mundy (xxxx@soas.ac.uk) by 25th October 2013.

If we have not heard from you by 25th October, we may have to offer your place at the workshop to others on our waiting list. Likewise, should you initially accept the invitation but are unable to attend, please let us know as soon as possible so that we can offer your place to someone else.

We do hope that you will be able to accept our invitation.

Yours sincerely,
Meena

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Reader in Philosophy and Cultural Politics,
Course Leader Philosophy,
Joint Course Leader MRes Human Sciences,
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http://www.wlv.ac.uk/default.aspx?page=36892

Attachments:

1. Registration Form
2. Key questions for stakeholders
3. Section 97 of the ERR Act 2013

Appendix 4: Second letter to stakeholders with the programme

Dear Participants,

We are approaching the day of the Stakeholders' Workshop of our project on 9 November 2013 at the University of Westminster. Please see the attached agenda for the day.

We are very grateful to all those who have promptly contributed their written statements. This is a gentle reminder to all, but particularly to those who hope to get a travel subsidy, to please send us your written responses to the Key Questions attached to the original invitation as a matter of urgency in advance of the event.

We plan to display the written statements and, as the programme indicates, there will be time set aside to read and comment on them. The task groups in the afternoon will continue the process of reflection on the written statements and will be an opportunity to more fully participate in the pooling of ideas.

Almost all invitees have registered, but a tiny number of registrations, is still awaited. If your plans have changed and you are unable to come, please let us know.

Please arrive between 9:30 and 10 am; we hope to start the proceedings for the day promptly at 10 am.

For directions to the venue, please see : http://www.westminster.ac.uk/business/facilities-and-services/venues-for-hire/conference-and-venues/309-regent-street/how-to-find-us The tube station #Oxford Circus# is 4 minutes away.

If you feel the need for directions on the day, please call the reception desk of the University of Westminster at 020-79115108.

We look forward to welcoming you on 9th November 2013.

Yours sincerely,

Meena

PS. Due to the volume of emails I have had to deal with, I will not be able to reply to any further queries about the event. Please accept my apologies in advance. For any practical queries please contact Jessie Kate Mundy (xxxx@soas.ac.uk).

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Joint Course Leader MRes Human Sciences
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EHRC Project on 'Caste in Britain'

Stakeholders' Workshop

Lecture Theatre 4 (Room 451 upper 4th floor) 309 Regent Street London W1B 2HW
Agenda
Timing: 9:30 – 17:00

9:30: Arrival and Registration (with Tea/Coffee)

10:00: Welcome and Introduction (Meena Dhanda)

- Background with aims and objectives of the workshop (David Mosse)

10:30: Presentation 1:

Research on caste in Britain (Meena Dhanda)
Discussion

11:45: Tea/Coffee Break

12.00: Participants' written statements: reading time, post-it comments

12:30: Lunch

13:00: Presentation 2:

Principles for a legal definition of caste (Annapurna Waughray, David Keane)
Discussion

14.15: Task Groups in parallel sessions: 1

- Definitions
- Cases
- Implementation

15:00: Tea/Coffee Break with Festive Sweets

15.15: Task Groups in parallel sessions: 2

- Definitions
- Cases
- Implementation

16:00: Reporting back and closing session

17:00: End

For directions to the venue, please see: http://www.westminster.ac.uk/business/facilities-and-services/venues-for-hire/conference-and-venues/309-regent-street/how-to-find-us

Appendix 5: Registration form - experts

Experts' Seminar: 'Caste in Britain' with reference to the Equality Act 2010

9:30 am to 5:30 pm on Saturday, 19 October, 2013, at SOAS, University of London, Thornhaugh Street, Russell Square, London WC1H 0XG

NAME AND TITLE OF ATTENDEE

Title: _____

First Name:

_____

Surname:

_____

EMPLOYMENT POSITION:

_____

EMPLOYER'S NAME:

_____

EMAIL ADDRESS for correspondence:

_____

MOBILE TELEPHONE NUMBER for emergency contact on the day:

_____

DIETARY RESTRICTIONS:_____

Please email the completed form by **Thursday, 3 October 2013** to:

Dr Meena Dhanda (M.Dhanda@wlv.ac.uk) and Jessie Kate Mundy (xxxx@soas.ac.uk)

Appendix 6: Registration form - stakeholders

EHRC project: 'Caste in Britain' with reference to the Equality Act 2010

9:30 am to 5:30 pm on Saturday, 9 November, 2013, at University of Westminster, 309 Regent Street, London WC1B 2HW (020 7911 5000; Nearest Tube: Oxford Street).

ORGANISATION YOU ARE REPRESENTING:

_____

POSITION YOU HOLD IN THE ORGANIZATION (member/office bearer):

_____

NAME AND TITLE OF ATTENDEE

Title: _____

First Name:

_____

Surname:

_____

EMAIL ADDRESS for correspondence:

_____

MOBILE TELEPHONE NUMBER for emergency contact on the day:

_____

DIETARY RESTRICTIONS:_____

WILL THE ATTENDEE REQUIRE WHEELCHAIR ACCESS? _____YES/NO (delete as appropriate)
WILL THE ATTENDEE REQUIRE A TRAVEL SUBSIDY? _____YES/NO (delete as appropriate)
WHAT IS YOUR ESTIMATED TRAVEL CLAIM (SUPPORTED BY RECEIPTS TO A MAXIMUM OF £50)?
Please email the completed form by **25 October 2013** to:

Dr Meena Dhanda (M.Dhanda@wlv.ac.uk) and Jessie Kate Mundy (xxxx@soas.ac.uk)

Appendix 7: Key questions for experts

To help us document views on the research topic, we are writing to seminar participants in advance, including to those who are unable to attend, to ask for your comments on any of the following key questions. These will be the focus of our discussions on 19th October. We would be grateful if you allow us to share your views at the seminar and also to use your statements in our report. Please indicate clearly if you would like your replies to be kept confidential and only used anonymously in our report.

Section A:

1. In general, how do you see caste operating as a concept in equality legislation?

2. Do you envision a wide take-up of cases in the wake of caste legislation? If not, is this relevant? If so, would existing expertise be an issue? [i.e. is existing expertise sufficient?]

3. How might caste discrimination be argued in the courts, both from the point of view of the plaintiff [complainant] and the defendant?

4. Would proving caste discrimination be any different to proving other forms of discrimination, such as on the grounds of ethnic origin?

5. How might judges engage with the issue of caste discrimination as a new ground for discrimination law?

6. How would caste operate in terms of the Public Sector [Equality] Duty requirement?

7. How would caste be embedded within the permitted exceptions rules?

8. What might be the obstacles, if any, to victims of caste discrimination accessing legal remedies?

9. What might be the long-term effects of caste discrimination legislation, and are there any parallels with race discrimination?

10. How is caste related to other aspects of law/law enforcement?

Section B:

11. What is ‘caste’ and how can it be defined within the context of contemporary Britain?

12. How is caste related to ‘identity, ‘race’ and religion in Britain?

13. Are there new manifestations of caste in Britain impacted by, for instance, youth culture, social media and globalisation?

14. What are the forms of caste discrimination, if any, in Britain?

15. Please provide us with references to your publications and to topic titles of your ongoing unpublished work that might be usefully included in a review of literature on this issue.

Thank you for agreeing to participate in our collective deliberations.

Meena Dhanda
(Dated: 10-10-13)

Appendix 8: Key questions for stakeholders with consent form

The amended equalities legislation aims to provide protection from harmful action in the workplace, education and the provision of goods, services and associations. In view of this, as a part of the process of consultation with Stakeholders, we are writing to all invitees to send us written responses to the questions listed below **in advance** of the meeting on 9th November. Please provide your answers in a maximum of two pages of A4 (approximately 1000 words). The word limit is a *maximum*; we are very keen to receive shorter comments.

Please answer as many questions as you feel able to and email your document to M.Dhanda@wlv.ac.uk with the subject heading: **EHRC - My answers and consent form.**

1. What do you understand by 'caste'?

2. What do you understand by 'caste discrimination'?

3. What do you understand by 'harassment' in relation to caste?

4. Have you directly or indirectly come across any instances of discrimination, harassment or victimization related to the issue of caste in the UK? Please give examples if you can.

5. In what way, if at all, do you think the proposed legislative change in the Equality Act 2010, making caste an aspect of race, is likely to affect you or your work?

6. What is your organization's view, if any, about the proposed change in the legislation in relation to caste?

7. Please write any other comments you have on the issue of caste in connection with UK equalities legislation.

We would like your permission to share your responses with other stakeholders and use the same in our report to the EHRC. For this purpose, please complete the consent form below and **email it along with your written statement**.

Consent Form

Regarding **permission to display** my written responses in full at the venue on 9th November 2013 to facilitate discussion between Stakeholders of the EHRC project – Caste in Britain led by Dr Meena Dhanda (delete as appropriate):

- Yes, I give you permission to display and you may specify my name/organization's name
- Yes, I give you permission to display but do not use my name/organisation's name
- No, I do not want my written responses to be displayed at all.

Regarding **permission to quote** my written responses, or parts thereof, in your report to the EHRC (delete as appropriate):

- Yes, I give you permission to quote and you may specify my name/organization's name
- Yes, I give you permission to quote but do not use my name/organization's name
- No, I do not want my written responses to be quoted at all.

My statement is given (delete as appropriate):

- as a member of (organization name) .....
- and, as an office bearer (title) ....
- in my personal capacity.

Signed:.....Dated:.....

Appendix 9: List of invited experts

	Name	Institution	Present (√) Apology (A) Written Statement (WS)
1	Professor Roger Ballard	University of Manchester	√ + WS
2	Dr Susan Bayly	University of Cambridge	A + WS
3	Dr Nathaniel Adam Tobias ~~Coleman~~	University College London	A
4	Ms Mehvish Chaudhry	Practising Lawyer, London	√
5	Professor Adam Dinham	Goldsmiths, University of London (Advisor, CIB)	A
6	Professor Gavin Flood	Oxford Centre for Hindu Studies	A + WS
7	Professor Sandra Fredman	University of Oxford	A
8	Professor Chris Fuller	London School of Economics	A
9	Professor David Gellner	University of Oxford	√
10	Professor Paul Avtar Singh Ghuman	Aberystwyth University; (Advisor, CIB)	A
11	Dr Hugo Gorringe	University of Edinburgh	√ + WS
12	Professor Barbara Harriss-White	University of Oxford	A
13	Professor Bob Hepple	University of Cambridge	A
14	Professor Judith Heyer	University of Oxford	√
15	Dr Nicolas Jaoul	EHESS (Ecole des Hautes Etudes en Sciences Sociales) Paris	A
16	Professor Satvinder Juss	King’s College London	A
17	Dr Karin Kapadia	University of Oxford	A + WS
18	Mr Jay Langley	University of Wolverhampton	√
19	Professor Aileen McColgan	King’s College London	Interviewed
20	Professor Werner Menski	SOAS	A
21	Colm O'Cinneide	University College London	Interviewed

22	Dr Sushrut Jadhav	University College London; Advisor, CIB	A
23	Dr Rusi Jaspal	De Montfort University	√ + WS
24	Dr Jasbir Jhutti-Johal	University of Birmingham	√
25	Dr Tarunabh Khaitan	University of Oxford	√
26	Hilary Metcalf	NIESR	A
27	Karon Monaghan QC	Practising Lawyer, London	A
28	Professor Eleanor Nesbitt	University of Warwick	A + WS
29	Mr Vimal Patel	De Montfort University	√ + WS
30	Dr Kaveri Qureshi	University of Sussex; University of Oxford	√
31	Professor Chakravarthi Ram-Prasad	Lancaster University; (Advisor, CIB)	A
32	Mr Charles Ramsden	Government Equalities Office	√
33	Dr Beatrice Renzi	Universität Bern Switzerland	√
34	Gilbert Rodrigo	Commonwealth Fellow	√
35	Zimran Samuel	Practising Lawyer	A
36	Dr Mary Searle-Chatterjee	University of Manchester	√ + WS
37	Dr Prakash Shah	Queen Mary University, London	A
38	Professor Gurharpal Singh	SOAS	A
39	Dr Gurnam Singh	Coventry University	A
40	Dr Pritam Singh	Oxford Brookes University	A + WS
41	Dr Steve Taylor	Northumbria University	A + WS
42	Professor Patrick Thornberry	Keele University	A
43	Dr Luisa Steur	University of Copenhagen	√ + WS
44	Dr Clarinda Still	University of Oxford	√ + WS
45	Dr Opinderjit Kaur Takhar	University of Wolverhampton	√

46	Professor Maya Unnithan	University of Sussex	A
47	Dr Kalpana Wilson	London School of Economics	A + WS
48	Dr John Zavos	University of Manchester	A
49	Dr Cosimo Zene	SOAS	√
OBSERVERS			
	Dr Fiona Glen	EHRC	√
	Dr Karen Jochelson	EHRC	√
	Dr Dave Perfect	EHRC	√
PROJECT TEAM: CASTE IN BRITAIN (CIB)			
	Dr Meena Dhanda	University of Wolverhampton Project Leader, CIB	√
	Dr Roger Green	Goldsmiths, University of London, Researcher, CIB	A
	Dr Steve Iafrati	University of Wolverhampton, Researcher, CIB	√ + WS
	Dr David Keane	Middlesex University, Researcher, CIB	√
	Professor David Mosse	SOAS, Co-Lead (Events), CIB	√
	Dr Annapurna Waughray	MMU, Co-Lead (Review of research), CIB	√
	Professor Stephen Whittle	MMU, Researcher, CIB	A
	Jessie Kate Mundy	SOAS, Research Assistant	√
	Raj Lal	UoW, Research Assistant	√
	Kirat Randhawa	University of Sussex, Research Assistant	√
	Natalie Robinson	UoW, Admin Support	√ + WS

Appendix 10: List of invited stakeholders' organisations

	ORGANISATION	REPRESENTATIVE	Present (√) Apology (A) Withdrawn (W)
1	Alliance of Hindu Organisations	Mr Pratik Dattani	√
2	Ambedkar Memorial Trust, London	Mr Arun Kumar	√
3	Annual Hindu Convention	Mr Kishan Bhatt	√
4	Anti Caste Discrimination Alliance (ACDA)	Dr Raj Chand/ Ms S. Dass *(same as no. 25 below)*	A/√
5	Asian Rationalist Society, GB	Mr Sachdev Virdee	√
6	BAPS Shri Swaminarayan Mandir	Mr Nitin Palan	√
7	Begumpura Foundation	Mr Ravi Kumar	√
8	Bhagwan Valmik Sabhas Bedford	Mr Tarsem Kalyan	√
9	British Hindu Voice	Mr Mukesh Nakar	W
10	British Organisation for People of Indian Origin	Mr Sat Pal Muman	√
11	British Organisation of People of Asian Origin (BOPA)	Dr Rakesh Sachdev	√
12	British Pakistani Christian Association	Mr Wilson Chowdhry	A
13	Buddha Dhamma Association, Southall	Mr Gautam Chakravarty	√
14	CasteAway Arts	Mrs Rena Annobil	√
15	CasteWatch UK	JP Davinder Prasad	√
16	Central Valmiki Sabhas UK	Mr Faquir Chand Sahota	A
17	City Hindus Network	Mr Prinal Nathwani	√
18	Confederation of Indian Organisations	Mr Bhupen Dave	W
19	Dalit Aid	Mr Gilbert Rodrigo	√
20	Dr. Ambedkar Memorial Committee GB, Wolverhampton	Ms Kamla Chumber	A
21	Dr. Ambedkar Mission Society, Bedford	Mr Pirthi Ram Kaeley	√
22	Dalit Solidarity Network	Ms Meena Varma	A
23	Equality & Diversity Officer, HR, University of St Andrews	Mr Sukhi Bains	√
24	Equality Officer, Office of CE, Wolverhampton City Council	Ms Delva Campbell	√

25	Federation of Ambedkarite and Buddhist Organisations UK	Ms MBE Santosh Dass	√
26	Gujrati Arya Kshatriya Mahasabha, UK	Mr Manish Amriwala	W
27	Head of Equality and Human Rights, LB Hounslow	Ms Celia Golden	√
28	HealthWatch Kent	Ms Lillian Ndawula	A
29	Hindu Council UK www.hinducounciluk.org	Mr Sanjay Jagatia *(and Mr Anil Bhanot)*	√ √
30	Hindu Council UK www.hinducouncil.net/	Mr Rajnish Kashyap	√
31	Hindu Forum of Britain	Mr Swaminathan Vaidyanathan	√
32	Hindu Lawyers Association UK	Mr Pramod Joshi (*and Mr Jayesh Jotangia*)	√ √
33	Hindu Swayamsevak Sangha UK	Mr Nilesh Solanki	√
34	International Krishna Consciousness	Mr Gauri Dass	√
35	Indian Workers Association	C. Avtar Uppal	√
36	Jain Network	Dr Natubhai Shah	A
37	Kesri Lehar	S. Jagdeesh Singh	√
38	National Council of Hindu Priests UK	Dr Hari Shukla	√
39	National Council of Hindu Temples UK	Mr Satish Sharma	√
40	National Hindu Students Forum UK	Ms Tejal Shah	√
41	Nepalese Hindu Forum UK	Mr Chiranjibi Paudyal	√
42	Punjab Buddhist Society	Mr Ram Pal Rahi	√
43	Sant Nirankari Satsang Bhavan, London	S. Sukhwinder Gill	A
44	Shree Hindu Community Centre Lakshminarayan Temple Birmingham	Mr Dinesh Chauhan	A
45	Shree Prajapati Association UK	Mr Jitubhai Mistry	W
46	Shri Guru Ravi Dass Mission International Kanshi TV	Mr Balbir Kalair	A
47	Shri Guru Ravidas Sabha Southall	Mr Jograj Ahir	A
48	Shri Guru Ravidass Dharmik Temple, Wolverhampton	Mr B.R. Mahay	A
49	Sikh Community Action Network (Slough)	S. Jagdeesh Singh *(same as no. 37 above)*	√
50	Sikh Council UK	S. Gurinder Singh Josan	√
51	Sikh Feminist Research Institute (UK Representative)	Ms Herpreet Grewal	√

52	South Asia Solidarity Group	Ms Amrit Wilson	√
53	Southall Black Sisters	Ms Pragna Patel	√
54	Sri Guru Ravidass Cultural Association, Birmingham	Mr Rajinder Rattu	√
55	Sri Guru Ravidass Sabha Bedford	Mr Sat Paul	√
56	The Employers Network for Equality and Inclusion (ENEI)	Mr Alan Beazley	√
57	The Leicestershire Brahma Samaj	Ms Rashmi Vyas	W
58	The Panjabi Centre	S. Ajit Singh Khera	√
59	Voice of Dalit International	Mr Eugene Culas	√
60	Workers Educational Association London Region	Ms Natasha Chatterjee	A
	OBSERVERS		
	Dr Dave Perfect	EHRC	√
	Dr Karen Jochelson	EHRC	√
	PROJECT TEAM: CASTE IN BRITAIN (CIB)		
	Dr Meena Dhanda	University of Wolverhampton (UoW) Project Leader, CIB	√
	Professor David Mosse	SOAS, University of London, Co-Lead (Events)	√
	Dr Annapurna Waughray	Manchester Metropolitan University, Co-Lead, (Review)	√
	Dr David Keane	Middlesex University, Researcher, CIB	√
	Dr Roger Green	Goldsmiths, University of London, Researcher, CIB	√
	Professor Eleanor Nesbitt	University of Warwick, Advisor, CIB	√
	Dr Steve Iafrati	UoW, Researcher, CIB	√
	Professor Stephen Whittle	MMU, Researcher, CIB	A
	Jessie Kate Mundy	SOAS, Research Assistant, CIB	√
	Chand Starin Basi	MIND (Ealing), Research Assistant, CIB	√
	Kirat Randhawa	University of Sussex, Research Assistant, CIB	√
	Jay Langley	UoW Admin Assistant	√

www.equalityhumanrights.com

The Commission's publications are available to download on our website: **www.equalityhumanrights.com.** If you are an organisation and would like to discuss the option of accessing a publication in an alternative format or language please contact engagementdesk@equalityhumanrights.com. If you are an individual please contact the Equality Advisory and Support Service (EASS) using the contact methods below.

Equality Advisory and Support Service (EASS)

The Equality Advisory Support Service has replaced the Equality and Human Rights Commission Helpline. It gives free advice, information and guidance to individuals on equality, discrimination and human rights issues.

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Closed on Sundays and Bank Holidays

Website: www.equalityadvisoryservice.com
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This report covers two events that were held with experts and stakeholders in the context of the requirement in the Enterprise and Regulatory Reform Act 2013 to make caste 'an aspect of ' the protected characteristic of race in the Equality Act 2010. The events explored the nature of caste in the UK; discrimination on the grounds of caste; the definition of caste for the purposes of the Equality Act 2010; legislative exceptions and exclusions; the implementation of the law; and the impact of legislation on caste.

The report is a companion study to *Caste in Britain: Socio-legal Review* (Research report no. 91).

Equality and Human Rights Commission

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Equality Act 2010

2010 CHAPTER 15

An Act to make provision to require Ministers of the Crown and others when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; to enable certain employers to be required to publish information about the differences in pay between male and female employees; to prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct; to enable duties to be imposed in relation to the exercise of public procurement functions; to increase equality of opportunity; to amend the law relating to rights and responsibilities in family relationships; and for connected purposes. [8th April 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act applied (30.9.2020) by The Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020 (S.I. 2020/916), arts. 1(2)(b), **4(2)**

C2 Act applied by S.I. 1993/1813, **art. 4(1C)** (as amended (30.9.2020) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915), arts. 1(2), **3**)

C3 Act applied by S.I. 1994/1405, **art. 4(1A)** (as amended (30.9.2020) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915), arts. 1(2), **9(3)**)

C4 Act modified (31.3.2021) by S.I. 2003/2818, **art. 11(3)** (as amended by The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021 (S.I. 2021/311), arts. 1(2), **2(4)(b)**)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 1

SOCIO-ECONOMIC INEQUALITIES

1 Public sector duty regarding socio-economic inequalities

(1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

(2) In deciding how to fulfil a duty to which it is subject under subsection (1), an authority must take into account any guidance issued **[**[F1]in accordance with subsection (2A)**]**.

[[F2](2A) The guidance to be taken into account under subsection (2) is—

(a) in the case of a duty imposed on an authority in relation to devolved Scottish functions, guidance issued by the Scottish Ministers;

[[F3](aa) in the case of a duty imposed on an authority in relation to devolved Welsh functions, guidance issued by the Welsh Ministers;**]**

(b) in any other case, guidance issued by a Minister of the Crown.**]**

[[F4](3) The authorities to which this section applies are—

(a) the Scottish Ministers;

(b) Food Standards Scotland;

(c) Keeper of the Registers of Scotland;

(d) National Records of Scotland;

(e) Revenue Scotland;

(f) Scottish Courts and Tribunals Service;

(g) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

(h) an integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014;

(i) a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978;

(j) a Special Health Board constituted under section 2(1)(b) of that Act;

(k) Scottish Police Authority;

(l) Highlands and Islands Enterprise;

(m) Scottish Enterprise.**]**

[[F10](n) Scottish National Investment Bank p.l.c.;

(o) South of Scotland Enterprise.**]**

[[F11](3A) This section also applies to the following authorities—

(a) the Welsh Ministers;

(b) a county council or county borough council in Wales;

(c) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;

(d) an NHS Trust established under section 18 of the National Health Service (Wales) Act 2006;

(e) a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006 other than a cross-border Special Health Authority

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(within the meaning of section 8A(5) of the National Health Service (Wales) Act 2006);

(f) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in Wales;

(g) a National Park authority established by an order under section 63 of the Environment Act 1995 for an area in Wales;

(h) the Welsh Revenue Authority or Awdurdod Cyllid Cymru.**]**

F12(4) . . . . . .

F13(5) . . . . . .

(6) The reference to inequalities in subsection (1) does not include any inequalities experienced by a person as a result of being a person subject to immigration control within the meaning given by section 115(9) of the Immigration and Asylum Act 1999.

Textual Amendments

F1 Words in s. 1(2) substituted (23.5.2016) by Scotland Act 2016 (c. 11), **ss. 38(3)**, 72(7)

F2 S. 1(2A) inserted (23.5.2016) by Scotland Act 2016 (c. 11), **ss. 38(4)**, 72(7)

F3 S. 1(2A)(aa) inserted (1.4.2018) by Wales Act 2017 (c. 4), **ss. 45(2)**, 71(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(i)

F4 S. 1(3) substituted (S.) (1.4.2018) by The Equality Act 2010 (Authorities subject to the Socio-economic Inequality Duty) (Scotland) Regulations 2018 (S.S.I. 2018/101), regs. 1, **2(2)**

F5 S. 1(3A)(ba) inserted (3.12.2021) by The Equality Act 2010 (Authorities subject to a duty regarding Socio-economic Inequalities) (No. 2) (Wales) Regulations 2021 (S.I. 2021/1351), regs. 1(2), **2**

F6 S. 1(3)(h) omitted (E.W.) (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 55(2), **Sch. 5 para. 181(a)**; S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

F7 S. 1(3)(i) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 55(2), **Sch. 5 para. 181(b)**; S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

F8 S. 1(3)(j) repealed (1.7.2012 at 0.02 a.m.) by Public Bodies Act 2011 (c. 24), s. 30(3), **Sch. 6**; S.I. 2012/1662, **art. 2(2)(b)**

F9 Words in s. 1(3)(k) substituted (22.11.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 99, **Sch. 16 para. 381**; S.I. 2012/2892, **art. 2(a)(i)**

F10 S. 1(3)(n)(o) inserted (26.11.2020) by The Scottish National Investment Bank p.l.c. and South of Scotland Enterprise (Miscellaneous Listings) Regulations 2020 (S.S.I. 2020/403), regs. 1, **2(2)**

F11 S. 1(3A) inserted (E.W.) (30.3.2021) by The Equality Act 2010 (Authorities subject to a duty regarding Socio-economic Inequalities) (Wales) Regulations 2021 (S.I. 2021/295), regs. 1, **2**

F12 S. 1(4) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), **ss. 100(2)(g)**, 115(3)(k)

F13 S. 1(5) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), **ss. 100(2)(g)**, 115(3)(k)

Commencement Information

I1 S. 1 in force at 31.3.2021 for specified purposes for W. by S.I. 2021/298, **art. 2(a)**

I2 S. 1(1)-(3)(6) in force at 1.4.2018 for S. by S.S.I. 2017/403, art. 2(1)(a)(2) [Editorial note: art. 2(2) of the commencement order provides that, for the avoidance of doubt, s. 1(3) is commenced as originally enacted]

2 Power to amend section 1

(1) A Minister of the Crown may by regulations amend section 1 so as to—

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(a) add a public authority to the authorities that are subject to the duty under subsection (1) of that section;

(b) remove an authority from those that are subject to the duty;

(c) make the duty apply, in the case of a particular authority, only in relation to certain functions that it has;

(d) in the case of an authority to which the application of the duty is already restricted to certain functions, remove or alter the restriction.

(2) In subsection (1) "public authority" means an authority that has functions of a public nature.

(3) Provision made under subsection (1) may not impose a duty on an authority in relation to any devolved Scottish functions or devolved Welsh functions.

(4) The Scottish Ministers or the Welsh Ministers may by regulations amend section 1 so as to—

(a) add a relevant authority to the authorities that are subject to the duty under subsection (1) of that section;

(b) remove a relevant authority from those that are subject to the duty;

(c) make the duty apply, in the case of a particular relevant authority, only in relation to certain functions that it has;

(d) in the case of a relevant authority to which the application of the duty is already restricted to certain functions, remove or alter the restriction.

(5) For the purposes of the power conferred by subsection (4) on the Scottish Ministers, "relevant authority" means an authority whose functions—

(a) are exercisable only in or as regards Scotland,

(b) are wholly or mainly devolved Scottish functions, and

(c) correspond or are similar to those of an authority for the time being specified in section 1(3).

(6) For the purposes of the power conferred by subsection (4) on the Welsh Ministers, "relevant authority" means **[**[F14]a devolved Welsh authority (within the meaning given by section 157A of the Government of Wales Act 2006) whose functions correspond**]** or are similar to those of an authority for the time being specified in subsection (3) of section 1 or referred to in subsection (4) of that section.

[F15](7) . . . . . .

(8) Regulations under this section may make any amendments of section 1 that appear to the Minister or Ministers to be necessary or expedient in consequence of provision made under subsection (1) or (as the case may be) subsection (4).

[F16](9) . . . . . .

[F17](10) . . . . . .

(11) For the purposes of this **[**[F18]Part**]**—

(a) a function is a devolved Scottish function if it is exercisable in or as regards Scotland and it does not relate to reserved matters (within the meaning of the Scotland Act 1998);

[F19](b) . . . . . .

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Textual Amendments

F14 Words in s. 2(6) substituted (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 83(2)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(r)

F15 S. 2(7) omitted (1.4.2018) by virtue of Wales Act 2017 (c. 4), **ss. 45(3)**, 71(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(i)

F16 S. 2(9) omitted (1.4.2018) by virtue of Wales Act 2017 (c. 4), **ss. 45(3)**, 71(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(i)

F17 S. 2(10) omitted (1.4.2018) by virtue of Wales Act 2017 (c. 4), **ss. 45(3)**, 71(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(i)

F18 Word in s. 2(11) substituted (23.5.2016) by Scotland Act 2016 (c. 11), **ss. 38(8)**, 72(7)

F19 S. 2(11)(b) omitted (1.4.2018) by virtue of Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 83(3)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(r)

Commencement Information

I3 S. 2 in force at 1.4.2018 for S. by S.S.I. 2017/403, **art. 2(1)(b)**

I4 S. 2 in force at 22.11.2019 for specified purposes for W. by S.I. 2019/1469, **art. 2**

3 Enforcement

A failure in respect of a performance of a duty under section 1 does not confer a cause of action at private law.

Commencement Information

I5 S. 3 in force at 1.4.2018 for S. by S.S.I. 2017/403, **art. 2(1)(c)**

I6 S. 3 in force at 31.3.2021 for specified purposes for W. by S.I. 2021/298, **art. 2(b)**

PART 2

EQUALITY: KEY CONCEPTS

CHAPTER 1

PROTECTED CHARACTERISTICS

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;

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

sexual orientation.

5 Age

(1) In relation to the protected characteristic of age—

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;

(b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.

(2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.

6 Disability

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—

(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

(5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

(6) Schedule 1 (disability: supplementary provision) has effect.

Commencement Information

I7 S. 6 wholly in force; s. 6 not in force at Royal Assent see s. 216; s. 6(5) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; s. 6(6) in force for certain purposes at 4.8.2010 by S.I. 2010/1966, **art. 2**; s. 6 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(b)** (with art. 15)

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)

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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.

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.

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 [F20]...—
- (a) **[**[F21]must by order**]** amend this section so as to provide for caste to be an aspect of race;
- (b) **[**[F22]may by order**]** 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.

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Textual Amendments

F20 Words in s. 9(5) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 97(2)**, 103(2)

F21 Words in s. 9(5)(a) inserted (25.4.2013 for specified purposes) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 97(3)**, 103(1)(i)(2)

F22 Words in s. 9(5)(b) inserted (25.4.2013 for specified purposes) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 97(4)**, 103(1)(i)(2)

Modifications etc. (not altering text)

C5 S. 9(5) power to repeal or amend conferred (25.4.2013 for specified purposes) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 97(7)-(10)**, 103(1)(i)(2)

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.

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.

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.

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CHAPTER 2

PROHIBITED CONDUCT

Discrimination

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).

PROSPECTIVE

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—
- (a) age;
- (b) disability;
- (c) gender reassignment;
- (d) race
- (e) religion or belief;
- (f) sex;
- (g) sexual orientation.

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(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.

15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—
   (a) A treats B unfavourably because of something arising in consequence of B's disability, and
   (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

16 Gender reassignment discrimination: cases of absence from work

(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of gender reassignment.

(2) A person (A) discriminates against a transsexual person (B) if, in relation to an absence of B's that is because of gender reassignment, A treats B less favourably than A would treat B if—
   (a) B's absence was because of sickness or injury, or
   (b) B's absence was for some other reason and it is not reasonable for B to be treated less favourably.

(3) A person's absence is because of gender reassignment if it is because the person is proposing to undergo, is undergoing or has undergone the process (or part of the process) mentioned in section 7(1).

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17 Pregnancy and maternity discrimination: non-work cases

(1) This section has effect for the purposes of the application to the protected characteristic of pregnancy and maternity of—
  (a) Part 3 (services and public functions);
  (b) Part 4 (premises);
  (c) Part 6 (education);
  (d) Part 7 (associations).

(2) A person (A) discriminates against a woman if A treats her unfavourably because of a pregnancy of hers.

(3) A person (A) discriminates against a woman if, in the period of 26 weeks beginning with the day on which she gives birth, A treats her unfavourably because she has given birth.

(4) The reference in subsection (3) to treating a woman unfavourably because she has given birth includes, in particular, a reference to treating her unfavourably because she is breast-feeding.

(5) For the purposes of this section, the day on which a woman gives birth is the day on which—
  (a) she gives birth to a living child, or
  (b) she gives birth to a dead child (more than 24 weeks of the pregnancy having passed).

(6) Section 13, so far as relating to sex discrimination, does not apply to anything done in relation to a woman in so far as—
  (a) it is for the reason mentioned in subsection (2), or
  (b) it is in the period, and for the reason, mentioned in subsection (3).

18 Pregnancy and maternity discrimination: work cases

(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —
  (a) because of the pregnancy, or
  (b) because of illness suffered by her as a result of it.

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—

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(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;

(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or

(b) it is for a reason mentioned in subsection (3) or (4).

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

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

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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.

Part of this Act	***Applicable Schedule***
Part 3 (services and public functions)	Schedule 2
Part 4 (premises)	Schedule 4
Part 5 (work)	Schedule 8

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Part 6 (education)	Schedule 13
Part 7 (associations)	Schedule 15
Each of the Parts mentioned above	Schedule 21

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.

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.

Commencement Information

I8 S. 22 wholly in force; s. 22 not in force at Royal Assent see s. 216; s. 22 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; s. 22 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(e)** (with art. 15)

Discrimination: supplementary

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.

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(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 [F23]... is not a material difference between the circumstances relating to each case.

[[F24](4) If the protected characteristic is sexual orientation, the fact that one person (whether or not the person referred to as B) is married to**[**[F25], or the civil partner of,**]** a person of the same sex while another is married to**[**[F25], or the civil partner of,**]** a person of the opposite sex is not a material difference between the circumstances relating to each case.**]**

Textual Amendments

F23 Words in s. 23(3) omitted (2.12.2019) by virtue of The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 32(2)(a)**

F24 S. 23(4) inserted (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 7 para. 43(3)**; S.I. 2014/93, art. 3(k)(iv)

F25 Words in s. 23(4) inserted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 32(2)(b)**

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.

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;

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(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—

(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

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

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(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.

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.

Commencement Information

I9 S. 27 wholly in force; s. 27 not in force at Royal Assent see s. 216; s. 27 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(2)(f)** (with art. 15, and subject to transitional provision in art. 8)

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PART 3

SERVICES AND PUBLIC FUNCTIONS

Preliminary

28 Application of this Part

(1) This Part does not apply to the protected characteristic of—
- (a) age, so far as relating to persons who have not attained the age of 18;
- (b) marriage and civil partnership.

(2) This Part does not apply to discrimination, harassment or victimisation—
- (a) that is prohibited by Part 4 (premises), 5 (work) or 6 (education), or
- (b) that would be so prohibited but for an express exception.

(3) This Part does not apply to—
- (a) a breach of an equality clause or rule;
- (b) anything that would be a breach of an equality clause or rule but for section 69 or Part 2 of Schedule 7;
- (c) a breach of a non-discrimination rule.

Commencement Information

I10 S. 28 wholly in force at 1.10.2012; s. 28 not in force at Royal Assent see s. 216; s. 28 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(3)**; s. 28 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 3(a)**

Provision of services, etc.

29 Provision of services, etc.

(1) A person (a "service-provider") concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.

(2) A service-provider (A) must not, in providing the service, discriminate against a person (B)—
- (a) as to the terms on which A provides the service to B;
- (b) by terminating the provision of the service to B;
- (c) by subjecting B to any other detriment.

(3) A service-provider must not, in relation to the provision of the service, harass—
- (a) a person requiring the service, or
- (b) a person to whom the service-provider provides the service.

(4) A service-provider must not victimise a person requiring the service by not providing the person with the service.

(5) A service-provider (A) must not, in providing the service, victimise a person (B)—

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Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) as to the terms on which A provides the service to B;
(b) by terminating the provision of the service to B;
(c) by subjecting B to any other detriment.

(6) A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.

(7) A duty to make reasonable adjustments applies to—
(a) a service-provider (and see also section 55(7));
(b) a person who exercises a public function that is not the provision of a service to the public or a section of the public.

(8) In the application of section 26 for the purposes of subsection (3), and subsection (6) as it relates to harassment, neither of the following is a relevant protected characteristic—
(a) religion or belief;
(b) sexual orientation.

(9) In the application of this section, so far as relating to race or religion or belief, to the granting of entry clearance (within the meaning of the Immigration Act 1971), it does not matter whether an act is done within or outside the United Kingdom.

(10) Subsection (9) does not affect the application of any other provision of this Act to conduct outside England and Wales or Scotland.

Commencement Information

I11 S. 29 wholly in force at 1.10.2012; s. 29 not in force at Royal Assent see s. 216; s. 29 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(3)**; s. 29 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 3(a)**

Supplementary

30 Ships and hovercraft

(1) This Part (subject to subsection (2)) applies only in such circumstances as are prescribed in relation to—
(a) transporting people by ship or hovercraft;
(b) a service provided on a ship or hovercraft.

(2) Section 29(6) applies in relation to the matters referred to in paragraphs (a) and (b) of subsection (1); but in so far as it relates to disability discrimination, section 29(6) applies to those matters only in such circumstances as are prescribed.

(3) It does not matter whether the ship or hovercraft is within or outside the United Kingdom.

(4) "Ship" has the same meaning as in the Merchant Shipping Act 1995.

(5) "Hovercraft" has the same meaning as in the Hovercraft Act 1968.

(6) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.

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Commencement Information

I12 S. 30 wholly in force at 1.10.2012; s. 30 not in force at Royal Assent see s. 216; s. 30 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(3)**; s. 30 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 3(a)**

31 Interpretation and exceptions

(1) This section applies for the purposes of this Part.

(2) A reference to the provision of a service includes a reference to the provision of goods or facilities.

(3) A reference to the provision of a service includes a reference to the provision of a service in the exercise of a public function.

(4) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

(5) Where an employer arranges for another person to provide a service only to the employer's employees—
  (a) the employer is not to be regarded as the service-provider, but
  (b) the employees are to be regarded as a section of the public.

(6) A reference to a person requiring a service includes a reference to a person who is seeking to obtain or use the service.

(7) A reference to a service-provider not providing a person with a service includes a reference to—
  (a) the service-provider not providing the person with a service of the quality that the service-provider usually provides to the public (or the section of it which includes the person), or
  (b) the service-provider not providing the person with the service in the manner in which, or on the terms on which, the service-provider usually provides the service to the public (or the section of it which includes the person).

(8) In relation to the provision of a service by either House of Parliament, the service-provider is the Corporate Officer of the House concerned; and if the service involves access to, or use of, a place in the Palace of Westminster which members of the public are allowed to enter, both Corporate Officers are jointly the service-provider.

(9) Schedule 2 (reasonable adjustments) has effect.

(10) Schedule 3 (exceptions) has effect.

Commencement Information

I13 S. 31 wholly in force at 1.10.2012; s. 31 not in force at Royal Assent see s. 216; s. 31 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(3)**; s. 31(9) in force so far as not already in force at 1.9.2012 by S.I. 2012/2184, **art. 2(a)**; s. 31(1)-(8)(10) in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 3(a)**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 4

PREMISES

Preliminary

32 Application of this Part

(1) This Part does not apply to the following protected characteristics—
- (a) age;
- (b) marriage and civil partnership.

(2) This Part does not apply to discrimination, harassment or victimisation—
- (a) that is prohibited by Part 5 (work) or Part 6 (education), or
- (b) that would be so prohibited but for an express exception.

(3) This Part does not apply to the provision of accommodation if the provision—
- (a) is generally for the purpose of short stays by individuals who live elsewhere, or
- (b) is for the purpose only of exercising a public function or providing a service to the public or a section of the public.

(4) The reference to the exercise of a public function, and the reference to the provision of a service, are to be construed in accordance with Part 3.

(5) This Part does not apply to—
- (a) a breach of an equality clause or rule;
- (b) anything that would be a breach of an equality clause or rule but for section 69 or Part 2 of Schedule 7;
- (c) a breach of a non-discrimination rule.

Disposal and management

33 Disposals, etc.

(1) A person (A) who has the right to dispose of premises must not discriminate against another (B)—
- (a) as to the terms on which A offers to dispose of the premises to B;
- (b) by not disposing of the premises to B;
- (c) in A's treatment of B with respect to things done in relation to persons seeking premises.

(2) Where an interest in a commonhold unit cannot be disposed of unless a particular person is a party to the disposal, that person must not discriminate against a person by not being a party to the disposal.

(3) A person who has the right to dispose of premises must not, in connection with anything done in relation to their occupation or disposal, harass—
- (a) a person who occupies them;
- (b) a person who applies for them.

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(4) A person (A) who has the right to dispose of premises must not victimise another (B)—
  (a) as to the terms on which A offers to dispose of the premises to B;
  (b) by not disposing of the premises to B;
  (c) in A's treatment of B with respect to things done in relation to persons seeking premises.

(5) Where an interest in a commonhold unit cannot be disposed of unless a particular person is a party to the disposal, that person must not victimise a person by not being a party to the disposal.

(6) In the application of section 26 for the purposes of subsection (3), neither of the following is a relevant protected characteristic—
  (a) religion or belief;
  (b) sexual orientation.

34 Permission for disposal

(1) A person whose permission is required for the disposal of premises must not discriminate against another by not giving permission for the disposal of the premises to the other.

(2) A person whose permission is required for the disposal of premises must not, in relation to an application for permission to dispose of the premises, harass a person—
  (a) who applies for permission to dispose of the premises, or
  (b) to whom the disposal would be made if permission were given.

(3) A person whose permission is required for the disposal of premises must not victimise another by not giving permission for the disposal of the premises to the other.

(4) In the application of section 26 for the purposes of subsection (2), neither of the following is a relevant protected characteristic—
  (a) religion or belief;
  (b) sexual orientation.

(5) This section does not apply to anything done in the exercise of a judicial function.

35 Management

(1) A person (A) who manages premises must not discriminate against a person (B) who occupies the premises—
  (a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;
  (b) by evicting B (or taking steps for the purpose of securing B's eviction);
  (c) by subjecting B to any other detriment.

(2) A person who manages premises must not, in relation to their management, harass—
  (a) a person who occupies them;
  (b) a person who applies for them.

(3) A person (A) who manages premises must not victimise a person (B) who occupies the premises—

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(a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;
(b) by evicting B (or taking steps for the purpose of securing B's eviction);
(c) by subjecting B to any other detriment.

(4) In the application of section 26 for the purposes of subsection (2), neither of the following is a relevant protected characteristic—
(a) religion or belief;
(b) sexual orientation.

Reasonable adjustments

36 Leasehold and commonhold premises and common parts

(1) A duty to make reasonable adjustments applies to—
(a) a controller of let premises;
(b) a controller of premises to let;
(c) a commonhold association;
(d) a responsible person in relation to common parts.

(2) A controller of let premises is—
(a) a person by whom premises are let, or
(b) a person who manages them.

(3) A controller of premises to let is—
(a) a person who has premises to let, or
(b) a person who manages them.

(4) The reference in subsection (1)(c) to a commonhold association is a reference to the association in its capacity as the person who manages a commonhold unit.

(5) A responsible person in relation to common parts is—
(a) where the premises to which the common parts relate are let (and are not part of commonhold land or in Scotland), a person by whom the premises are let;
(b) where the premises to which the common parts relate are part of commonhold land, the commonhold association.

(6) Common parts are—
(a) in relation to let premises (which are not part of commonhold land or in Scotland), the structure and exterior of, and any common facilities within or used in connection with, the building or part of a building which includes the premises;
(b) in relation to commonhold land, every part of the commonhold which is not for the time being a commonhold unit in accordance with the commonhold community statement.

(7) A reference to letting includes a reference to sub-letting; and for the purposes of subsection (1)(a) and (b), a reference to let premises includes premises subject to a right to occupy.

(8) This section does not apply to premises of such description as may be prescribed.

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Commencement Information

I14 S. 36 partly in force; s. 36 not in force at Royal Assent see s. 216; s. 36(1)(a)-(c)(2)-(4)(7)(8) in force at 1.10.2010 by S.I. 2010/2317, **art. 2(4)(b)**

37 Adjustments to common parts in Scotland

(1) The Scottish Ministers may by regulations provide that a disabled person is entitled to make relevant adjustments to common parts in relation to premises in Scotland.

(2) The reference in subsection (1) to a disabled person is a reference to a disabled person who—

(a) is a tenant of the premises,

(b) is an owner of the premises, or

(c) is otherwise entitled to occupy the premises,

and uses or intends to use the premises as the person's only or main home.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult a Minister of the Crown.

(4) Regulations under subsection (1) may, in particular—

(a) prescribe things which are, or which are not, to be treated as relevant adjustments;

(b) prescribe circumstances in which the consent of an owner of the common parts is required before a disabled person may make an adjustment;

(c) provide that the consent to adjustments is not to be withheld unreasonably;

(d) prescribe matters to be taken into account, or to be disregarded, in deciding whether it is reasonable to consent to adjustments;

(e) prescribe circumstances in which consent to adjustments is to be taken to be withheld;

(f) make provision about the imposition of conditions on consent to adjustments;

(g) make provision as to circumstances in which the sheriff may make an order authorising a disabled person to carry out adjustments;

(h) make provision about the responsibility for costs arising (directly or indirectly) from an adjustment;

(i) make provision about the reinstatement of the common parts to the condition they were in before an adjustment was made;

(j) make provision about the giving of notice to the owners of the common parts and other persons;

(k) make provision about agreements between a disabled person and an owner of the common parts;

(l) make provision about the registration of information in the Land Register of Scotland or the recording of documents in the Register of Sasines relating to an entitlement of a disabled person or an obligation on an owner of the common parts;

(m) make provision about the effect of such registration or recording;

(n) make provision about who is to be treated as being, or as not being, a person entitled to occupy premises otherwise than as tenant or owner.

(5) In this section—

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"common parts" means, in relation to premises, the structure and exterior of, and any common facilities within or used in connection with, the building or part of a building which includes the premises but only in so far as the structure, exterior and common facilities are not solely owned by the owner of the premises;

"relevant adjustments" means, in relation to a disabled person, alterations or additions which are likely to avoid a substantial disadvantage to which the disabled person is put in using the common parts in comparison with persons who are not disabled.

Supplementary

38 Interpretation and exceptions

(1) This section applies for the purposes of this Part.

(2) A reference to premises is a reference to the whole or part of the premises.

(3) A reference to disposing of premises includes, in the case of premises subject to a tenancy, a reference to—
- (a) assigning the premises,
- (b) sub-letting them, or
- (c) parting with possession of them.

(4) A reference to disposing of premises also includes a reference to granting a right to occupy them.

(5) A reference to disposing of an interest in a commonhold unit includes a reference to creating an interest in a commonhold unit.

(6) A reference to a tenancy is to a tenancy created (whether before or after the passing of this Act)—
- (a) by a lease or sub-lease,
- (b) by an agreement for a lease or sub-lease,
- (c) by a tenancy agreement, or
- (d) in pursuance of an enactment,

and a reference to a tenant is to be construed accordingly.

(7) A reference to commonhold land, a commonhold association, a commonhold community statement, a commonhold unit or a unit-holder is to be construed in accordance with the Commonhold and Leasehold Reform Act 2002.

(8) Schedule 4 (reasonable adjustments) has effect.

(9) Schedule 5 (exceptions) has effect.

Commencement Information

I15 S. 38 partly in force; s. 38 not in force at Royal Assent see s. 216; s. 38(8) in force for certain purposes at 4.8.2010 by S.I. 2010/1966, **art. 2**; s. 38(1)-(7)(9) wholly in force and s. 38(8) in force for certain further purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(4)(c)(d)** (with art. 15)

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PART 5

WORK

Modifications etc. (not altering text)

C6 Pt. 5 excluded by 2005 c. 4, s. 63(4) (as inserted (15.7.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 10(3)**; S.I. 2013/1725, art. 2(g))

C7 Pt. 5 excluded by 2005 c. 4, s. 27(5A)(b) (as inserted (15.7.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 9**; S.I. 2013/1725, art. 2(g))

C8 Pt. 5 excluded (coming into force in accordance with reg. 2(1) of the commencing S.I.) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 5 para. 5(4)** (with Sch. 7 paras. 1, 6); S.I. 2017/351, reg. 2(2) [Editorial note: S.I. 2017/1282 was made under 2017 c. 4, Sch. 5 para. 7(1) and comes into force on 12.12.2017]

C9 Pt. 5 restricted (S.) (29.5.2020) by Gender Representation on Public Boards (Scotland) Act 2018 (asp 4), **ss. 11(2)**, 13; S.S.I. 2020/119, reg. 2

C10 Pt. 5 applied (1.8.2011) by the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 (S.I. 2011/1771), **regs. 3-5**

CHAPTER 1

EMPLOYMENT, ETC.

Employees

39 Employees and applicants

(1) An employer (A) must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer employment;
- (b) as to the terms on which A offers B employment;
- (c) by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)—
- (a) as to B's terms of employment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c) by dismissing B;
- (d) by subjecting B to any other detriment.

(3) An employer (A) must not victimise a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer employment;
- (b) as to the terms on which A offers B employment;
- (c) by not offering B employment.

(4) An employer (A) must not victimise an employee of A's (B)—
- (a) as to B's terms of employment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
- (c) by dismissing B;

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(d) by subjecting B to any other detriment.

(5) A duty to make reasonable adjustments applies to an employer.

(6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—

(a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or

(b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.

(7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

(a) by the expiry of a period (including a period expiring by reference to an event or circumstance);

(b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

(8) Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

40 Employees and applicants: harassment

(1) An employer (A) must not, in relation to employment by A, harass a person (B)—

(a) who is an employee of A's;

(b) who has applied to A for employment.

F26(2) . . . . . .

F26(3) . . . . . .

F26(4) . . . . . .

Textual Amendments

F26 S. 40(2)-(4) omitted (1.10.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 65**, 103(3); S.I. 2013/2227, art. 2(c) (with art. 4)

41 Contract workers

(1) A principal must not discriminate against a contract worker—

(a) as to the terms on which the principal allows the worker to do the work;

(b) by not allowing the worker to do, or to continue to do, the work;

(c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;

(d) by subjecting the worker to any other detriment.

(2) A principal must not, in relation to contract work, harass a contract worker.

(3) A principal must not victimise a contract worker—

(a) as to the terms on which the principal allows the worker to do the work;

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(b) by not allowing the worker to do, or to continue to do, the work;

(c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;

(d) by subjecting the worker to any other detriment.

(4) A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).

(5) A "principal" is a person who makes work available for an individual who is—

(a) employed by another person, and

(b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).

(6) "Contract work" is work such as is mentioned in subsection (5).

(7) A "contract worker" is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).

Police officers

42 Identity of employer

(1) For the purposes of this Part, holding the office of constable is to be treated as employment—

(a) by the chief officer, in respect of any act done by the chief officer in relation to a constable or appointment to the office of constable;

(b) by the responsible authority, in respect of any act done by the authority in relation to a constable or appointment to the office of constable.

(2) For the purposes of this Part, holding an appointment as a police cadet is to be treated as employment—

(a) by the chief officer, in respect of any act done by the chief officer in relation to a police cadet or appointment as one;

(b) by the responsible authority, in respect of any act done by the authority in relation to a police cadet or appointment as one.

(3) Subsection (1) does not apply to service with the Civil Nuclear Constabulary (as to which, see section 55(2) of the Energy Act 2004).

(4) Subsection (1) does not apply to a constable at **[**[F27]NCA**][**[F28]or SPA**]**.

(5) A constable at **[**[F27]NCA**]** or **[**[F29]SPA**]** is to be treated as employed by it, in respect of any act done by it in relation to the constable.

(6) [F30]. . . . . .

Textual Amendments

F27 Word in s. 42(4)(5) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 181**; S.I. 2013/1682, art. 3(v)

F28 Words in s. 42(4) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(2)(a)**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F29 Word in s. 42(5) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(2)(b)**

F30 S. 42(6) omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(2)(c)**

43 Interpretation

(1) This section applies for the purposes of section 42.

(2) "Chief officer" means—

(a) in relation to an appointment under a relevant Act, the chief officer of police for the police force to which the appointment relates;

(b) in relation to any other appointment, the person under whose direction and control the body of constables or other persons to which the appointment relates is;

(c) in relation to a constable or other person under the direction and control of a chief officer of police, that chief officer of police;

(d) in relation to any other constable or any other person, the person under whose direction and control the constable or other person is.

(3) "Responsible authority" means—

(a) in relation to an appointment under a relevant Act, the **[**[F31]local policing body or police authority**]** that maintains the police force to which the appointment relates;

(b) in relation to any other appointment, the person by whom a person would (if appointed) be paid;

(c) in relation to a constable or other person under the direction and control of a chief officer of police, the **[**[F31]local policing body or police authority**]** that maintains the police force for which that chief officer is the chief officer of police;

(d) in relation to any other constable or any other person, the person by whom the constable or other person is paid.

(4) "Police cadet" means a person appointed to undergo training with a view to becoming a constable.

[[F32](5) "NCA " means the National Crime Agency; and a reference to a constable at NCA is a reference to a constable seconded to it to serve as an NCA officer. **]**

[[F33](5A) " SPA " means the Scottish Police Authority; and a reference to a constable at SPA is a reference to a constable serving as a member of its staff by virtue of paragraph 7(1) of schedule 1 to the Police and Fire Reform (Scotland) Act 2012. **]**

(7) [F34]. . . . . .

(8) For the purposes of this section, the relevant Acts are—

(a) the Metropolitan Police Act 1829;

(b) the City of London Police Act 1839;

(c) the **[**[F35]Police and Fire Reform (Scotland) Act 2012**]**;

[[F36](d) the Police Reform and Social Responsibility Act 2011.**]**

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[[F37](9) Subsections (2) and (3) apply in relation to Scotland as follows—

(a) a reference to a police authority includes a reference to the Scottish Police Authority;

(b) a reference to a police force includes a reference to the Police Service of Scotland; and

(c) a reference to a chief officer of police includes a reference to the chief constable of the Police Service of Scotland.**]**

Textual Amendments

F31 Words in s. 43(3) substituted (16.1.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 99, **Sch. 16 para. 382(a)**; S.I. 2011/3019, art. 3, {Sch. 1 para. (nnn)(iii)}

F32 S. 43(5) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 182**; S.I. 2013/1682, art. 3(v)

F33 S. 43(5A) substituted (1.4.2013) for s. 43(6) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(3)(a)**

F34 S. 43(7) omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(3)(b)**

F35 Words in s. 43(8)(c) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(3)(c)**

F36 S. 43(8)(d) substituted (16.1.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 99, **Sch. 16 para. 382(b)**; S.I. 2011/3019, art. 3, {Sch. 1 para. (nnn)(iii)} (with Sch. 2 para. 80)

F37 S. 43(9) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(3)(d)**

Partners

44 Partnerships

(1) A firm or proposed firm must not discriminate against a person—

(a) in the arrangements it makes for deciding to whom to offer a position as a partner;

(b) as to the terms on which it offers the person a position as a partner;

(c) by not offering the person a position as a partner.

(2) A firm (A) must not discriminate against a partner (B)—

(a) as to the terms on which B is a partner;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by expelling B;

(d) by subjecting B to any other detriment.

(3) A firm must not, in relation to a position as a partner, harass—

(a) a partner;

(b) a person who has applied for the position.

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(4) A proposed firm must not, in relation to a position as a partner, harass a person who has applied for the position.

(5) A firm or proposed firm must not victimise a person—
- (a) in the arrangements it makes for deciding to whom to offer a position as a partner;
- (b) as to the terms on which it offers the person a position as a partner;
- (c) by not offering the person a position as a partner.

(6) A firm (A) must not victimise a partner (B)—
- (a) as to the terms on which B is a partner;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c) by expelling B;
- (d) by subjecting B to any other detriment.

(7) A duty to make reasonable adjustments applies to—
- (a) a firm;
- (b) a proposed firm.

(8) In the application of this section to a limited partnership within the meaning of the Limited Partnerships Act 1907, "partner" means a general partner within the meaning of that Act.

45 Limited liability partnerships

(1) An LLP or proposed LLP must not discriminate against a person—
- (a) in the arrangements it makes for deciding to whom to offer a position as a member;
- (b) as to the terms on which it offers the person a position as a member;
- (c) by not offering the person a position as a member.

(2) An LLP (A) must not discriminate against a member (B)—
- (a) as to the terms on which B is a member;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c) by expelling B;
- (d) by subjecting B to any other detriment.

(3) An LLP must not, in relation to a position as a member, harass—
- (a) a member;
- (b) a person who has applied for the position.

(4) A proposed LLP must not, in relation to a position as a member, harass a person who has applied for the position.

(5) An LLP or proposed LLP must not victimise a person—
- (a) in the arrangements it makes for deciding to whom to offer a position as a member;

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(b) as to the terms on which it offers the person a position as a member;
(c) by not offering the person a position as a member.

(6) An LLP (A) must not victimise a member (B)—
(a) as to the terms on which B is a member;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by expelling B;
(d) by subjecting B to any other detriment.

(7) A duty to make reasonable adjustments applies to—
(a) an LLP;
(b) a proposed LLP.

46 Interpretation

(1) This section applies for the purposes of sections 44 and 45.

(2) "Partnership" and "firm" have the same meaning as in the Partnership Act 1890.

(3) "Proposed firm" means persons proposing to form themselves into a partnership.

(4) "LLP" means a limited liability partnership (within the meaning of the Limited Liability Partnerships Act 2000).

(5) "Proposed LLP" means persons proposing to incorporate an LLP with themselves as members.

(6) A reference to expelling a partner of a firm or a member of an LLP includes a reference to the termination of the person's position as such—
(a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
(b) by an act of the person (including giving notice) in circumstances such that the person is entitled, because of the conduct of other partners or members, to terminate the position without notice;
(c) (in the case of a partner of a firm) as a result of the dissolution of the partnership.

(7) Subsection (6)(a) and (c) does not apply if, immediately after the termination, the position is renewed on the same terms.

The Bar

47 Barristers

(1) A barrister (A) must not discriminate against a person (B)—
(a) in the arrangements A makes for deciding to whom to offer a pupillage or tenancy;
(b) as to the terms on which A offers B a pupillage or tenancy;
(c) by not offering B a pupillage or tenancy.

(2) A barrister (A) must not discriminate against a person (B) who is a pupil or tenant—

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(a) as to the terms on which B is a pupil or tenant;
(b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
(c) by terminating the pupillage;
(d) by subjecting B to pressure to leave chambers;
(e) by subjecting B to any other detriment.

(3) A barrister must not, in relation to a pupillage or tenancy, harass—
(a) the pupil or tenant;
(b) a person who has applied for the pupillage or tenancy.

(4) A barrister (A) must not victimise a person (B)—
(a) in the arrangements A makes for deciding to whom to offer a pupillage or tenancy;
(b) as to the terms on which A offers B a pupillage or tenancy;
(c) by not offering B a pupillage or tenancy.

(5) A barrister (A) must not victimise a person (B) who is a pupil or tenant—
(a) as to the terms on which B is a pupil or tenant;
(b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
(c) by terminating the pupillage;
(d) by subjecting B to pressure to leave chambers;
(e) by subjecting B to any other detriment.

(6) A person must not, in relation to instructing a barrister—
(a) discriminate against a barrister by subjecting the barrister to a detriment;
(b) harass the barrister;
(c) victimise the barrister.

(7) A duty to make reasonable adjustments applies to a barrister.

(8) The preceding provisions of this section (apart from subsection (6)) apply in relation to a barrister's clerk as they apply in relation to a barrister; and for that purpose the reference to a barrister's clerk includes a reference to a person who carries out the functions of a barrister's clerk.

(9) A reference to a tenant includes a reference to a barrister who is permitted to work in chambers (including as a squatter or door tenant); and a reference to a tenancy is to be construed accordingly.

48 Advocates

(1) An advocate (A) must not discriminate against a person (B)—
(a) in the arrangements A makes for deciding who to take as A's devil or to whom to offer membership of a stable;
(b) as to the terms on which A offers to take B as A's devil or offers B membership of a stable;
(c) by not offering to take B as A's devil or not offering B membership of a stable.

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(2) An advocate (A) must not discriminate against a person (B) who is a devil or a member of a stable—
  (a) as to the terms on which B is a devil or a member of the stable;
  (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
  (c) by terminating A's relationship with B (where B is a devil);
  (d) by subjecting B to pressure to leave the stable;
  (e) by subjecting B to any other detriment.

(3) An advocate must not, in relation to a relationship with a devil or membership of a stable, harass—
  (a) a devil or member;
  (b) a person who has applied to be taken as the advocate's devil or to become a member of the stable.

(4) An advocate (A) must not victimise a person (B)—
  (a) in the arrangements A makes for deciding who to take as A's devil or to whom to offer membership of a stable;
  (b) as to the terms on which A offers to take B as A's devil or offers B membership of a stable;
  (c) by not offering to take B as A's devil or not offering B membership of a stable.

(5) An advocate (A) must not victimise a person (B) who is a devil or a member of a stable—
  (a) as to the terms on which B is a devil or a member of the stable;
  (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
  (c) by terminating A's relationship with B (where B is a devil);
  (d) by subjecting B to pressure to leave the stable;
  (e) by subjecting B to any other detriment.

(6) A person must not, in relation to instructing an advocate—
  (a) discriminate against the advocate by subjecting the advocate to a detriment;
  (b) harass the advocate;
  (c) victimise the advocate.

(7) A duty to make reasonable adjustments applies to an advocate.

(8) This section (apart from subsection (6)) applies in relation to an advocate's clerk as it applies in relation to an advocate; and for that purpose the reference to an advocate's clerk includes a reference to a person who carries out the functions of an advocate's clerk.

(9) “Advocate” means a practising member of the Faculty of Advocates.

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Office-holders

49 Personal offices: appointments, etc.

(1) This section applies in relation to personal offices.

(2) A personal office is an office or post—
- (a) to which a person is appointed to discharge a function personally under the direction of another person, and
- (b) in respect of which an appointed person is entitled to remuneration.

(3) A person (A) who has the power to make an appointment to a personal office must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer the appointment;
- (b) as to the terms on which A offers B the appointment;
- (c) by not offering B the appointment.

(4) A person who has the power to make an appointment to a personal office must not, in relation to the office, harass a person seeking, or being considered for, the appointment.

(5) A person (A) who has the power to make an appointment to a personal office must not victimise a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer the appointment;
- (b) as to the terms on which A offers B the appointment;
- (c) by not offering B the appointment.

(6) A person (A) who is a relevant person in relation to a personal office must not discriminate against a person (B) appointed to the office—
- (a) as to the terms of B's appointment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c) by terminating B's appointment;
- (d) by subjecting B to any other detriment.

(7) A relevant person in relation to a personal office must not, in relation to that office, harass a person appointed to it.

(8) A person (A) who is a relevant person in relation to a personal office must not victimise a person (B) appointed to the office—
- (a) as to the terms of B's appointment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c) by terminating B's appointment;
- (d) by subjecting B to any other detriment.

(9) A duty to make reasonable adjustments applies to—
- (a) a person who has the power to make an appointment to a personal office;
- (b) a relevant person in relation to a personal office.

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(10) For the purposes of subsection (2)(a), a person is to be regarded as discharging functions personally under the direction of another person if that other person is entitled to direct the person as to when and where to discharge the functions.

(11) For the purposes of subsection (2)(b), a person is not to be regarded as entitled to remuneration merely because the person is entitled to payments—

(a) in respect of expenses incurred by the person in discharging the functions of the office or post, or

(b) by way of compensation for the loss of income or benefits the person would or might have received had the person not been discharging the functions of the office or post.

(12) Subsection (3)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—

(a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or

(b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (3)(b) by virtue of section 13, 14 or 18.

50 Public offices: appointments, etc.

(1) This section and section 51 apply in relation to public offices.

(2) A public office is—

(a) an office or post, appointment to which is made by a member of the executive;

(b) an office or post, appointment to which is made on the recommendation of, or subject to the approval of, a member of the executive;

(c) an office or post, appointment to which is made on the recommendation of, or subject to the approval of, the House of Commons, the House of Lords, the National Assembly for Wales or the Scottish Parliament.

[[F38](d) an office or post, appointment to which is made by the Lord Chief Justice or the Senior President of Tribunals.**]**

(3) A person (A) who has the power to make an appointment to a public office within subsection (2)(a) **[**[F39], (b) or (d)**]** must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding to whom to offer the appointment;

(b) as to the terms on which A offers B the appointment;

(c) by not offering B the appointment.

(4) A person who has the power to make an appointment to a public office within subsection (2)(a) **[**[F39], (b) or (d)**]** must not, in relation to the office, harass a person seeking, or being considered for, the appointment.

(5) A person (A) who has the power to make an appointment to a public office within subsection (2)(a) **[**[F39], (b) or (d)**]** must not victimise a person (B)—

(a) in the arrangements A makes for deciding to whom to offer the appointment;

(b) as to the terms on which A offers B the appointment;

(c) by not offering B the appointment.

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(6) A person (A) who is a relevant person in relation to a public office within subsection (2)(a) **[**[F39], (b) or (d)**]** must not discriminate against a person (B) appointed to the office—

(a) as to B's terms of appointment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by terminating the appointment;

(d) by subjecting B to any other detriment.

(7) A person (A) who is a relevant person in relation to a public office within subsection (2)(c) must not discriminate against a person (B) appointed to the office—

(a) as to B's terms of appointment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by subjecting B to any other detriment (other than by terminating the appointment).

(8) A relevant person in relation to a public office must not, in relation to that office, harass a person appointed to it.

(9) A person (A) who is a relevant person in relation to a public office within subsection (2)(a) **[**[F40], (b) or (d)**]** must not victimise a person (B) appointed to the office—

(a) as to B's terms of appointment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by terminating the appointment;

(d) by subjecting B to any other detriment.

(10) A person (A) who is a relevant person in relation to a public office within subsection (2)(c) must not victimise a person (B) appointed to the office—

(a) as to B's terms of appointment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by subjecting B to any other detriment (other than by terminating the appointment).

(11) A duty to make reasonable adjustments applies to—

(a) a relevant person in relation to a public office;

(b) a person who has the power to make an appointment to a public office within subsection (2)(a) **[**[F41], (b) or (d)**]**.

(12) Subsection (3)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—

(a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or

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(b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (3)(b) by virtue of section 13, 14 or 18.

Textual Amendments

F38 S. 50(2)(d) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 50(2)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

F39 Words in s. 50(3)-(6) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 50(3)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

F40 Words in s. 50(9) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 50(3)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

F41 Words in s. 50(11)(b) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 50(3)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

51 Public offices: recommendations for appointments, etc.

(1) A person (A) who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) **[**[F42], (b) or (d)**]**, must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding who to recommend for appointment or to whose appointment to give approval;

(b) by not recommending B for appointment to the office;

(c) by making a negative recommendation of B for appointment to the office;

(d) by not giving approval to the appointment of B to the office.

(2) A person who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) **[**[F42], (b) or (d)**]** must not, in relation to the office, harass a person seeking or being considered for the recommendation or approval.

(3) A person (A) who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) **[**[F42], (b) or (d)**]**, must not victimise a person (B)—

(a) in the arrangements A makes for deciding who to recommend for appointment or to whose appointment to give approval;

(b) by not recommending B for appointment to the office;

(c) by making a negative recommendation of B for appointment to the office;

(d) by not giving approval to the appointment of B to the office.

(4) A duty to make reasonable adjustments applies to a person who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) **[**[F42], (b) or (d)**]**.

(5) A reference in this section to a person who has the power to make a recommendation for or give approval to an appointment to a public office within section 50(2)(a) **[**[F43]or (d)**]** is a reference only to a relevant body which has that power; and for that purpose "relevant body" means a body established—

(a) by or in pursuance of an enactment, or

(b) by a member of the executive.

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Textual Amendments

F42 Words in s. 51(1)-(4) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 51(2)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

F43 Words in s. 51(5) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 51(3)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

52 Interpretation and exceptions

(1) This section applies for the purposes of sections 49 to 51.

(2) "Personal office" has the meaning given in section 49.

(3) "Public office" has the meaning given in section 50.

(4) An office or post which is both a personal office and a public office is to be treated as being a public office only.

(5) Appointment to an office or post does not include election to it.

(6) "Relevant person", in relation to an office, means the person who, in relation to a matter specified in the first column of the table, is specified in the second column (but a reference to a relevant person does not in any case include the House of Commons, the House of Lords, the National Assembly for Wales or the Scottish Parliament).

Matter	*Relevant person*
A term of appointment	The person who has the power to set the term.
Access to an opportunity	The person who has the power to afford access to the opportunity (or, if there is no such person, the person who has the power to make the appointment).
Terminating an appointment	The person who has the power to terminate the appointment.
Subjecting an appointee to any other detriment	The person who has the power in relation to the matter to which the conduct in question relates (or, if there is no such person, the person who has the power to make the appointment).
Harassing an appointee	The person who has the power in relation to the matter to which the conduct in question relates.

(7) A reference to terminating a person's appointment includes a reference to termination of the appointment—

(a) by the expiry of a period (including a period expiring by reference to an event or circumstance);

(b) by an act of the person (including giving notice) in circumstances such that the person is entitled, because of the relevant person's conduct, to terminate the appointment without notice.

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(8) Subsection (7)(a) does not apply if, immediately after the termination, the appointment is renewed on the same terms.

(9) Schedule 6 (excluded offices) has effect.

Qualifications

53 Qualifications bodies

(1) A qualifications body (A) must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
- (b) as to the terms on which it is prepared to confer a relevant qualification on B;
- (c) by not conferring a relevant qualification on B.

(2) A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification—
- (a) by withdrawing the qualification from B;
- (b) by varying the terms on which B holds the qualification;
- (c) by subjecting B to any other detriment.

(3) A qualifications body must not, in relation to conferment by it of a relevant qualification, harass—
- (a) a person who holds the qualification, or
- (b) a person who applies for it.

(4) A qualifications body (A) must not victimise a person (B)—
- (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
- (b) as to the terms on which it is prepared to confer a relevant qualification on B;
- (c) by not conferring a relevant qualification on B.

(5) A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification—
- (a) by withdrawing the qualification from B;
- (b) by varying the terms on which B holds the qualification;
- (c) by subjecting B to any other detriment.

(6) A duty to make reasonable adjustments applies to a qualifications body.

(7) The application by a qualifications body of a competence standard to a disabled person is not disability discrimination unless it is discrimination by virtue of section 19.

54 Interpretation

(1) This section applies for the purposes of section 53.

(2) A qualifications body is an authority or body which can confer a relevant qualification.

(3) A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.

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(4) An authority or body is not a qualifications body in so far as—
- (a) it can confer a qualification to which section 96 applies,
- (b) it is the responsible body of a school to which section 85 applies,
- (c) it is the governing body of an institution to which section 91 applies,
- (d) it exercises functions under the Education Acts, or
- (e) it exercises functions under the Education (Scotland) Act 1980.

(5) A reference to conferring a relevant qualification includes a reference to renewing or extending the conferment of a relevant qualification.

(6) A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.

Employment services

55 Employment service-providers

(1) A person (an "employment service-provider") concerned with the provision of an employment service must not discriminate against a person—
- (a) in the arrangements the service-provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
- (b) as to the terms on which the service-provider offers to provide the service to the person;
- (c) by not offering to provide the service to the person.

(2) An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—
- (a) as to the terms on which A provides the service to B;
- (b) by not providing the service to B;
- (c) by terminating the provision of the service to B;
- (d) by subjecting B to any other detriment.

(3) An employment service-provider must not, in relation to the provision of an employment service, harass—
- (a) a person who asks the service-provider to provide the service;
- (b) a person for whom the service-provider provides the service.

(4) An employment service-provider (A) must not victimise a person (B)—
- (a) in the arrangements A makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
- (b) as to the terms on which A offers to provide the service to B;
- (c) by not offering to provide the service to B.

(5) An employment service-provider (A) must not, in relation to the provision of an employment service, victimise a person (B)—
- (a) as to the terms on which A provides the service to B;
- (b) by not providing the service to B;
- (c) by terminating the provision of the service to B;
- (d) by subjecting B to any other detriment.

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(6) A duty to make reasonable adjustments applies to an employment service-provider, except in relation to the provision of a vocational service.

(7) The duty imposed by section 29(7)(a) applies to a person concerned with the provision of a vocational service; but a failure to comply with that duty in relation to the provision of a vocational service is a contravention of this Part for the purposes of Part 9 (enforcement).

56 Interpretation

(1) This section applies for the purposes of section 55.

(2) The provision of an employment service includes—
- (a) the provision of vocational training;
- (b) the provision of vocational guidance;
- (c) making arrangements for the provision of vocational training or vocational guidance;
- (d) the provision of a service for finding employment for persons;
- (e) the provision of a service for supplying employers with persons to do work;
- (f) the provision of a service in pursuance of arrangements made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State relating to employment);
- (g) the provision of a service in pursuance of arrangements made or a direction given under section 10 of that Act (careers services);
- (h) the exercise of a function in pursuance of arrangements made under section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 (functions of Scottish Enterprise, etc. relating to employment);
- (i) an assessment related to the conferment of a relevant qualification within the meaning of section 53 above (except in so far as the assessment is by the qualifications body which confers the qualification).

(3) This section does not apply in relation to training or guidance in so far as it is training or guidance in relation to which another provision of this Part applies.

(4) This section does not apply in relation to training or guidance for pupils of a school to which section 85 applies in so far as it is training or guidance to which the responsible body of the school has power to afford access (whether as the responsible body of that school or as the responsible body of any other school at which the training or guidance is provided).

(5) This section does not apply in relation to training or guidance for students of an institution to which section 91 applies in so far as it is training or guidance to which the governing body of the institution has power to afford access.

(6) "Vocational training" means—
- (a) training for employment, or
- (b) work experience (including work experience the duration of which is not agreed until after it begins).

(7) A reference to the provision of a vocational service is a reference to the provision of an employment service within subsection (2)(a) to (d) (or an employment service

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within subsection (2)(f) or (g) in so far as it is also an employment service within subsection (2)(a) to (d)); and for that purpose—

(a) the references to an employment service within subsection (2)(a) do not include a reference to vocational training within the meaning given by subsection (6)(b), and

(b) the references to an employment service within subsection (2)(d) also include a reference to a service for assisting persons to retain employment.

(8) A reference to training includes a reference to facilities for training.

Trade organisations

57 Trade organisations

(1) A trade organisation (A) must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding to whom to offer membership of the organisation;

(b) as to the terms on which it is prepared to admit B as a member;

(c) by not accepting B's application for membership.

(2) A trade organisation (A) must not discriminate against a member (B)—

(a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;

(b) by depriving B of membership;

(c) by varying the terms on which B is a member;

(d) by subjecting B to any other detriment.

(3) A trade organisation must not, in relation to membership of it, harass—

(a) a member, or

(b) an applicant for membership.

(4) A trade organisation (A) must not victimise a person (B)—

(a) in the arrangements A makes for deciding to whom to offer membership of the organisation;

(b) as to the terms on which it is prepared to admit B as a member;

(c) by not accepting B's application for membership.

(5) A trade organisation (A) must not victimise a member (B)—

(a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;

(b) by depriving B of membership;

(c) by varying the terms on which B is a member;

(d) by subjecting B to any other detriment.

(6) A duty to make reasonable adjustments applies to a trade organisation.

(7) A trade organisation is—

(a) an organisation of workers,

(b) an organisation of employers, or

(c) any other organisation whose members carry on a particular trade or profession for the purposes of which the organisation exists.

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Local authority members

58 Official business of members

(1) A local authority must not discriminate against a member of the authority in relation to the member's carrying out of official business—

(a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;

(b) by subjecting the member to any other detriment.

(2) A local authority must not, in relation to a member's carrying out of official business, harass the member.

(3) A local authority must not victimise a member of the authority in relation to the member's carrying out of official business—

(a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;

(b) by subjecting the member to any other detriment.

(4) A member of a local authority is not subjected to a detriment for the purposes of subsection (1)(b) or (3)(b) only because the member is—

(a) not appointed or elected to an office of the authority,

(b) not appointed or elected to, or to an office of, a committee or sub-committee of the authority, or

(c) not appointed or nominated in exercise of an appointment power of the authority.

(5) In subsection (4)(c), an appointment power of a local authority is a power of the authority, or of a group of bodies including the authority, to make—

(a) appointments to a body;

(b) nominations for appointment to a body.

(6) A duty to make reasonable adjustments applies to a local authority.

59 Interpretation

(1) This section applies for the purposes of section 58.

(2) "Local authority" means—

(a) a county council in England;

(b) a district council in England;

(c) the Greater London Authority;

(d) a London borough council;

(e) the Common Council of the City of London;

(f) the Council of the Isles of Scilly;

(g) a parish council in England;

(h) a county council in Wales;

(i) a community council in Wales;

(j) a county borough council in Wales;

[[F44](ja) a corporate joint committee established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021;**]**

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(k) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

(l) a community council in Scotland.

(3) A Minister of the Crown may by order amend subsection (2) so as to add, vary or omit a reference to a body which exercises functions that have been conferred on a local authority within paragraph (a) to (l).

(4) A reference to the carrying-out of official business by a person who is a member of a local authority is a reference to the doing of anything by the person—

(a) as a member of the authority,

(b) as a member of a body to which the person is appointed by, or appointed following nomination by, the authority or a group of bodies including the authority, or

(c) as a member of any other public body.

(5) "Member", in relation to the Greater London Authority, means—

(a) the Mayor of London;

(b) a member of the London Assembly.

Textual Amendments

F44 S. 59(2)(ja) inserted (E.W.) (1.4.2021) by The Corporate Joint Committees (General) (Wales) Regulations 2021 (S.I. 2021/327), reg. 1(2), **Sch. 3 para. 2**

Recruitment

60 Enquiries about disability and health

(1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)—

(a) before offering work to B, or

(b) where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.

(2) A contravention of subsection (1) (or a contravention of section 111 or 112 that relates to a contravention of subsection (1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 120(8), is enforceable only by the Commission under that Part).

(3) A does not contravene a relevant disability provision merely by asking about B's health; but A's conduct in reliance on information given in response may be a contravention of a relevant disability provision.

(4) Subsection (5) applies if B brings proceedings before an employment tribunal on a complaint that A's conduct in reliance on information given in response to a question about B's health is a contravention of a relevant disability provision.

(5) In the application of section 136 to the proceedings, the particulars of the complaint are to be treated for the purposes of subsection (2) of that section as facts from which the tribunal could decide that A contravened the provision.

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(6) This section does not apply to a question that A asks in so far as asking the question is necessary for the purpose of—

(a) establishing whether B will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments is or will be imposed on A in relation to B in connection with a requirement to undergo an assessment,

(b) establishing whether B will be able to carry out a function that is intrinsic to the work concerned,

(c) monitoring diversity in the range of persons applying to A for work,

(d) taking action to which section 158 would apply if references in that section to persons who share (or do not share) a protected characteristic were references to disabled persons (or persons who are not disabled) and the reference to the characteristic were a reference to disability, or

(e) if A applies in relation to the work a requirement to have a particular disability, establishing whether B has that disability.

(7) In subsection (6)(b), where A reasonably believes that a duty to make reasonable adjustments would be imposed on A in relation to B in connection with the work, the reference to a function that is intrinsic to the work is to be read as a reference to a function that would be intrinsic to the work once A complied with the duty.

(8) Subsection (6)(e) applies only if A shows that, having regard to the nature or context of the work—

(a) the requirement is an occupational requirement, and

(b) the application of the requirement is a proportionate means of achieving a legitimate aim.

(9) "Work" means employment, contract work, a position as a partner, a position as a member of an LLP, a pupillage or tenancy, being taken as a devil, membership of a stable, an appointment to a personal or public office, or the provision of an employment service; and the references in subsection (1) to offering a person work are, in relation to contract work, to be read as references to allowing a person to do the work.

(10) A reference to offering work is a reference to making a conditional or unconditional offer of work (and, in relation to contract work, is a reference to allowing a person to do the work subject to fulfilment of one or more conditions).

(11) The following, so far as relating to discrimination within section 13 because of disability, are relevant disability provisions—

(a) section 39(1)(a) or (c);

(b) section 41(1)(b);

(c) section 44(1)(a) or (c);

(d) section 45(1)(a) or (c);

(e) section 47(1)(a) or (c);

(f) section 48(1)(a) or (c);

(g) section 49(3)(a) or (c);

(h) section 50(3)(a) or (c);

(i) section 51(1);

(j) section 55(1)(a) or (c).

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(12) An assessment is an interview or other process designed to give an indication of a person's suitability for the work concerned.

(13) For the purposes of this section, whether or not a person has a disability is to be regarded as an aspect of that person's health.

(14) This section does not apply to anything done for the purpose of vetting applicants for work for reasons of national security.

CHAPTER 2

OCCUPATIONAL PENSION SCHEMES

61 Non-discrimination rule

(1) An occupational pension scheme must be taken to include a non-discrimination rule.

(2) A non-discrimination rule is a provision by virtue of which a responsible person (A)—
- (a) must not discriminate against another person (B) in carrying out any of A's functions in relation to the scheme;
- (b) must not, in relation to the scheme, harass B;
- (c) must not, in relation to the scheme, victimise B.

(3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.

(4) The following are responsible persons—
- (a) the trustees or managers of the scheme;
- (b) an employer whose employees are, or may be, members of the scheme;
- (c) a person exercising an appointing function in relation to an office the holder of which is, or may be, a member of the scheme.

(5) A non-discrimination rule does not apply in relation to a person who is a pension credit member of a scheme.

(6) An appointing function is any of the following—
- (a) the function of appointing a person;
- (b) the function of terminating a person's appointment;
- (c) the function of recommending a person for appointment;
- (d) the function of approving an appointment.

(7) A breach of a non-discrimination rule is a contravention of this Part for the purposes of Part 9 (enforcement).

(8) It is not a breach of a non-discrimination rule for the employer or the trustees or managers of a scheme to maintain or use in relation to the scheme rules, practices, actions or decisions relating to age which are of a description specified by order by a Minister of the Crown.

(9) An order authorising the use of rules, practices, actions or decisions which are not in use before the order comes into force must not be made unless the Minister consults such persons as the Minister thinks appropriate.

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(10) A non-discrimination rule does not have effect in relation to an occupational pension scheme in so far as an equality rule has effect in relation to it (or would have effect in relation to it but for Part 2 of Schedule 7).

(11) A duty to make reasonable adjustments applies to a responsible person.

Modifications etc. (not altering text)

C11 S. 61 excluded (10.3.2022 for specified purposes) by the Public Service Pensions and Judicial Offices Act 2022 (c. 7), **ss. 30**, 131(1)(2)(a)(b) (with ss. 31(1), 32)

C12 S. 61 excluded (10.3.2022 for specified purposes) by the Public Service Pensions and Judicial Offices Act 2022 (c. 7), **ss. 66**, 131(1)(2)(c) (with ss. 67(1), 68)

Commencement Information

I16 S. 61 wholly in force; s. 61 not in force at Royal Assent see s. 216; s. 61(8)(9) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; s. 61 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(5)(b)** (with art. 15)

62 Non-discrimination alterations

(1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make non-discrimination alterations to the scheme.

(2) This section also applies if the trustees or managers of an occupational pension scheme have power to make non-discrimination alterations to the scheme but the procedure for doing so—

(a) is liable to be unduly complex or protracted, or

(b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.

(3) The trustees or managers may by resolution make non-discrimination alterations to the scheme.

(4) Non-discrimination alterations may have effect in relation to a period before the date on which they are made.

(5) Non-discrimination alterations to an occupational pension scheme are such alterations to the scheme as may be required for the provisions of the scheme to have the effect that they have in consequence of section 61(3).

63 Communications

(1) In their application to communications the following provisions apply in relation to a disabled person who is a pension credit member of an occupational pension scheme as they apply in relation to a disabled person who is a deferred member or pensioner member of the scheme—

(a) section 61;

(b) section 120;

(c) section 126;

(d) paragraph 19 of Schedule 8 (and such other provisions of that Schedule as apply for the purposes of that paragraph).

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(2) Communications include—
  (a) the provision of information;
  (b) the operation of a dispute resolution procedure.

CHAPTER 3

EQUALITY OF TERMS

Sex equality

64 Relevant types of work

(1) Sections 66 to 70 apply where—
  (a) a person (A) is employed on work that is equal to the work that a comparator of the opposite sex (B) does;
  (b) a person (A) holding a personal or public office does work that is equal to the work that a comparator of the opposite sex (B) does.

(2) The references in subsection (1) to the work that B does are not restricted to work done contemporaneously with the work done by A.

65 Equal work

(1) For the purposes of this Chapter, A's work is equal to that of B if it is—
  (a) like B's work,
  (b) rated as equivalent to B's work, or
  (c) of equal value to B's work.

(2) A's work is like B's work if—
  (a) A's work and B's work are the same or broadly similar, and
  (b) such differences as there are between their work are not of practical importance in relation to the terms of their work.

(3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to—
  (a) the frequency with which differences between their work occur in practice, and
  (b) the nature and extent of the differences.

(4) A's work is rated as equivalent to B's work if a job evaluation study—
  (a) gives an equal value to A's job and B's job in terms of the demands made on a worker, or
  (b) would give an equal value to A's job and B's job in those terms were the evaluation not made on a sex-specific system.

(5) A system is sex-specific if, for the purposes of one or more of the demands made on a worker, it sets values for men different from those it sets for women.

(6) A's work is of equal value to B's work if it is—
  (a) neither like B's work nor rated as equivalent to B's work, but

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(b) nevertheless equal to B's work in terms of the demands made on A by reference to factors such as effort, skill and decision-making.

66 Sex equality clause

(1) If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one.

(2) A sex equality clause is a provision that has the following effect—

(a) if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable;

(b) if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.

(3) Subsection (2)(a) applies to a term of A's relating to membership of or rights under an occupational pension scheme only in so far as a sex equality rule would have effect in relation to the term.

(4) In the case of work within section 65(1)(b), a reference in subsection (2) above to a term includes a reference to such terms (if any) as have not been determined by the rating of the work (as well as those that have).

67 Sex equality rule

(1) If an occupational pension scheme does not include a sex equality rule, it is to be treated as including one.

(2) A sex equality rule is a provision that has the following effect—

(a) if a relevant term is less favourable to A than it is to B, the term is modified so as not to be less favourable;

(b) if a term confers a relevant discretion capable of being exercised in a way that would be less favourable to A than to B, the term is modified so as to prevent the exercise of the discretion in that way.

(3) A term is relevant if it is—

(a) a term on which persons become members of the scheme, or

(b) a term on which members of the scheme are treated.

(4) A discretion is relevant if its exercise in relation to the scheme is capable of affecting—

(a) the way in which persons become members of the scheme, or

(b) the way in which members of the scheme are treated.

(5) The reference in subsection (3)(b) to a term on which members of a scheme are treated includes a reference to the term as it has effect for the benefit of dependants of members.

(6) The reference in subsection (4)(b) to the way in which members of a scheme are treated includes a reference to the way in which they are treated as the scheme has effect for the benefit of dependants of members.

[[F45](7) If the effect of a relevant matter on a person (A) differs according to the effect it has on a person of the same sex as A, according to whether A is married, in a civil partnership, or for some other reason due to A's family status, a comparison for the purposes of

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this section of the effect of that matter on persons of the opposite sex must be with a person of the opposite sex to A who is in the same position as A and in particular—

(a) where A is married to**[**[F46], or the civil partner of,**]** someone of the opposite sex, A is to be compared to a person of the opposite sex to A ("B") where B is married to**[**[F47] or (as the case may be) the civil partner of**]** someone of the opposite sex to B;

[[F48](b) where A is married to, or the civil partner of, someone of the same sex, A is to be compared to B where B is married to or (as the case may be) the civil partner of someone of the same sex as B.**]]**

(8) A relevant matter is—

(a) a relevant term;

(b) a term conferring a relevant discretion;

(c) the exercise of a relevant discretion in relation to an occupational pension scheme.

(9) This section, so far as relating to the terms on which persons become members of an occupational pension scheme, does not have effect in relation to pensionable service before 8 April 1976.

(10) This section, so far as relating to the terms on which members of an occupational pension scheme are treated, does not have effect in relation to pensionable service before 17 May 1990.

Textual Amendments

F45 S. 67(7) substituted (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 5 para. 19(2)**

F46 Words in s. 67(7)(a) inserted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 32(3)(a)(i)**

F47 Words in s. 67(7)(a) inserted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 32(3)(a)(ii)**

F48 S. 67(7)(b) substituted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 32(3)(b)**

68 Sex equality rule: consequential alteration of schemes

(1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make sex equality alterations to the scheme.

(2) This section also applies if the trustees or managers of an occupational pension scheme have power to make sex equality alterations to the scheme but the procedure for doing so—

(a) is liable to be unduly complex or protracted, or

(b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.

(3) The trustees or managers may by resolution make sex equality alterations to the scheme.

(4) Sex equality alterations may have effect in relation to a period before the date on which they are made.

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(5) Sex equality alterations to an occupational pension scheme are such alterations to the scheme as may be required to secure conformity with a sex equality rule.

69 Defence of material factor

(1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—
  (a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and
  (b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.

(2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.

(3) For the purposes of subsection (1), the long-term objective of reducing inequality between men's and women's terms of work is always to be regarded as a legitimate aim.

(4) A sex equality rule has no effect in relation to a difference between A and B in the effect of a relevant matter if the trustees or managers of the scheme in question show that the difference is because of a material factor which is not the difference of sex.

(5) "Relevant matter" has the meaning given in section 67.

(6) For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.

70 Exclusion of sex discrimination provisions

(1) The relevant sex discrimination provision has no effect in relation to a term of A's that—
  (a) is modified by, or included by virtue of, a sex equality clause or rule, or
  (b) would be so modified or included but for section 69 or Part 2 of Schedule 7.

(2) Neither of the following is sex discrimination for the purposes of the relevant sex discrimination provision—
  (a) the inclusion in A's terms of a term that is less favourable as referred to in section 66(2)(a);
  (b) the failure to include in A's terms a corresponding term as referred to in section 66(2)(b).

(3) The relevant sex discrimination provision is, in relation to work of a description given in the first column of the table, the provision referred to in the second column so far as relating to sex.

Description of work	***Provision***
Employment	Section 39(2)
Appointment to a personal office	Section 49(6)
Appointment to a public office	Section 50(6)

Status: *This version of this Act contains provisions that are prospective.*
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71 Sex discrimination in relation to contractual pay

(1) This section applies in relation to a term of a person's work—
  (a) that relates to pay, but
  (b) in relation to which a sex equality clause or rule has no effect.

(2) The relevant sex discrimination provision (as defined by section 70) has no effect in relation to the term except in so far as treatment of the person amounts to a contravention of the provision by virtue of section 13 or 14.

Pregnancy and maternity equality

72 Relevant types of work

Sections 73 to 76 apply where a woman—
  (a) is employed, or
  (b) holds a personal or public office.

73 Maternity equality clause

(1) If the terms of the woman's work do not (by whatever means) include a maternity equality clause, they are to be treated as including one.

(2) A maternity equality clause is a provision that, in relation to the terms of the woman's work, has the effect referred to in section 74(1), (6) and (8).

(3) In the case of a term relating to membership of or rights under an occupational pension scheme, a maternity equality clause has only such effect as a maternity equality rule would have.

74 Maternity equality clause: pay

(1) A term of the woman's work that provides for maternity-related pay to be calculated by reference to her pay at a particular time is, if each of the following three conditions is satisfied, modified as mentioned in subsection (5).

(2) The first condition is that, after the time referred to in subsection (1) but before the end of the protected period—
  (a) her pay increases, or
  (b) it would have increased had she not been on maternity leave.

(3) The second condition is that the maternity-related pay is not—
  (a) what her pay would have been had she not been on maternity leave, or
  (b) the difference between the amount of statutory maternity pay to which she is entitled and what her pay would have been had she not been on maternity leave.

(4) The third condition is that the terms of her work do not provide for the maternity-related pay to be subject to—
  (a) an increase as mentioned in subsection (2)(a), or
  (b) an increase that would have occurred as mentioned in subsection (2)(b).

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(5) The modification referred to in subsection (1) is a modification to provide for the maternity-related pay to be subject to—
  (a) any increase as mentioned in subsection (2)(a), or
  (b) any increase that would have occurred as mentioned in subsection (2)(b).

(6) A term of her work that—
  (a) provides for pay within subsection (7), but
  (b) does not provide for her to be given the pay in circumstances in which she would have been given it had she not been on maternity leave,

  is modified so as to provide for her to be given it in circumstances in which it would normally be given.

(7) Pay is within this subsection if it is—
  (a) pay (including pay by way of bonus) in respect of times before the woman is on maternity leave,
  (b) pay by way of bonus in respect of times when she is on compulsory maternity leave, or
  (c) pay by way of bonus in respect of times after the end of the protected period.

(8) A term of the woman's work that—
  (a) provides for pay after the end of the protected period, but
  (b) does not provide for it to be subject to an increase to which it would have been subject had she not been on maternity leave,

  is modified so as to provide for it to be subject to the increase.

(9) Maternity-related pay is pay (other than statutory maternity pay) to which a woman is entitled—
  (a) as a result of being pregnant, or
  (b) in respect of times when she is on maternity leave.

(10) A reference to the protected period is to be construed in accordance with section 18.

75 Maternity equality rule

(1) If an occupational pension scheme does not include a maternity equality rule, it is to be treated as including one.

(2) A maternity equality rule is a provision that has the effect set out in subsections (3) and (4).

(3) If a relevant term does not treat time when the woman is on maternity leave as it treats time when she is not, the term is modified so as to treat time when she is on maternity leave as time when she is not.

(4) If a term confers a relevant discretion capable of being exercised so that time when she is on maternity leave is treated differently from time when she is not, the term is modified so as not to allow the discretion to be exercised in that way.

(5) A term is relevant if it is—
  (a) a term relating to membership of the scheme,
  (b) a term relating to the accrual of rights under the scheme, or

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(c) a term providing for the determination of the amount of a benefit payable under the scheme.

(6) A discretion is relevant if its exercise is capable of affecting—
(a) membership of the scheme,
(b) the accrual of rights under the scheme, or
(c) the determination of the amount of a benefit payable under the scheme.

(7) This section does not require the woman's contributions to the scheme in respect of time when she is on maternity leave to be determined otherwise than by reference to the amount she is paid in respect of that time.

(8) This section, so far as relating to time when she is on ordinary maternity leave but is not being paid by her employer, applies only in a case where the expected week of childbirth began on or after 6 April 2003.

(9) This section, so far as relating to time when she is on additional maternity leave but is not being paid by her employer—
(a) does not apply to the accrual of rights under the scheme in any case;
(b) applies for other purposes only in a case where the expected week of childbirth began on or after 5 October 2008.

(10) In this section—
(a) a reference to being on maternity leave includes a reference to having been on maternity leave, and
(b) a reference to being paid by the employer includes a reference to receiving statutory maternity pay from the employer.

76 Exclusion of pregnancy and maternity discrimination provisions

(1) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work that is modified by a maternity equality clause or rule.

[[F49](1A) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work—
(a) that relates to pay, but
(b) in relation to which a maternity equality clause or rule has no effect.**]**

(2) The inclusion in the woman's terms of a term that requires modification by virtue of section 73(2) or (3) is not pregnancy and maternity discrimination for the purposes of the relevant pregnancy and maternity discrimination provision.

(3) The relevant pregnancy and maternity discrimination provision is, in relation to a description of work given in the first column of the table, the provision referred to in the second column so far as relating to pregnancy and maternity.

Description of work	***Provision***
Employment	Section 39(2)
Appointment to a personal office	Section 49(6)
Appointment to a public office	Section 50(6)

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Textual Amendments

F49 S. 76(1A) inserted (30.10.2010) by The Equality Act 2010 (Amendment) Order 2010 (S.I. 2010/2622), **art. 2**

Disclosure of information

77 Discussions about pay

(1) A term of a person's work that purports to prevent or restrict the person (P) from disclosing or seeking to disclose information about the terms of P's work is unenforceable against P in so far as P makes or seeks to make a relevant pay disclosure.

(2) A term of a person's work that purports to prevent or restrict the person (P) from seeking disclosure of information from a colleague about the terms of the colleague's work is unenforceable against P in so far as P seeks a relevant pay disclosure from the colleague; and "colleague" includes a former colleague in relation to the work in question.

(3) A disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out whether or to what extent there is, in relation to the work in question, a connection between pay and having (or not having) a particular protected characteristic.

(4) The following are to be treated as protected acts for the purposes of the relevant victimisation provision—
   (a) seeking a disclosure that would be a relevant pay disclosure;
   (b) making or seeking to make a relevant pay disclosure;
   (c) receiving information disclosed in a relevant pay disclosure.

(5) The relevant victimisation provision is, in relation to a description of work specified in the first column of the table, section 27 so far as it applies for the purposes of a provision mentioned in the second column.

Description of work	***Provision by virtue of which section 27 has effect***
Employment	Section 39(3) or (4)
Appointment to a personal office	Section 49(5) or (8)
Appointment to a public office	Section 50(5) or (9)

78 Gender pay gap information

(1) Regulations may require employers to publish information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees.

(2) This section does not apply to—
   (a) an employer who has fewer than 250 employees;
   (b) a person specified in Schedule 19;

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(c) a government department or part of the armed forces not specified in that Schedule.

(3) The regulations may prescribe—
(a) descriptions of employer;
(b) descriptions of employee;
(c) how to calculate the number of employees that an employer has;
(d) descriptions of information;
(e) the time at which information is to be published;
(f) the form and manner in which it is to be published.

(4) Regulations under subsection (3)(e) may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months.

(5) The regulations may make provision for a failure to comply with the regulations—
(a) to be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale;
(b) to be enforced, otherwise than as an offence, by such means as are prescribed.

(6) The reference to a failure to comply with the regulations includes a reference to a failure by a person acting on behalf of an employer.

Commencement Information
I17 S. 78 in force at 22.8.2016 by S.I. 2016/839, **art. 2**

Supplementary

79 Comparators

(1) This section applies for the purposes of this Chapter.

(2) If A is employed, B is a comparator if subsection (3) or (4) applies.

(3) This subsection applies if—
(a) B is employed by A's employer or by an associate of A's employer, and
(b) A and B work at the same establishment.

(4) This subsection applies if—
(a) B is employed by A's employer or an associate of A's employer,
(b) B works at an establishment other than the one at which A works, and
(c) common terms apply at the establishments (either generally or as between A and B).

(5) If A holds a personal or public office, B is a comparator if—
(a) B holds a personal or public office, and
(b) the person responsible for paying A is also responsible for paying B.

(6) If A is a relevant member of the House of Commons staff, B is a comparator if—

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(a) B is employed by the person who is A's employer under subsection (6) of section 195 of the Employment Rights Act 1996, or

(b) if subsection (7) of that section applies in A's case, B is employed by the person who is A's employer under that subsection.

(7) If A is a relevant member of the House of Lords staff, B is a comparator if B is also a relevant member of the House of Lords staff.

(8) Section 42 does not apply to this Chapter; accordingly, for the purposes of this Chapter only, holding the office of constable is to be treated as holding a personal office.

(9) For the purposes of this section, employers are associated if—

(a) one is a company of which the other (directly or indirectly) has control, or

(b) both are companies of which a third person (directly or indirectly) has control.

80 Interpretation and exceptions

(1) This section applies for the purposes of this Chapter.

(2) The terms of a person's work are—

(a) if the person is employed, the terms of the person's employment that are in the person's contract of employment, contract of apprenticeship or contract to do work personally;

(b) if the person holds a personal or public office, the terms of the person's appointment to the office.

(3) If work is not done at an establishment, it is to be treated as done at the establishment with which it has the closest connection.

(4) A person (P) is the responsible person in relation to another person if—

(a) P is the other's employer;

(b) P is responsible for paying remuneration in respect of a personal or public office that the other holds.

(5) A job evaluation study is a study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors such as effort, skill and decision-making, the jobs to be done—

(a) by some or all of the workers in an undertaking or group of undertakings, or

(b) in the case of the armed forces, by some or all of the members of the armed forces.

(6) In the case of Crown employment, the reference in subsection (5)(a) to an undertaking is to be construed in accordance with section 191(4) of the Employment Rights Act 1996.

[F50](7) . . . . . .

(8) Schedule 7 (exceptions) has effect.

Textual Amendments

F50 S. 80(7) omitted (13.3.2014) by virtue of The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), **Sch. 1 para. 35(3)**

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Commencement Information

I18 S. 80 wholly in force; s. 80 not in force at Royal Assent see s. 216; s. 80(8) in force for certain purposes at 4.8.2010 by S.I. 2010/1966, **art. 2**; s. 80 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(5)(e)** (with art. 15)

CHAPTER 4

SUPPLEMENTARY

81 Ships and hovercraft

(1) This Part applies in relation to—

(a) work on ships,

(b) work on hovercraft, and

(c) seafarers,

only in such circumstances as are prescribed.

(2) For the purposes of this section, it does not matter whether employment arises or work is carried out within or outside the United Kingdom.

(3) "Ship" has the same meaning as in the Merchant Shipping Act 1995.

(4) "Hovercraft" has the same meaning as in the Hovercraft Act 1968.

(5) "Seafarer" means a person employed or engaged in any capacity on board a ship or hovercraft.

(6) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.

Commencement Information

I19 S. 81 wholly in force; s. 81 not in force at Royal Assent see s. 216; s. 81 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; s. 81 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(5)(e)** (with art. 15)

82 Offshore work

(1) Her Majesty may by Order in Council provide that in the case of persons in offshore work—

(a) specified provisions of this Part apply (with or without modification);

(b) Northern Ireland legislation making provision for purposes corresponding to any of the purposes of this Part applies (with or without modification).

(2) The Order may—

(a) provide for these provisions, as applied by the Order, to apply to individuals (whether or not British citizens) and bodies corporate (whether or not incorporated under the law of a part of the United Kingdom), whether or not such application affects activities outside the United Kingdom;

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(b) make provision for conferring jurisdiction on a specified court or class of court or on employment tribunals in respect of offences, causes of action or other matters arising in connection with offshore work;

(c) exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under the provisions mentioned in subsection (1) in connection with offshore work;

(d) provide that such proceedings must not be brought without such consent as may be required by the Order.

(3) "Offshore work" is work for the purposes of—

(a) activities in the territorial sea adjacent to the United Kingdom,

(b) activities such as are mentioned in subsection (2) of section 11 of the Petroleum Act 1998 in waters within subsection (8)(b) or (c) of that section, or

(c) activities mentioned in paragraphs (a) and (b) of section 87(1) of the Energy Act 2004 in waters to which that section applies.

(4) Work includes employment, contract work, a position as a partner or as a member of an LLP, or an appointment to a personal or public office.

(5) Northern Ireland legislation includes an enactment contained in, or in an instrument under, an Act that forms part of the law of Northern Ireland.

(6) In the application to Northern Ireland of subsection (2)(b), the reference to employment tribunals is to be read as a reference to industrial tribunals.

(7) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.

Commencement Information

I20 S. 82 wholly in force; s. 82 not in force at Royal Assent see s. 216; s. 82 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; s. 82 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(5)(e)** (with art. 15)

83 Interpretation and exceptions

(1) This section applies for the purposes of this Part.

(2) "Employment" means—

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;

(b) Crown employment;

(c) employment as a relevant member of the House of Commons staff;

(d) employment as a relevant member of the House of Lords staff.

(3) This Part applies to service in the armed forces as it applies to employment by a private person; and for that purpose—

(a) references to terms of employment, or to a contract of employment, are to be read as including references to terms of service;

(b) references to associated employers are to be ignored.

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(4) A reference to an employer or an employee, or to employing or being employed, is (subject to section 212(11)) to be read with subsections (2) and (3); and a reference to an employer also includes a reference to a person who has no employees but is seeking to employ one or more other persons.

(5) "Relevant member of the House of Commons staff" has the meaning given in section 195 of the Employment Rights Act 1996; and such a member of staff is an employee of—

(a) the person who is the employer of that member under subsection (6) of that section, or

(b) if subsection (7) of that section applies in the case of that member, the person who is the employer of that member under that subsection.

(6) "Relevant member of the House of Lords staff" has the meaning given in section 194 of that Act (which provides that such a member of staff is an employee of the Corporate Officer of the House of Lords).

(7) In the case of a person in Crown employment, or in employment as a relevant member of the House of Commons staff, a reference to the person's dismissal is a reference to the termination of the person's employment.

(8) A reference to a personal or public office, or to an appointment to a personal or public office, is to be construed in accordance with section 52.

(9) "Crown employment" has the meaning given in section 191 of the Employment Rights Act 1996.

(10) Schedule 8 (reasonable adjustments) has effect.

(11) Schedule 9 (exceptions) has effect.

Commencement Information

I21 S. 83 wholly in force; s. 83 not in force at Royal Assent see s. 216; s. 83(11) in force for certain purposes at 4.8.2010 by S.I. 2010/1966, **art. 2**; s. 83 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(5)(e)** (with art. 15)

PART 6

EDUCATION

CHAPTER 1

SCHOOLS

Modifications etc. (not altering text)

C13 Pt. 6 Ch. 1: power to amend or repeal conferred (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), s. 18(2)(c) (as amended by S.I. 2011/1651, **art. 12(b)**); S.I. 2012/320, **art. 2(g)**

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84 Application of this Chapter

This Chapter does not apply to the following protected characteristics—

(a) age;

(b) marriage and civil partnership.

85 Pupils: admission and treatment, etc.

(1) The responsible body of a school to which this section applies must not discriminate against a person—

(a) in the arrangements it makes for deciding who is offered admission as a pupil;

(b) as to the terms on which it offers to admit the person as a pupil;

(c) by not admitting the person as a pupil.

(2) The responsible body of such a school must not discriminate against a pupil—

(a) in the way it provides education for the pupil;

(b) in the way it affords the pupil access to a benefit, facility or service;

(c) by not providing education for the pupil;

(d) by not affording the pupil access to a benefit, facility or service;

(e) by excluding the pupil from the school;

(f) by subjecting the pupil to any other detriment.

(3) The responsible body of such a school must not harass—

(a) a pupil;

(b) a person who has applied for admission as a pupil.

(4) The responsible body of such a school must not victimise a person—

(a) in the arrangements it makes for deciding who is offered admission as a pupil;

(b) as to the terms on which it offers to admit the person as a pupil;

(c) by not admitting the person as a pupil.

(5) The responsible body of such a school must not victimise a pupil—

(a) in the way it provides education for the pupil;

(b) in the way it affords the pupil access to a benefit, facility or service;

(c) by not providing education for the pupil;

(d) by not affording the pupil access to a benefit, facility or service;

(e) by excluding the pupil from the school;

(f) by subjecting the pupil to any other detriment.

(6) A duty to make reasonable adjustments applies to the responsible body of such a school.

(7) In relation to England and Wales, this section applies to—

(a) a school maintained by a local authority;

(b) an independent educational institution (other than a special school);

[[F51](ba) an alternative provision Academy that is not an independent educational institution;**]**

(c) a special school (not maintained by a local authority).

(8) In relation to Scotland, this section applies to—

(a) a school managed by an education authority;

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(b) an independent school;

(c) a school in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980.

(9) The responsible body of a school to which this section applies is—

(a) if the school is within subsection (7)(a), the local authority or governing body;

(b) if it is within subsection (7)(b) **[**[F52], (ba)**]** or (c), the proprietor;

(c) if it is within subsection (8)(a), the education authority;

(d) if it is within subsection (8)(b), the proprietor;

(e) if it is within subsection (8)(c), the managers.

(10) In the application of section 26 for the purposes of subsection (3), none of the following is a relevant protected characteristic—

(a) gender reassignment;

(b) religion or belief;

(c) sexual orientation.

Textual Amendments

F51 S. 85(7)(ba) inserted (E.W.) (1.4.2012) by The Alternative Provision Academies (Consequential Amendments to Acts) (England) Order 2012 (S.I. 2012/976), arts. 1, 2, **Sch. para. 25(a)**

F52 Word in s. 85(9)(b) inserted (E.W.) (1.4.2012) by The Alternative Provision Academies (Consequential Amendments to Acts) (England) Order 2012 (S.I. 2012/976), arts. 1, 2, **Sch. para. 25(b)**

86 Victimisation of pupils, etc. for conduct of parents, etc.

(1) This section applies for the purposes of section 27 in its application to section 85(4) or (5).

(2) The references to B in paragraphs (a) and (b) of subsection (1) of section 27 include a reference to a parent or sibling of the child in question.

(3) Giving false evidence or information, or making a false allegation, in good faith is not a protected act in a case where—

(a) the evidence or information is given, or the allegation is made, by a parent or sibling of the child, and

(b) the child has acted in bad faith.

(4) Giving false evidence or information, or making a false allegation, in bad faith, is a protected act in a case where—

(a) the evidence or information is given, or the allegation is made, by a parent or sibling of the child, and

(b) the child has acted in good faith.

(5) In this section—

"child" means a person who has not attained the age of 18;

"sibling" means a brother or sister, a half-brother or half-sister, or a stepbrother or stepsister.

Status: *This version of this Act contains provisions that are prospective.*
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Modifications etc. (not altering text)

C14 S. 86(2)-(4) modified (W.) (1.9.2021) by The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 (S.I. 2021/403), regs. 1(2), **5**

87 [F53Application of enforcement powers under education legislation]

[F54(A1) Subsections (1) and (2) do not apply in the case of a school in Wales.**]**

(1) Sections 496 and 497 of the Education Act 1996 (powers to give directions where responsible body of school in default of obligations, etc.) **[**F55 and section 70 of the Education (Scotland) Act 1980**]** apply to the performance of a duty under section 85.

(2) But neither of sections 496 and 497 of **[**F56the Education Act 1996**]** applies to the performance of a duty under that section by the proprietor of an independent educational institution (other than a special school) **[**F57 or an alternative provision Academy that is not an independent educational institution**][**F58; and section 70 of the Education (Scotland) Act 1980 does not apply to the performance of a duty under that section by the proprietor of an independent school**]**.

[F59(3) In the case of a school in Wales—

(a) Chapter 1 of Part 2 of the School Standards and Organisation (Wales) Act 2013 ("the 2013 Act") (intervention in conduct of maintained schools) applies to the performance of a duty under section 85, but as if—

(i) the only relevant grounds for intervention were grounds 5 and 6 in section 2 of that Act, and

(ii) sections 3 to 9 and 12 to 16 of that Act did not apply;

(b) Chapter 2 of Part 2 of the 2013 Act (intervention in local authorities) applies to the performance of a duty under section 85, but as if—

(i) the only relevant grounds for intervention were grounds 1 and 2 in section 21 of that Act, and

(ii) sections 24 to 27 of that Act did not apply.

(4) But neither of Chapters 1 and 2 of Part 2 of the 2013 Act applies to the performance of a duty under section 85 by the proprietor of an independent educational institution (other than a special school).**]**

Textual Amendments

F53 S. 87 title substituted (1.10.2010) by virtue of The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), **3**

F54 S. 87(A1) inserted (E.W.) (20.2.2014) by School Standards and Organisation (Wales) Act 2013 (anaw 1), s. 100(4), **Sch. 5 para. 11(2)**; S.I. 2014/178, art. 2(f) (with art. 3)

F55 Words in s. 87(1) inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), **3(a)**

F56 Words in s. 87(2) substituted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), **3(b)(i)**

F57 Words in s. 87(2) inserted (E.W.) (1.4.2012) by The Alternative Provision Academies (Consequential Amendments to Acts) (England) Order 2012 (S.I. 2012/976), arts. 1, 2, **Sch. para. 26**

F58 Words in s. 87(2) inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), **3(b)(ii)**

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F59 S. 87(3)(4) inserted (E.W.) (20.2.2014) by School Standards and Organisation (Wales) Act 2013 (anaw 1), s. 100(4), **Sch. 5 para. 11(3)**; S.I. 2014/178, art. 2(f) (with art. 3)

88 Disabled pupils: accessibility

Schedule 10 (accessibility) has effect.

89 Interpretation and exceptions

(1) This section applies for the purposes of this Chapter.

(2) Nothing in this Chapter applies to anything done in connection with the content of the curriculum.

(3) "Pupil"—

(a) in relation to England and Wales, has the meaning given in section 3(1) of the Education Act 1996;

(b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

(4) "Proprietor"—

(a) in relation to a school in England and Wales, has the meaning given in section 579(1) of the Education Act 1996;

(b) in relation to a school in Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

(5) "School"—

(a) in relation to England and Wales, has the meaning given in section 4 of the Education Act 1996;

(b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

(6) A reference to a school includes a reference to an independent educational institution in England; and a reference to an independent educational institution in England is to be construed in accordance with Chapter 1 of Part 4 of the Education and Skills Act 2008.

(7) A reference to an independent educational institution is a reference to—

(a) an independent educational institution in England, or

(b) an independent school in Wales.

(8) "Independent school"—

(a) in relation to Wales, has the meaning given in section 463 of the Education Act 1996;

(b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

(9) "Special school" has the meaning given in section 337 of the Education Act 1996.

(10) "Local authority" means—

(a) in relation to England, an English local authority within the meaning of section 162 of the Education and Inspections Act 2006;

(b) in relation to Wales, a Welsh local authority within the meaning of that section.

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(11) "Education authority", in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

(12) Schedule 11 (exceptions) has effect.

CHAPTER 2

FURTHER AND HIGHER EDUCATION

90 Application of this Chapter

This Chapter does not apply to the protected characteristic of marriage and civil partnership.

91 Students: admission and treatment, etc.

(1) The responsible body of an institution to which this section applies must not discriminate against a person—
- (a) in the arrangements it makes for deciding who is offered admission as a student;
- (b) as to the terms on which it offers to admit the person as a student;
- (c) by not admitting the person as a student.

(2) The responsible body of such an institution must not discriminate against a student—
- (a) in the way it provides education for the student;
- (b) in the way it affords the student access to a benefit, facility or service;
- (c) by not providing education for the student;
- (d) by not affording the student access to a benefit, facility or service;
- (e) by excluding the student;
- (f) by subjecting the student to any other detriment.

(3) The responsible body of such an institution must not discriminate against a disabled person—
- (a) in the arrangements it makes for deciding upon whom to confer a qualification;
- (b) as to the terms on which it is prepared to confer a qualification on the person;
- (c) by not conferring a qualification on the person;
- (d) by withdrawing a qualification from the person or varying the terms on which the person holds it.

(4) Subsection (3) applies only to disability discrimination.

(5) The responsible body of such an institution must not harass—
- (a) a student;
- (b) a person who has applied for admission as a student;
- (c) a disabled person who holds or has applied for a qualification conferred by the institution.

(6) The responsible body of such an institution must not victimise a person—

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(a) in the arrangements it makes for deciding who is offered admission as a student;
(b) as to the terms on which it offers to admit the person as a student;
(c) by not admitting the person as a student.

(7) The responsible body of such an institution must not victimise a student—
(a) in the way it provides education for the student;
(b) in the way it affords the student access to a benefit, facility or service;
(c) by not providing education for the student;
(d) by not affording the student access to a benefit, facility or service;
(e) by excluding the student;
(f) by subjecting the student to any other detriment.

(8) The responsible body of such an institution must not victimise a disabled person—
(a) in the arrangements it makes for deciding upon whom to confer a qualification;
(b) as to the terms on which it is prepared to confer a qualification on the person;
(c) by not conferring a qualification on the person;
(d) by withdrawing a qualification from the person or varying the terms on which the person holds it.

(9) A duty to make reasonable adjustments applies to the responsible body of such an institution.

(10) In relation to England and Wales, this section applies to—
(a) a university;
(b) any other institution within the higher education sector;
(c) an institution within the further education sector.
[[F60](d) a 16 to 19 Academy.**]**

(11) In relation to Scotland, this section applies to—
(a) a university;
(b) a designated institution;
(c) a college of further education.

(12) A responsible body is—
(a) in the case of an institution within subsection (10)(a), (b) or (c), the governing body;
[[F61](aa) in the case of an institution within subsection (10)(d), the proprietor (within the meaning of the Education Act 1996);**]**
(b) in the case of an institution within subsection (11)(a) or (b), the governing body;
(c) in the case of a college of further education under the management of a board of management, the board of management;
(d) in the case of any other college of further education, any board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.

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Textual Amendments

F60 S. 91(10)(d) inserted (1.4.2012) by Education Act 2011 (c. 21), s. 54(1), **Sch. 13 para. 20(2)(a)**; S.I. 2012/924, **art. 2**

F61 S. 91(12)(aa) inserted (1.4.2012) by Education Act 2011 (c. 21), s. 54(1), **Sch. 13 para. 20(2)(b)**; S.I. 2012/924, **art. 2**

92 Further and higher education courses

(1) The responsible body in relation to a course to which this section applies must not discriminate against a person—
- (a) in the arrangements it makes for deciding who is enrolled on the course;
- (b) as to the terms on which it offers to enrol the person on the course;
- (c) by not accepting the person's application for enrolment.

(2) The responsible body in relation to such a course must not discriminate against a person who is enrolled on the course in the services it provides or offers to provide.

(3) The responsible body in relation to such a course must not harass a person who—
- (a) seeks enrolment on the course;
- (b) is enrolled on the course;
- (c) is a user of services provided by the body in relation to the course.

(4) The responsible body in relation to such a course must not victimise a person—
- (a) in the arrangements it makes for deciding who is enrolled on the course;
- (b) as to the terms on which it offers to enrol the person on the course;
- (c) by not accepting the person's application for enrolment.

(5) The responsible body in relation to such a course must not victimise a person who is enrolled on the course in the services it provides or offers to provide.

(6) A duty to make reasonable adjustments applies to the responsible body.

(7) This section applies to—
- (a) a course of further or higher education secured by a responsible body in England or Wales;
- (b) a course of education provided by the governing body of a maintained school under section 80 of the School Standards and Framework Act 1998;
- (c) a course of further education secured by an education authority in Scotland.

(8) A responsible body is—
- (a) a local authority in England or Wales, for the purposes of subsection (7)(a);
- (b) the governing body of a maintained school, for the purposes of subsection (7)(b);
- (c) an education authority in Scotland, for the purposes of subsection (7)(c).

(9) In this section—

"course", in relation to further education, includes each component part of a course if there is no requirement imposed on persons registered for a component part of the course to register for another component part of the course;

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"enrolment" includes registration for a component part of a course;

"maintained school" has the meaning given in section 20(7) of the School Standards and Framework Act 1998;

"services" means services of any description which are provided wholly or mainly for persons enrolled on a course to which this section applies.

93 Recreational or training facilities

(1) The responsible body in relation to facilities to which this section applies must not discriminate against a person—
- (a) in the arrangements it makes for deciding who is provided with the facilities;
- (b) as to the terms on which it offers to provide the facilities to the person;
- (c) by not accepting the person's application for provision of the facilities.

(2) The responsible body in relation to such facilities must not discriminate against a person who is provided with the facilities in the services it provides or offers to provide.

(3) The responsible body in relation to such facilities must not harass a person who—
- (a) seeks to have the facilities provided;
- (b) is provided with the facilities;
- (c) is a user of services provided by the body in relation to the facilities.

(4) The responsible body in relation to such facilities must not victimise a person—
- (a) in the arrangements it makes for deciding who is provided with the facilities;
- (b) as to the terms on which it offers to provide the facilities to the person;
- (c) by not accepting the person's application for provision of the facilities.

(5) The responsible body in relation to such facilities must not victimise a person who is provided with the facilities in the services it provides or offers to provide.

(6) A duty to make reasonable adjustments applies to the responsible body.

(7) This section applies to—
- (a) facilities secured by a local authority in England under section 507A or 507B of the Education Act 1996;
- (b) facilities secured by a local authority in Wales under section 508 of that Act;
- (c) recreational or training facilities provided by an education authority in Scotland.

(8) A responsible body is—
- (a) a local authority in England, for the purposes of subsection (7)(a);
- (b) a local authority in Wales, for the purposes of subsection (7)(b);
- (c) an education authority in Scotland, for the purposes of subsection (7)(c).

(9) This section does not apply to the protected characteristic of age, so far as relating to persons who have not attained the age of 18.

94 Interpretation and exceptions

(1) This section applies for the purposes of this Chapter.

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(2) Nothing in this Chapter applies to anything done in connection with the content of the curriculum.

(3) A reference to a student, in relation to an institution, is a reference to a person for whom education is provided by the institution.

(4) A reference to a university includes a reference to a university college and a college, school or hall of a university.

(5) A reference to an institution within the further or higher education sector is to be construed in accordance with section 91 of the Further and Higher Education Act 1992.

(6) "Further education"—

(a) in relation to England and Wales, has the meaning given in section 2 of the Education Act 1996;

(b) in relation to Scotland, has the meaning given in section 1(3) of the Further and Higher Education (Scotland) Act 1992.

(7) "Higher education"—

(a) in relation to England and Wales, means education provided by means of a course of a description mentioned in Schedule 6 to the Education Reform Act 1988;

(b) in relation to Scotland, has the meaning given in section 38 of the Further and Higher Education (Scotland) Act 1992.

(8) "College of further education" has the meaning given in section 36 of the Further and Higher Education (Scotland) Act 1992.

(9) "Designated institution" has the meaning given in section 44 of that Act.

(10) "Local authority" means—

(a) in relation to England, an English local authority within the meaning of section 162 of the Education and Inspections Act 2006;

(b) in relation to Wales, a Welsh local authority within the meaning of that section.

(11) "Education authority" has the meaning given by section 135(1) of the Education (Scotland) Act 1980.

[[F62](11A) A reference to conferring a qualification includes a reference—

(a) to renewing or extending the conferment of a qualification;

(b) to authenticating a qualification conferred by another person.**]**

(12) Schedule 12 (exceptions) has effect.

Textual Amendments

F62 S. 94(11A) inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), **4**

Commencement Information

I22 S. 94 wholly in force; s. 94 not in force at Royal Assent see s. 216; s. 94(12) in force for certain purposes at 4.8.2010 by S.I. 2010/1966, **art. 2**; s. 94 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(6)(b)** (with art. 15)

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CHAPTER 3

GENERAL QUALIFICATIONS BODIES

95 Application of this Chapter

This Chapter does not apply to the protected characteristic of marriage and civil partnership.

96 Qualifications bodies

(1) A qualifications body (A) must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
- (b) as to the terms on which it is prepared to confer a relevant qualification on B;
- (c) by not conferring a relevant qualification on B.

(2) A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification—
- (a) by withdrawing the qualification from B;
- (b) by varying the terms on which B holds the qualification;
- (c) by subjecting B to any other detriment.

(3) A qualifications body must not, in relation to conferment by it of a relevant qualification, harass—
- (a) a person who holds the qualification, or
- (b) a person who applies for it.

(4) A qualifications body (A) must not victimise a person (B)—
- (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
- (b) as to the terms on which it is prepared to confer a relevant qualification on B;
- (c) by not conferring a relevant qualification on B.

(5) A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification—
- (a) by withdrawing the qualification from B;
- (b) by varying the terms on which B holds the qualification;
- (c) by subjecting B to any other detriment.

(6) A duty to make reasonable adjustments applies to a qualifications body.

(7) Subsection (6) does not apply to the body in so far as the appropriate regulator specifies provisions, criteria or practices in relation to which the body—
- (a) is not subject to a duty to make reasonable adjustments;
- (b) is subject to a duty to make reasonable adjustments, but in relation to which such adjustments as the regulator specifies should not be made.

(8) For the purposes of subsection (7) the appropriate regulator must have regard to—
- (a) the need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities;

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(b) the need to secure that the qualification gives a reliable indication of the knowledge, skills and understanding of a person upon whom it is conferred;

(c) the need to maintain public confidence in the qualification.

(9) The appropriate regulator—

(a) must not specify any matter for the purposes of subsection (7) unless it has consulted such persons as it thinks appropriate;

(b) must publish matters so specified (including the date from which they are to have effect) in such manner as is prescribed.

(10) The appropriate regulator is—

(a) in relation to a qualifications body that confers qualifications in England, a person prescribed by a Minister of the Crown;

(b) in relation to a qualifications body that confers qualifications in Wales, a person prescribed by the Welsh Ministers;

(c) in relation to a qualifications body that confers qualifications in Scotland, a person prescribed by the Scottish Ministers.

(11) For the purposes of subsection (10), a qualification is conferred in a part of Great Britain if there are, or may reasonably be expected to be, persons seeking to obtain the qualification who are or will be assessed for those purposes wholly or mainly in that part.

Commencement Information

I23 S. 96 wholly in force; s. 96 not in force at Royal Assent see s. 216; s. 96(10)(11) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; s. 96(9)(b) in force for certain purposes at 3.9.2010 by S.I. 2010/2191, **art. 2**; s. 96 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(6)(d)** (with art. 15)

97 Interpretation

(1) This section applies for the purposes of section 96.

(2) A qualifications body is an authority or body which can confer a relevant qualification.

(3) A relevant qualification is an authorisation, qualification, approval or certification of such description as may be prescribed—

(a) in relation to conferments in England, by a Minister of the Crown;

(b) in relation to conferments in Wales, by the Welsh Ministers;

(c) in relation to conferments in Scotland, by the Scottish Ministers.

(4) An authority or body is not a qualifications body in so far as—

(a) it is the responsible body of a school to which section 85 applies,

(b) it is the governing body of an institution to which section 91 applies,

(c) it exercises functions under the Education Acts, or

(d) it exercises functions under the Education (Scotland) Act 1980.

(5) A qualifications body does not include an authority or body of such description, or in such circumstances, as may be prescribed.

(6) A reference to conferring a relevant qualification includes a reference—

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(a) to renewing or extending the conferment of a relevant qualification;
(b) to authenticating a relevant qualification conferred by another person.

(7) A reference in section 96(8), (10) or (11) to a qualification is a reference to a relevant qualification.

(8) Subsection (11) of section 96 applies for the purposes of subsection (3) of this section as it applies for the purposes of subsection (10) of that section.

Commencement Information

I24 S. 97 wholly in force; s. 97 not in force at Royal Assent see s. 216; s. 97 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; s. 97 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(6)(d)** (with art. 15)

CHAPTER 4

MISCELLANEOUS

98 Reasonable adjustments

Schedule 13 (reasonable adjustments) has effect.

Commencement Information

I25 S. 98 wholly in force at 1.9.2012; s. 98 not in force at Royal Assent see s. 216; s. 98 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(6)(e)**; s. 99 in force so far as not already in force at 1.9.2012 by S.I. 2012/2184, **art. 2(b)**

99 Educational charities and endowments

Schedule 14 (educational charities and endowments) has effect.

PART 7

ASSOCIATIONS

Preliminary

100 Application of this Part

(1) This Part does not apply to the protected characteristic of marriage and civil partnership.

(2) This Part does not apply to discrimination, harassment or victimisation—
(a) that is prohibited by Part 3 (services and public functions), Part 4 (premises), Part 5 (work) or Part 6 (education), or
(b) that would be so prohibited but for an express exception.

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Commencement Information

I26 S. 100 wholly in force at 1.10.2012; s. 100 not in force at Royal Assent see s. 216; s. 100 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(7)(a)** (with art. 15); s. 100 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(b)**

Membership, etc.

101 Members and associates

(1) An association (A) must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding who to admit to membership;
- (b) as to the terms on which A is prepared to admit B to membership;
- (c) by not accepting B's application for membership.

(2) An association (A) must not discriminate against a member (B)—
- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
- (b) by depriving B of membership;
- (c) by varying B's terms of membership;
- (d) by subjecting B to any other detriment.

(3) An association (A) must not discriminate against an associate (B)—
- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
- (b) by depriving B of B's rights as an associate;
- (c) by varying B's rights as an associate;
- (d) by subjecting B to any other detriment.

(4) An association must not harass—
- (a) a member;
- (b) a person seeking to become a member;
- (c) an associate.

(5) An association (A) must not victimise a person (B)—
- (a) in the arrangements A makes for deciding who to admit to membership;
- (b) as to the terms on which A is prepared to admit B to membership;
- (c) by not accepting B's application for membership.

(6) An association (A) must not victimise a member (B)—
- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
- (b) by depriving B of membership;
- (c) by varying B's terms of membership;
- (d) by subjecting B to any other detriment.

(7) An association (A) must not victimise an associate (B)—
- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;

Status: *This version of this Act contains provisions that are prospective.*
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(b) by depriving B of B's rights as an associate;
(c) by varying B's rights as an associate;
(d) by subjecting B to any other detriment.

Commencement Information

I27 S. 101 wholly in force at 1.10.2012; s. 101 not in force at Royal Assent see s. 216; s. 101 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(7)(a)** (with art. 15); s. 101 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(b)**

102 Guests

(1) An association (A) must not discriminate against a person (B)—
(a) in the arrangements A makes for deciding who to invite, or who to permit to be invited, as a guest;
(b) as to the terms on which A is prepared to invite B, or to permit B to be invited, as a guest;
(c) by not inviting B, or not permitting B to be invited, as a guest.

(2) An association (A) must not discriminate against a guest (B) invited by A or with A's permission (whether express or implied)—
(a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
(b) by subjecting B to any other detriment.

(3) An association must not harass—
(a) a guest;
(b) a person seeking to be a guest.

(4) An association (A) must not victimise a person (B)—
(a) in the arrangements A makes for deciding who to invite, or who to permit to be invited, as a guest;
(b) as to the terms on which A is prepared to invite B, or to permit B to be invited, as a guest;
(c) by not inviting B, or not permitting B to be invited, as a guest.

(5) An association (A) must not victimise a guest (B) invited by A or with A's permission (whether express or implied)—
(a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
(b) by subjecting B to any other detriment.

Commencement Information

I28 S. 102 wholly in force at 1.10.2012; s. 102 not in force at Royal Assent see s. 216; s. 102 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(7)(a)** (with art. 15); s. 102 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(b)**

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103 Sections 101 and 102: further provision

(1) A duty to make reasonable adjustments applies to an association.

(2) In the application of section 26 for the purposes of section 101(4) or 102(3), neither of the following is a relevant protected characteristic—
  (a) religion or belief;
  (b) sexual orientation.

Commencement Information

I29 S. 103 wholly in force at 1.10.2012; s. 103 not in force at Royal Assent see s. 216; s. 103 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(7)(a)** (with art. 15); s. 103 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(b)**

Special provision for political parties

104 Selection of candidates

(1) This section applies to an association which is a registered political party.

(2) A person does not contravene this Part only by acting in accordance with selection arrangements.

(3) Selection arrangements are arrangements—
  (a) which the party makes for regulating the selection of its candidates in a relevant election,
  (b) the purpose of which is to reduce inequality in the party's representation in the body concerned, and
  (c) which, subject to subsection (7), are a proportionate means of achieving that purpose.

(4) The reference in subsection (3)(b) to inequality in a party's representation in a body is a reference to inequality between—
  (a) the number of the party's candidates elected to be members of the body who share a protected characteristic, and
  (b) the number of the party's candidates so elected who do not share that characteristic.

(5) For the purposes of subsection (4), persons share the protected characteristic of disability if they are disabled persons (and section 6(3)(b) is accordingly to be ignored).

(6) Selection arrangements do not include short-listing only such persons as have a particular protected characteristic.

(7) But subsection (6) does not apply to the protected characteristic of sex; and subsection (3)(c) does not apply to short-listing in reliance on this subsection.

(8) The following elections are relevant elections—
  (a) Parliamentary Elections;
  F63(b) . . . . . .
  (c) elections to the Scottish Parliament;

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(d) elections to the National Assembly for Wales;

(e) local government elections within the meaning of section 191, 203 or 204 of the Representation of the People Act 1983 (excluding elections for the Mayor of London).

Textual Amendments

F63 S. 104(8)(b) repealed (31.12.2020) by The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 (S.I. 2018/1310), reg. 1, **Sch. 1 Pt. 1** (as amended by S.I. 2019/1389, regs. 1, 2(2))

Commencement Information

I30 S. 104 wholly in force at 1.10.2012; s. 104 not in force at Royal Assent see s. 216; s. 104 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(7)(a)** (with art. 15); s. 104 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(b)**

105 Time-limited provision

(1) Section 104(7) and the words “, subject to subsection (7),” in section 104(3)(c) are repealed at the end of 2030 unless an order is made under subsection (2).

(2) At any time before the end of 2030, a Minister of the Crown may by order provide that subsection (1) is to have effect with the substitution of a later time for that for the time being specified there.

(3) In section 3 of the Sex Discrimination (Election Candidates) Act 2002 (expiry of that Act), in subsection (1) for “2015” substitute “ 2030 ”.

(4) The substitution made by subsection (3) does not affect the power to substitute a later time by order under section 3 of that Act.

Commencement Information

I31 S. 105 wholly in force at 1.10.2012; s. 105 not in force at Royal Assent see s. 216; s. 105 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(7)(a)** (with art. 15); s. 105 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(b)**

PROSPECTIVE

106 Information about diversity in range of candidates, etc.

(1) This section applies to an association which is a registered political party.

(2) If the party had candidates at a relevant election, the party must, in accordance with regulations, publish information relating to protected characteristics of persons who come within a description prescribed in the regulations in accordance with subsection (3).

(3) One or more of the following descriptions may be prescribed for the purposes of subsection (2)—

(a) successful applicants for nomination as a candidate at the relevant election;

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(b) unsuccessful applicants for nomination as a candidate at that election;
(c) candidates elected at that election;
(d) candidates who are not elected at that election.

(4) The duty imposed by subsection (2) applies only in so far as it is possible to publish information in a manner that ensures that no person to whom the information relates can be identified from that information.

(5) The following elections are relevant elections—
(a) Parliamentary Elections;
F64(b) . . . . . .
(c) elections to the Scottish Parliament;
(d) elections to the National Assembly for Wales.

(6) This section does not apply to the following protected characteristics—
(a) marriage and civil partnership;
(b) pregnancy and maternity.

(7) The regulations may provide that the information to be published—
(a) must (subject to subsection (6)) relate to all protected characteristics or only to such as are prescribed;
(b) must include a statement, in respect of each protected characteristic to which the information relates, of the proportion that the number of persons who provided the information to the party bears to the number of persons who were asked to provide it.

(8) Regulations under this section may prescribe—
(a) descriptions of information;
(b) descriptions of political party to which the duty is to apply;
(c) the time at which information is to be published;
(d) the form and manner in which information is to be published;
(e) the period for which information is to be published.

(9) Provision by virtue of subsection (8)(b) may, in particular, provide that the duty imposed by subsection (2) does not apply to a party which had candidates in fewer constituencies in the election concerned than a prescribed number.

(10) Regulations under this section—
(a) may provide that the duty imposed by subsection (2) applies only to such relevant elections as are prescribed;
(b) may provide that a by-election or other election to fill a vacancy is not to be treated as a relevant election or is to be so treated only to a prescribed extent;
(c) may amend this section so as to provide for the duty imposed by subsection (2) to apply in the case of additional descriptions of election.

(11) Nothing in this section authorises a political party to require a person to provide information to it.

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Textual Amendments

F64 S. 106(5)(b) repealed (31.12.2020) by The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 (S.I. 2018/1310), reg. 1, **Sch. 1 Pt. 1** (as amended by S.I. 2019/1389, regs. 1, 2(2))

Supplementary

107 Interpretation and exceptions

(1) This section applies for the purposes of this Part.

(2) An "association" is an association of persons—
- (a) which has at least 25 members, and
- (b) admission to membership of which is regulated by the association's rules and involves a process of selection.

(3) A Minister of the Crown may by order amend subsection (2)(a) so as to substitute a different number for that for the time being specified there.

(4) It does not matter—
- (a) whether an association is incorporated;
- (b) whether its activities are carried on for profit.

(5) Membership is membership of any description; and a reference to a member is to be construed accordingly.

(6) A person is an "associate", in relation to an association, if the person—
- (a) is not a member of the association, but
- (b) in accordance with the association's rules, has some or all of the rights as a member as a result of being a member of another association.

(7) A reference to a registered political party is a reference to a party registered in the Great Britain register under Part 2 of the Political Parties, Elections and Referendums Act 2000.

(8) Schedule 15 (reasonable adjustments) has effect.

(9) Schedule 16 (exceptions) has effect.

Commencement Information

I32 S. 107 wholly in force at 1.10.2012; s. 107 not in force at Royal Assent see s. 216; s. 107 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(7)(b)** (with art. 15); s. 107 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(c)**

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PART 8

PROHIBITED CONDUCT: ANCILLARY

108 Relationships that have ended

(1) A person (A) must not discriminate against another (B) if—

(a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.

(2) A person (A) must not harass another (B) if—

(a) the harassment arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the harassment would, if it occurred during the relationship, contravene this Act.

(3) It does not matter whether the relationship ends before or after the commencement of this section.

(4) A duty to make reasonable adjustments applies to A **[**[F65]if B is**]** placed at a substantial disadvantage as mentioned in section 20.

(5) For the purposes of subsection (4), sections 20, 21 and 22 and the applicable Schedules are to be construed as if the relationship had not ended.

(6) For the purposes of Part 9 (enforcement), a contravention of this section relates to the Part of this Act that would have been contravened if the relationship had not ended.

(7) But conduct is not a contravention of this section in so far as it also amounts to victimisation of B by A.

Textual Amendments

F65 Words in s. 108(4) substituted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279, arts. 1(2), **5**

109 Liability of employers and principals

(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

(3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.

(4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—

(a) from doing that thing, or

(b) from doing anything of that description.

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(5) This section does not apply to offences under this Act (other than offences under Part 12 (disabled persons: transport)).

110 Liability of employees and agents

(1) A person (A) contravenes this section if—
  (a) A is an employee or agent,
  (b) A does something which, by virtue of section 109(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and
  (c) the doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).

(2) It does not matter whether, in any proceedings, the employer is found not to have contravened this Act by virtue of section 109(4).

(3) A does not contravene this section if—
  (a) A relies on a statement by the employer or principal that doing that thing is not a contravention of this Act, and
  (b) it is reasonable for A to do so.

(4) A person (B) commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (3)(a) which is false or misleading in a material respect.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[[F66](5A) A does not contravene this section if A—
  (a) does not conduct a relevant marriage,
  (b) is not present at, does not carry out, or does not otherwise participate in, a relevant marriage, or
  (c) does not consent to a relevant marriage being conducted,

for the reason that the marriage is the marriage of a same sex couple.

(5B) Subsection (5A) applies to A only if A is within the meaning of " person " for the purposes of section 2 of the Marriage (Same Sex Couples) Act 2013; and other expressions used in subsection (5A) and section 2 of that Act have the same meanings in that subsection as in that section. **]**

[[F67](5BA) If A is a protected person, A does not contravene this section if A—
  (a) does not allow religious premises to be used as the place at which two people register as civil partners of each other under Part 2 of the Civil Partnership Act 2004 ("the 2004 Act"), or
  (b) does not provide, arrange, facilitate or participate in, or is not present at—
    (i) an occasion during which two people register as civil partners of each other on religious premises under Part 2 of the 2004 Act, or
    (ii) a ceremony or event in England or Wales to mark the formation of a civil partnership,

for the reason that the person does not wish to do things of that sort in relation to civil partnerships generally, or those between two people of the same sex, or those between two people of the opposite sex.

(5BB) In subsection (5BA)—

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"protected person" has the meaning given by section 30ZA(2) of the 2004 Act;

"religious premises" has the meaning given by section 6A(3C) of the 2004 Act.**]**

[[F68](5C) A does not contravene this section by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.

[F69](5CA) **[** A does not contravene this section by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the opposite sex who are in a civil partnership with each other.**]**

(5D) A does not contravene this section by refusing to register a relevant Scottish civil partnership for the reason that **[**[F70]A does not wish to register civil partnerships generally, or those between two persons of the same sex, or those between two persons of the opposite sex**]**.

(5E) Subsections (5C)**[**[F71], (5CA)**]** and (5D) apply only if A is an approved celebrant.

(5F) Expressions used in subsections (5C) to (5E) have the same meaning as in paragraph 25B of Schedule 3.

(5G) A chaplain does not contravene this section by refusing to solemnise a relevant Scottish forces marriage for the reason that the marriage is the marriage of two persons of the same sex.

(5H) Expressions used in subsection (5G) have the same meaning as in paragraph 25C of Schedule 3.**]**

(6) Part 9 (enforcement) applies to a contravention of this section by A as if it were the contravention mentioned in subsection (1)(c).

(7) The reference in subsection (1)(c) to a contravention of this Act does not include a reference to disability discrimination in contravention of Chapter 1 of Part 6 (schools).

Textual Amendments

F66 S. 110(5A)(5B) inserted (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), **ss. 2(5)**, 21(3); S.I. 2014/93, art. 3(a)

F67 S. 110(5BA)(5BB) inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **10(2)**

F68 S. 110(5C)-(5H) inserted (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 5 para. 19(4)**

F69 S. 110(5CA) inserted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(2)(a)**

F70 Words in s. 110(5D) substituted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(2)(b)**

F71 Word in s. 110(5E) inserted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(2)(c)**

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111 Instructing, causing or inducing contraventions

(1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 112(1) (a basic contravention).

(2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention.

(3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention.

(4) For the purposes of subsection (3), inducement may be direct or indirect.

(5) Proceedings for a contravention of this section may be brought—
- (a) by B, if B is subjected to a detriment as a result of A's conduct;
- (b) by C, if C is subjected to a detriment as a result of A's conduct;
- (c) by the Commission.

(6) For the purposes of subsection (5), it does not matter whether—
- (a) the basic contravention occurs;
- (b) any other proceedings are, or may be, brought in relation to A's conduct.

(7) This section does not apply unless the relationship between A and B is such that A is in a position to commit a basic contravention in relation to B.

(8) A reference in this section to causing or inducing a person to do something includes a reference to attempting to cause or induce the person to do it.

(9) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating—
- (a) in a case within subsection (5)(a), to the Part of this Act which, because of the relationship between A and B, A is in a position to contravene in relation to B;
- (b) in a case within subsection (5)(b), to the Part of this Act which, because of the relationship between B and C, B is in a position to contravene in relation to C.

112 Aiding contraventions

(1) A person (A) must not knowingly help another (B) to do anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 111 (a basic contravention).

(2) It is not a contravention of subsection (1) if—
- (a) A relies on a statement by B that the act for which the help is given does not contravene this Act, and
- (b) it is reasonable for A to do so.

(3) B commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (2)(a) which is false or misleading in a material respect.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating to the provision of this Act to which the basic contravention relates.

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(6) The reference in subsection (1) to a basic contravention does not include a reference to disability discrimination in contravention of Chapter 1 of Part 6 (schools).

PART 9

ENFORCEMENT

CHAPTER 1

INTRODUCTORY

113 Proceedings

(1) Proceedings relating to a contravention of this Act must be brought in accordance with this Part.

(2) Subsection (1) does not apply to proceedings under Part 1 of the Equality Act 2006.

(3) Subsection (1) does not prevent—
- (a) a claim for judicial review;
- (b) proceedings under the Immigration Acts;
- (c) proceedings under the Special Immigration Appeals Commission Act 1997;
- (d) in Scotland, an application to the supervisory jurisdiction of the Court of Session.

(4) This section is subject to any express provision of this Act conferring jurisdiction on a court or tribunal.

(5) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(6) Chapters 2 and 3 do not apply to proceedings relating to an equality clause or rule except in so far as Chapter 4 provides for that.

(7) This section does not apply to—
- (a) proceedings for an offence under this Act;
- (b) proceedings relating to a penalty under Part 12 (disabled persons: transport).

Commencement Information

I33 S. 113 wholly in force; s. 113 not in force at Royal Assent see s. 216; s. 113 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(a)** (with art. 15, and subject to transitional provision in art. 7)

Status: *This version of this Act contains provisions that are prospective.*
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CHAPTER 2

CIVIL COURTS

114 Jurisdiction

(1) **[**[F72]The county court**]** or, in Scotland, the sheriff has jurisdiction to determine a claim relating to—

(a) a contravention of Part 3 (services and public functions);

(b) a contravention of Part 4 (premises);

(c) a contravention of Part 6 (education);

(d) a contravention of Part 7 (associations);

(e) a contravention of section 108, 111 or 112 that relates to Part 3, 4, 6 or 7.

(2) Subsection (1)(a) does not apply to a claim within section 115.

(3) Subsection (1)(c) does not apply to a claim within section 116.

(4) Subsection (1)(d) does not apply to a contravention of section 106.

(5) For the purposes of proceedings on a claim within subsection (1)(a)—

(a) a decision in proceedings on a claim mentioned in section 115(1) that an act is a contravention of Part 3 is binding;

(b) it does not matter whether the act occurs outside the United Kingdom.

(6) The county court or sheriff—

(a) must not grant an interim injunction or interdict unless satisfied that no criminal matter would be prejudiced by doing so;

(b) must grant an application to stay or sist proceedings under subsection (1) on grounds of prejudice to a criminal matter unless satisfied the matter will not be prejudiced.

(7) In proceedings in England and Wales on a claim within subsection (1), the power under section 63(1) of the County Courts Act 1984 (appointment of assessors) must be exercised unless the judge is satisfied that there are good reasons for not doing so.

(8) In proceedings in Scotland on a claim within subsection (1), the power under rule 44.3 of Schedule 1 to the Sheriff Court (Scotland) Act 1907 (appointment of assessors) must be exercised unless the sheriff is satisfied that there are good reasons for not doing so.

(9) The remuneration of an assessor appointed by virtue of subsection (8) is to be at a rate determined by the Lord President of the Court of Session.

Textual Amendments

F72 Words in s. 114(1) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Commencement Information

I34 S. 114 wholly in force; s. 114 not in force at Royal Assent see s. 216; s. 114 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(a)** (with art. 15, and subject to transitional provision in art. 7)

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115 Immigration cases

(1) A claim is within this section if it relates to the act of an immigration authority in taking a relevant decision and—

(a) the question whether the act is a contravention of Part 3 has been or could be raised on an appeal which is pending, or could be brought, under the immigration provisions, or

(b) it has been decided on an appeal under those provisions that the act is not a contravention of Part 3.

(2) The relevant decision is not—

(a) subject to challenge in proceedings on a claim within section 114(1)(a), or

(b) affected by the decision of a court in such proceedings.

(3) For the purposes of subsection (1)(a) a power to grant permission to appeal out of time must be ignored.

(4) Each of the following is an immigration authority—

(a) the Secretary of State;

(b) an immigration officer;

(c) a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971).

(5) The immigration provisions are—

(a) the Special Immigration Appeals Commission Act 1997, or

(b) Part 5 of the Nationality, Immigration and Asylum Act 2002.

(6) A relevant decision is—

(a) a decision under the Immigration Acts relating to the entitlement of a person to enter or remain in the United Kingdom;

(b) a decision on an appeal under the immigration provisions relating to a decision within paragraph (a).

(7) An appeal is pending if it is pending for the purposes of section 104 of the Nationality, Immigration and Asylum Act 2002 or (as the case may be) for the purposes of that section as it is applied by section 2(2)(j) of the Special Immigration Appeals Commission Act 1997.

[[F73](8) This section applies in relation to reviews under **[**[F74]section 2D, 2E or 2F**]** of the Special Immigration Appeals Commission Act 1997 as it applies in relation to appeals under the immigration provisions.**]**

Textual Amendments

F73 S. 115(8) inserted (25.6.2013) by Justice and Security Act 2013 (c. 18), s. 20(1), **Sch. 2 para. 12**; S.I. 2013/1482, art. 2 (with arts. 3, 4)

F74 Words in s. 115(8) substituted (28.6.2022) by Nationality and Borders Act 2022 (c. 36), ss. 87(1), **77(6)**; S.I. 2022/590, reg. 1(2), 2, Sch. 1 para. 27

Commencement Information

I35 S. 115 wholly in force; s. 115 not in force at Royal Assent see s. 216; s. 115 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(a)** (with art. 15, and subject to transitional provision in art. 7)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

116 Education cases

(1) A claim is within this section if it may be made to—

(a) the First-tier Tribunal in accordance with Part 2 of Schedule 17,

(b) the **[**[F75]Education Tribunal for Wales**]** in accordance with Part 2 of that Schedule, or

(c) **[**[F76]the First-tier Tribunal for Scotland Health and Education Chamber**]** in accordance with Part 3 of that Schedule.

(2) A claim is also within this section if it must be made in accordance with appeal arrangements within the meaning of Part 4 of that Schedule.

(3) Schedule 17 (disabled pupils: enforcement) has effect.

Textual Amendments

F75 Words in s. 116(1)(b) substituted (E.W.) (1.9.2021) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(2)**; S.I. 2021/373, art. 8(j)(xxxiii)

F76 Words in s. 116(1)(c) substituted (S.) (12.1.2018) by The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 4(2)**

Commencement Information

I36 S. 116 wholly in force; s. 116 not in force at Royal Assent see s. 216; s. 116(3) in force for certain purposes at 4.8.2010 by S.I. 2010/1966, **art. 2**; s. 116(1)(a)(b)(2) wholly in force and s. 116(1)(c)(3) in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(b)-(d)** (with art. 15, and subject to transitional provision in art. 7); s. 116(1)(c)(3) in force at 18.3.2011 in so far as not already in force by S.I. 2010/2317, **art. 3(a)(b)** (with art. 15, and subject to transitional provision in art. 7)

117 National security

(1) Rules of court may, in relation to proceedings on a claim within section 114, confer power as mentioned in subsections (2) to (4); but a power so conferred is exercisable only if the court thinks it expedient to do so in the interests of national security.

(2) The rules may confer power to exclude from all or part of the proceedings—

(a) the claimant or pursuer;

(b) a representative of the claimant or pursuer;

(c) an assessor.

(3) The rules may confer power to permit a claimant, pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or part of the proceedings, to which the exclusion relates.

(4) The rules may confer power to take steps to keep secret all or part of the reasons for the court's decision.

(5) The Attorney General or, in Scotland, the Advocate General for Scotland may appoint a person to represent the interests of a claimant or pursuer in, or in any part of, proceedings to which an exclusion by virtue of subsection (2)(a) or (b) relates.

(6) A person (P) may be appointed under subsection (5) only if—

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(a) in relation to proceedings in England and Wales, P is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation;

(b) in relation to proceedings in Scotland, P is an advocate or qualified to practice as a solicitor in Scotland.

(7) P is not responsible to the person whose interests P is appointed to represent.

Commencement Information

I37 S. 117 wholly in force; s. 117 not in force at Royal Assent see s. 216; s. 117(1)-(4) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; s. 117 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(9)(e)** (with art. 15, and subject to transitional provision in art. 7)

118 Time limits

(1) **[**[F77]Subject to**[**[F78]**[**[F79]section**]** 140AA**]]** proceedings on a claim within section 114 may not be brought after the end of—

(a) the period of 6 months starting with the date of the act to which the claim relates, or

(b) such other period as the county court or sheriff thinks just and equitable.

(2) If subsection (3) [F80]... applies, subsection (1)(a) has effect as if for "6 months" there were substituted " 9 months ".

(3) This subsection applies if—

(a) the claim relates to the act of a qualifying institution, and

(b) a complaint relating to the act is referred under the student complaints scheme before the end of the period of 6 months starting with the date of the act.

[F81](4) . . . . . .

(5) If it has been decided under the immigration provisions that the act of an immigration authority in taking a relevant decision is a contravention of Part 3 (services and public functions), subsection (1) has effect as if for paragraph (a) there were substituted—

"(a) the period of 6 months starting with the day after the expiry of the period during which, as a result of section 114(2), proceedings could not be brought in reliance on section 114(1)(a);".

(6) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(7) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

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(8) In this section—

"immigration authority", "immigration provisions" and "relevant decision" each have the meaning given in section 115;

"qualifying institution" has the meaning given in section 11 of the Higher Education Act 2004**[**[F82], and includes an institution which is treated as continuing to be a qualifying institution for the purposes of Part 2 of that Act (see section 20A(2) of that Act)**]**;

"the student complaints scheme" means a scheme for the review of qualifying complaints (within the meaning of section 12 of that Act) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).

Textual Amendments

F77 Words in s. 118(1) inserted (20.5.2011 with application as mentioned in regs. 3, 4 of the amending S.I.) by The Cross-Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133), **reg. 55**

F78 Words in s. 118(1) substituted (9.7.2015) by The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (S.I. 2015/1392), regs. 1(2), **7(2)** (with reg. 1(3))

F79 Word in s. 118(1) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 17(2)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

F80 Words in s. 118(2) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 64(13)(a)**, 103(2)

F81 S. 118(4) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 64(13)(b)**, 103(2)

F82 Words in s. 118(8) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), **ss. 89(6)**, 124(5); S.I. 2018/241, reg. 2(l)

Modifications etc. (not altering text)

C15 S. 118(6) applied (1.10.2010) by S.I. 2010/2317, **art. 4(3)** (with art. 15)

Commencement Information

I38 S. 118 wholly in force; s. 118 not in force at Royal Assent see s. 216; s. 118 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

119 Remedies

(1) This section applies if **[**[F83]the county court**]** or the sheriff finds that there has been a contravention of a provision referred to in section 114(1).

(2) The county court has power to grant any remedy which could be granted by the High Court—

(a) in proceedings in tort;

(b) on a claim for judicial review.

(3) The sheriff has power to make any order which could be made by the Court of Session—

(a) in proceedings for reparation;

(b) on a petition for judicial review.

(4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).

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(5) Subsection (6) applies if the county court or sheriff—

(a) finds that a contravention of a provision referred to in section 114(1) is established by virtue of section 19, but

(b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the claimant or pursuer.

(6) The county court or sheriff must not make an award of damages unless it first considers whether to make any other disposal.

(7) The county court or sheriff must not grant a remedy other than an award of damages or the making of a declaration unless satisfied that no criminal matter would be prejudiced by doing so.

Textual Amendments

F83 Words in s. 119(1) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Commencement Information

I39 S. 119 wholly in force; s. 119 not in force at Royal Assent see s. 216; s. 119 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

CHAPTER 3

EMPLOYMENT TRIBUNALS

120 Jurisdiction

(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—

(a) a contravention of Part 5 (work);

(b) a contravention of section 108, 111 or 112 that relates to Part 5.

(2) An employment tribunal has jurisdiction to determine an application by a responsible person (as defined by section 61) for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of a non-discrimination rule.

(3) An employment tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of a non-discrimination rule.

(4) An employment tribunal also has jurisdiction to determine a question that—

(a) relates to a non-discrimination rule, and

(b) is referred to the tribunal by virtue of section 122.

(5) In proceedings before an employment tribunal on a complaint relating to a breach of a non-discrimination rule, the employer—

(a) is to be treated as a party, and

(b) is accordingly entitled to appear and be heard.

Status: *This version of this Act contains provisions that are prospective.*
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(6) Nothing in this section affects such jurisdiction as the High Court, **[**[F84]the county court**]**, the Court of Session or the sheriff has in relation to a non-discrimination rule.

(7) Subsection (1)(a) does not apply to a contravention of section 53 in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.

(8) In subsection (1), the references to Part 5 do not include a reference to section 60(1).

Textual Amendments

F84 Words in s. 120(6) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Commencement Information

I40 S. 120 wholly in force; s. 120 not in force at Royal Assent see s. 216; s. 120 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

121 Armed forces cases

(1) Section 120(1) does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless—

(a) the complainant has made a service complaint about the matter, and

(b) the complaint has not been withdrawn.

[[F85](2) Where the complaint is dealt with by a person or panel appointed by the Defence Council by virtue of section 340C(1)(a) of the 2006 Act, it is to be treated for the purposes of subsection (1)(b) as withdrawn if—

(a) the period allowed in accordance with service complaints regulations for bringing an appeal against the person's or panel's decision expires, [F86]...

[[F87](aa) there are grounds (of which the complainant is aware) on which the complainant is entitled to bring such an appeal, and**]**

(b) either—

(i) the complainant does not apply to the Service Complaints Ombudsman for a review by virtue of section **[**[F88]340D(6)(a)**]** of the 2006 Act (review of decision that appeal brought out of time cannot proceed), or

(ii) the complainant does apply for such a review and the Ombudsman decides that an appeal against the person's or panel's decision cannot be proceeded with.**]**

[F89](3) . . . . . .

[F89](4) . . . . . .

(5) The making of a complaint to an employment tribunal in reliance on subsection (1) does not affect the continuation of **[**[F90] the procedures set out in service complaints regulations. **]**

[[F91](6) In this section—

"the 2006 Act" means the Armed Forces Act 2006;

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"service complaints regulations" means regulations made under section 340B(1) of the 2006 Act.**]**

Textual Amendments

F85 S. 121(2) substituted (1.1.2016) by Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19), s. 7(1), **Sch. para. 13(2)**; S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

F86 Word in s. 121(2)(a) omitted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in force) by virtue of Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 8(a)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2

F87 S. 121(2)(aa) inserted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 8(b)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2

F88 Word in s. 121(2)(b)(i) substituted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 8(c)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2

F89 S. 121(3)(4) omitted (1.1.2016) by virtue of Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19), s. 7(1), **Sch. para. 13(3)**; S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

F90 Words in s. 121(5) substituted (1.1.2016) by Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19), s. 7(1), **Sch. para. 13(4)**; S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

F91 S. 121(6) inserted (1.1.2016) by Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19), s. 7(1), **Sch. para. 13(5)**; S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

Commencement Information

I41 S. 121 wholly in force; s. 121 not in force at Royal Assent see s. 216; s. 121 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

122 References by court to tribunal, etc.

(1) If it appears to a court in which proceedings are pending that a claim or counter-claim relating to a non-discrimination rule could more conveniently be determined by an employment tribunal, the court may strike out the claim or counter-claim.

(2) If in proceedings before a court a question arises about a non-discrimination rule, the court may (whether or not on an application by a party to the proceedings)—

(a) refer the question, or direct that it be referred by a party to the proceedings, to an employment tribunal for determination, and

(b) stay or sist the proceedings in the meantime.

Commencement Information

I42 S. 122 wholly in force; s. 122 not in force at Royal Assent see s. 216; s. 122 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

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123 Time limits

(1) **[**[F92]Subject to **[**[F93]**[**[F94]section**]** 140B**]]** proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Textual Amendments

F92 Words in s. 123(1) inserted (20.5.2011 with application as mentioned in regs. 3, 4 of the amending S.I.) by The Cross-Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133), **reg. 56**

F93 Words in s. 123(1) substituted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 43**; S.I. 2014/253, art. 3(g)

F94 Word in s. 123(1) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 17(3)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I43 S. 123 wholly in force; s. 123 not in force at Royal Assent see s. 216; s. 123 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

124 Remedies: general

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).

(2) The tribunal may—

(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;

(b) order the respondent to pay compensation to the complainant;

(c) make an appropriate recommendation.

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(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect**[**[F95]on the complainant **]** of any matter to which the proceedings relate—

[F96](a) . . . . . .

[F96](b) . . . . . .

(4) Subsection (5) applies if the tribunal—

(a) finds that a contravention is established by virtue of section 19, but

(b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant.

(5) It must not make an order under subsection (2)(b) unless it first considers whether to act under subsection (2)(a) or (c).

(6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by **[**[F97]the county court**]** or the sheriff under section 119.

(7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation[F98]..., the tribunal may—

(a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid;

(b) if no such order was made, make one.

Textual Amendments

F95 Words in s. 124(3) inserted (1.10.2015) by Deregulation Act 2015 (c. 20), **ss. 2(1)(a)**, 115(7); S.I. 2015/994, art. 11(a) (with Sch. Pt. 1)

F96 S. 124(3)(a)(b) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), **ss. 2(1)(b)**, 115(7); S.I. 2015/994, art. 11(a) (with Sch. Pt. 1)

F97 Words in s. 124(6) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F98 Words in s. 124(7) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), **ss. 2(2)(a)**, 115(7); S.I. 2015/994, art. 11(a) (with Sch. Pt. 1)

Commencement Information

I44 S. 124 wholly in force; s. 124 not in force at Royal Assent see s. 216; s. 124 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

[F99]125 Remedies: national security

. . . . . .

Textual Amendments

F99 S. 125 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), **ss. 2(2)(b)**, 115(7); S.I. 2015/994, art. 11(a) (with Sch. Pt. 1)

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Commencement Information

I45 S. 125 wholly in force; s. 125 not in force at Royal Assent see s. 216; s. 125 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

126 Remedies: occupational pension schemes

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1) in relation to—

(a) the terms on which persons become members of an occupational pension scheme, or

(b) the terms on which members of an occupational pension scheme are treated.

(2) In addition to anything which may be done by the tribunal under section 124 the tribunal may also by order declare—

(a) if the complaint relates to the terms on which persons become members of a scheme, that the complainant has a right to be admitted to the scheme;

(b) if the complaint relates to the terms on which members of the scheme are treated, that the complainant has a right to membership of the scheme without discrimination.

(3) The tribunal may not make an order under subsection (2)(b) of section 124 unless—

(a) the compensation is for injured feelings, or

(b) the order is made by virtue of subsection (7) of that section.

(4) An order under subsection (2)—

(a) may make provision as to the terms on which or the capacity in which the claimant is to enjoy the admission or membership;

(b) may have effect in relation to a period before the order is made.

Commencement Information

I46 S. 126 wholly in force; s. 126 not in force at Royal Assent see s. 216; s. 126 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

CHAPTER 4

EQUALITY OF TERMS

127 Jurisdiction

(1) An employment tribunal has, subject to subsection (6), jurisdiction to determine a complaint relating to a breach of an equality clause or rule.

(2) The jurisdiction conferred by subsection (1) includes jurisdiction to determine a complaint arising out of a breach of an equality clause or rule; and a reference in this Chapter to a complaint relating to such a breach is to be read accordingly.

(3) An employment tribunal also has jurisdiction to determine an application by a responsible person for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of an equality clause or rule.

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(4) An employment tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of an equality rule.

(5) An employment tribunal also has jurisdiction to determine a question that—
  (a) relates to an equality clause or rule, and
  (b) is referred to the tribunal by virtue of section 128(2).

(6) This section does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless—
  (a) the complainant has made a service complaint about the matter, and
  (b) the complaint has not been withdrawn.

(7) **[**[F100]Subsections (2) to (6) **]** of section 121 apply for the purposes of subsection (6) of this section as they apply for the purposes of subsection (1) of that section.

(8) In proceedings before an employment tribunal on a complaint relating to a breach of an equality rule, the employer—
  (a) is to be treated as a party, and
  (b) is accordingly entitled to appear and be heard.

(9) Nothing in this section affects such jurisdiction as the High Court, **[**[F101]the county court**]**, the Court of Session or the sheriff has in relation to an equality clause or rule.

Textual Amendments

F100 Words in s. 127(7) substituted (1.1.2016) by Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19), s. 7(1), **Sch. para. 14**; S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

F101 Words in s. 127(9) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Commencement Information

I47 S. 127 wholly in force; s. 127 not in force at Royal Assent see s. 216; s. 127 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

128 References by court to tribunal, etc.

(1) If it appears to a court in which proceedings are pending that a claim or counter-claim relating to an equality clause or rule could more conveniently be determined by an employment tribunal, the court may strike out the claim or counter-claim.

(2) If in proceedings before a court a question arises about an equality clause or rule, the court may (whether or not on an application by a party to the proceedings)—
  (a) refer the question, or direct that it be referred by a party to the proceedings, to an employment tribunal for determination, and
  (b) stay or sist the proceedings in the meantime.

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Commencement Information

I48 S. 128 wholly in force; s. 128 not in force at Royal Assent see s. 216; s. 128 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

129 Time limits

(1) This section applies to—

(a) a complaint relating to a breach of an equality clause or rule;

(b) an application for a declaration referred to in section 127(3) or (4).

(2) Proceedings on the complaint or application may not be brought in an employment tribunal after the end of the qualifying period.

(3) If the complaint or application relates to terms of work other than terms of service in the armed forces, the qualifying period is, in a case mentioned in the first column of the table, the period mentioned in the second column **[**[F102], subject to **[**[F103]**[**[F104]section**]** 140B**]]**.

Case	*Qualifying period*
A standard case	The period of 6 months beginning with the last day of the employment or appointment.
A stable work case (but not if it is also a concealment or incapacity case (or both))	The period of 6 months beginning with the day on which the stable working relationship ended.
A concealment case (but not if it is also an incapacity case)	The period of 6 months beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.
An incapacity case (but not if it is also a concealment case)	The period of 6 months beginning with the day on which the worker ceased to have the incapacity.
A case which is a concealment case and an incapacity case.	The period of 6 months beginning with the later of the days on which the period would begin if the case were merely a concealment or incapacity case.

(4) If the complaint or application relates to terms of service in the armed forces, the qualifying period is, in a case mentioned in the first column of the table, the period mentioned in the second column**[**[F105], subject to section 140B**]**.

Case	*Qualifying period*
A standard case	The period of 9 months beginning with the last day of the period of service during which the complaint arose.
A concealment case (but not if it is also an incapacity case)	The period of 9 months beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.

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An incapacity case (but not if it is also a concealment case)	The period of 9 months beginning with the day on which the worker ceased to have the incapacity.
A case which is a concealment case and an incapacity case.	The period of 9 months beginning with the later of the days on which the period would begin if the case were merely a concealment or incapacity case.

Textual Amendments

F102 Words in s. 129(3) inserted (20.5.2011 with application as mentioned in regs. 3, 4 of the amending S.I.) by The Cross-Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133), **reg. 57**

F103 Words in s. 129(3) substituted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 44(a)**; S.I. 2014/253, art. 3(g)

F104 Word in s. 129(3) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 17(4)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

F105 Words in s. 129(4) inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 44(b)**; S.I. 2014/253, art. 3(g)

Commencement Information

I49 S. 129 wholly in force; s. 129 not in force at Royal Assent see s. 216; s. 129 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

130 Section 129: supplementary

(1) This section applies for the purposes of section 129.

(2) A standard case is a case which is not—
- (a) a stable work case,
- (b) a concealment case,
- (c) an incapacity case, or
- (d) a concealment case and an incapacity case.

(3) A stable work case is a case where the proceedings relate to a period during which there was a stable working relationship between the worker and the responsible person (including any time after the terms of work had expired).

(4) A concealment case in proceedings relating to an equality clause is a case where—
- (a) the responsible person deliberately concealed a qualifying fact from the worker, and
- (b) the worker did not discover (or could not with reasonable diligence have discovered) the qualifying fact until after the relevant day.

(5) A concealment case in proceedings relating to an equality rule is a case where—
- (a) the employer or the trustees or managers of the occupational pension scheme in question deliberately concealed a qualifying fact from the member, and
- (b) the member did not discover (or could not with reasonable diligence have discovered) the qualifying fact until after the relevant day.

(6) A qualifying fact for the purposes of subsection (4) or (5) is a fact—
- (a) which is relevant to the complaint, and

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(b) without knowledge of which the worker or member could not reasonably have been expected to bring the proceedings.

(7) An incapacity case in proceedings relating to an equality clause with respect to terms of work other than terms of service in the armed forces is a case where the worker had an incapacity during the period of 6 months beginning with the later of—

(a) the relevant day, or

(b) the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the worker by the responsible person.

(8) An incapacity case in proceedings relating to an equality clause with respect to terms of service in the armed forces is a case where the worker had an incapacity during the period of 9 months beginning with the later of—

(a) the last day of the period of service during which the complaint arose, or

(b) the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the worker by the responsible person.

(9) An incapacity case in proceedings relating to an equality rule is a case where the member of the occupational pension scheme in question had an incapacity during the period of 6 months beginning with the later of—

(a) the relevant day, or

(b) the day on which the member discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the member by the employer or the trustees or managers of the scheme.

(10) The relevant day for the purposes of this section is—

(a) the last day of the employment or appointment, or

(b) the day on which the stable working relationship between the worker and the responsible person ended.

Commencement Information

I50 S. 130 wholly in force; s. 130 not in force at Royal Assent see s. 216; s. 130 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

131 Assessment of whether work is of equal value

(1) This section applies to proceedings before an employment tribunal on—

(a) a complaint relating to a breach of an equality clause or rule, or

(b) a question referred to the tribunal by virtue of section 128(2).

(2) Where a question arises in the proceedings as to whether one person's work is of equal value to another's, the tribunal may, before determining the question, require a member of the panel of independent experts to prepare a report on the question.

(3) The tribunal may withdraw a requirement that it makes under subsection (2); and, if it does so, it may—

(a) request the panel member to provide it with specified documentation;

(b) make such other requests to that member as are connected with the withdrawal of the requirement.

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(4) If the tribunal requires the preparation of a report under subsection (2) (and does not withdraw the requirement), it must not determine the question unless it has received the report.

(5) Subsection (6) applies where—

(a) a question arises in the proceedings as to whether the work of one person (A) is of equal value to the work of another (B), and

(b) A's work and B's work have been given different values by a job evaluation study.

(6) The tribunal must determine that A's work is not of equal value to B's work unless it has reasonable grounds for suspecting that the evaluation contained in the study—

(a) was based on a system that discriminates because of sex, or

(b) is otherwise unreliable.

(7) For the purposes of subsection (6)(a), a system discriminates because of sex if a difference (or coincidence) between values that the system sets on different demands is not justifiable regardless of the sex of the person on whom the demands are made.

(8) A reference to a member of the panel of independent experts is a reference to a person—

(a) who is for the time being designated as such by the Advisory, Conciliation and Arbitration Service (ACAS) for the purposes of this section, and

(b) who is neither a member of the Council of ACAS nor one of its officers or members of staff.

(9) "Job evaluation study" has the meaning given in section 80(5).

Commencement Information

I51 S. 131 wholly in force; s. 131 not in force at Royal Assent see s. 216; s. 131 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

132 Remedies in non-pensions cases

(1) This section applies to proceedings before a court or employment tribunal on a complaint relating to a breach of an equality clause, other than a breach with respect to membership of or rights under an occupational pension scheme.

(2) If the court or tribunal finds that there has been a breach of the equality clause, it may—

(a) make a declaration as to the rights of the parties in relation to the matters to which the proceedings relate;

(b) order an award by way of arrears of pay or damages in relation to the complainant.

(3) The court or tribunal may not order a payment under subsection (2)(b) in respect of a time before the arrears day.

(4) In relation to proceedings in England and Wales, the arrears day is, in a case mentioned in the first column of the table, the day mentioned in the second column.

Case	*Arrears day*

Status: *This version of this Act contains provisions that are prospective.*
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A standard case	The day falling 6 years before the day on which the proceedings were instituted.
A concealment case or an incapacity case (or a case which is both).	The day on which the breach first occurred.

(5) In relation to proceedings in Scotland, the arrears day is the first day of—
  (a) the period of 5 years ending with the day on which the proceedings were commenced, or
  (b) if the case involves a relevant incapacity, or a relevant fraud or error, **[**[F106]the period determined in accordance with section 135(6) and (7)**]**.

Textual Amendments

F106 Words in s. 132(5)(b) substituted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), **6**

Commencement Information

I52 S. 132 wholly in force; s. 132 not in force at Royal Assent see s. 216; s. 132 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

133 Remedies in pensions cases

(1) This section applies to proceedings before a court or employment tribunal on a complaint relating to—
  (a) a breach of an equality rule, or
  (b) a breach of an equality clause with respect to membership of, or rights under, an occupational pension scheme.

(2) If the court or tribunal finds that there has been a breach as referred to in subsection (1)—
  (a) it may make a declaration as to the rights of the parties in relation to the matters to which the proceedings relate;
  (b) it must not order arrears of benefits or damages or any other amount to be paid to the complainant.

(3) Subsection (2)(b) does not apply if the proceedings are proceedings to which section 134 applies.

(4) If the breach relates to a term on which persons become members of the scheme, the court or tribunal may declare that the complainant is entitled to be admitted to the scheme with effect from a specified date.

(5) A date specified for the purposes of subsection (4) must not be before 8 April 1976.

(6) If the breach relates to a term on which members of the scheme are treated, the court or tribunal may declare that the complainant is, in respect of a specified period, entitled to secure the rights that would have accrued if the breach had not occurred.

(7) A period specified for the purposes of subsection (6) must not begin before 17 May 1990.

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(8) If the court or tribunal makes a declaration under subsection (6), the employer must provide such resources to the scheme as are necessary to secure for the complainant (without contribution or further contribution by the complainant or other members) the rights referred to in that subsection.

Commencement Information

I53 S. 133 wholly in force; s. 133 not in force at Royal Assent see s. 216; s. 133 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

134 Remedies in claims for arrears brought by pensioner members

(1) This section applies to proceedings before a court or employment tribunal on a complaint by a pensioner member of an occupational pension scheme relating to a breach of an equality clause or rule with respect to a term on which the member is treated.

(2) If the court or tribunal finds that there has been a breach referred to in subsection (1), it may—

(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;

(b) order an award by way of arrears of benefits or damages or of any other amount in relation to the complainant.

(3) The court or tribunal must not order an award under subsection (2)(b) in respect of a time before the arrears day.

(4) If the court or tribunal orders an award under subsection (2)(b), the employer must provide such resources to the scheme as are necessary to secure for the complainant (without contribution or further contribution by the complainant or other members) the amount of the award.

(5) In relation to proceedings in England and Wales, the arrears day is, in a case mentioned in the first column of the table, the day mentioned in the second column.

Case	*Arrears day*
A standard case	The day falling 6 years before the day on which the proceedings were commenced.
A concealment case or an incapacity case (or a case which is both).	The day on which the breach first occurred.

(6) In relation to proceedings in Scotland, the arrears day is the first day of—

(a) the period of 5 years ending with the day on which the proceedings were commenced, or

(b) if the case involves a relevant incapacity, or a relevant fraud or error, **[**[F107]the period determined in accordance with section 135(6) and (7)**]**.

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Textual Amendments

F107 Words in s. 134(6)(b) substituted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), **6**

Commencement Information

I54 S. 134 wholly in force; s. 134 not in force at Royal Assent see s. 216; s. 134 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

135 Supplementary

(1) This section applies for the purposes of sections 132 to 134.

(2) A standard case is a case which is not—

(a) a concealment case,

(b) an incapacity case, or

(c) a concealment case and an incapacity case.

(3) A concealment case in relation to an equality clause is a case where—

(a) the responsible person deliberately concealed a qualifying fact (as defined by section 130) from the worker, and

(b) the worker commenced the proceedings before the end of the period of 6 years beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.

(4) A concealment case in relation to an equality rule is a case where—

(a) the employer or the trustees or managers of the occupational pension scheme in question deliberately concealed a qualifying fact (as defined by section 130) from the member, and

(b) the member commenced the proceedings before the end of the period of 6 years beginning with the day on which the member discovered (or could with reasonable diligence have discovered) the qualifying fact.

(5) An incapacity case is a case where the worker or member—

(a) had an incapacity when the breach first occurred, and

(b) commenced the proceedings before the end of the period of 6 years beginning with the day on which the worker or member ceased to have the incapacity.

(6) A case involves a relevant incapacity or a relevant fraud or error if the period of 5 years referred to in section 132(5)(a) **[**[F108]or 134(6)(a)**]** is, as a result of subsection (7) below, reckoned as a period of more than **[**[F109]5 years; and—

(a) if, as a result of subsection (7), that period is reckoned as a period of more than 5 years but no more than 20 years, the period for the purposes of section 132(5)(b) or (as the case may be) section 134(6)(b) is that extended period;

(b) if, as a result of subsection (7), that period is reckoned as a period of more than 20 years, the period for the purposes of section 132(5)(b) or (as the case may be) section 134(6)(b) is a period of 20 years.**]**

(7) For the purposes of the reckoning referred to in subsection (6), no account is to be taken of time when the worker or member—

(a) had an incapacity, or

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(b) was induced by a relevant fraud or error to refrain from commencing proceedings (not being a time after the worker or member could with reasonable diligence have discovered the fraud or error).

(8) For the purposes of subsection (7)—

(a) a fraud is relevant in relation to an equality clause if it is a fraud on the part of the responsible person;

(b) an error is relevant in relation to an equality clause if it is induced by the words or conduct of the responsible person;

(c) a fraud is relevant in relation to an equality rule if it is a fraud on the part of the employer or the trustees or managers of the scheme;

(d) an error is relevant in relation to an equality rule if it is induced by the words or conduct of the employer or the trustees or managers of the scheme.

(9) A reference in subsection (8) to the responsible person, the employer or the trustees or managers includes a reference to a person acting on behalf of the person or persons concerned.

(10) In relation to terms of service, a reference in section 132(5) or subsection (3) or (5)(b) of this section to commencing proceedings is to be read as a reference to making a service complaint.

(11) A reference to a pensioner member of a scheme includes a reference to a person who is entitled to the present payment of pension or other benefits derived through a member.

(12) In relation to proceedings before a court—

(a) a reference to a complaint is to be read as a reference to a claim, and

(b) a reference to a complainant is to be read as a reference to a claimant.

Textual Amendments

F108 Words in s. 135(6) inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), **7(a)**

F109 Words in s. 135(6) substituted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), **7(b)**

Commencement Information

I55 S. 135 wholly in force; s. 135 not in force at Royal Assent see s. 216; s. 135 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(f)** (with art. 15, and subject to transitional provision in art. 7)

CHAPTER 5

MISCELLANEOUS

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

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(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—
- (a) an employment tribunal;
- (b) the Asylum and Immigration Tribunal;
- (c) the Special Immigration Appeals Commission;
- (d) the First-tier Tribunal;
- (e) the **[**[F110]Education Tribunal for Wales**]**;
- (f) **[**[F111]the First-tier Tribunal for Scotland Health and Education Chamber**]** .

Textual Amendments

F110 Words in s. 136(6)(e) substituted (E.W.) (1.9.2021) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(3)**; S.I. 2021/373, art. 8(j)(xxxiii)

F111 Words in s. 136(6)(f) substituted (S.) (12.1.2018) by The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 4(3)**

Commencement Information

I56 S. 136 wholly in force; s. 136 not in force at Royal Assent see s. 216; s. 136(1)-(5)(6)(a)-(e) in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(g)** (with art. 15, and subject to transitional provision in art. 7); s. 136(6)(f) in force at 18.3.2011 by S.I. 2010/2317, **art. 3(c)** (with art. 15, and subject to transitional provision in art. 7)

137 Previous findings

(1) A finding in relevant proceedings in respect of an act which has become final is to be treated as conclusive in proceedings under this Act.

(2) Relevant proceedings are proceedings before a court or employment tribunal under any of the following—
- (a) section 19 or 20 of the Race Relations Act 1968;
- (b) the Equal Pay Act 1970;
- (c) the Sex Discrimination Act 1975;
- (d) the Race Relations Act 1976;
- (e) section 6(4A) of the Sex Discrimination Act 1986;
- (f) the Disability Discrimination Act 1995;
- (g) Part 2 of the Equality Act 2006;
- (h) the Employment Equality (Religion and Belief) Regulations 2003 (S.I. 2003/1660);
- (i) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661);
- (j) the Employment Equality (Age) Regulations 2006 (S.I. 2006/1031);
- (k) the Equality Act (Sexual Orientation) Regulations 2007 (S.I. 2007/1263).

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(3) A finding becomes final—

(a) when an appeal against the finding is dismissed, withdrawn or abandoned, or

(b) when the time for appealing expires without an appeal having been brought.

Commencement Information

I57 S. 137 wholly in force; s. 137 not in force at Royal Assent see s. 216; s. 137 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(h)** (with art. 15, and subject to transitional provision in art. 7)

[F112]138 Obtaining information, etc.

. . . . . .

Textual Amendments

F112 S. 138 omitted (6.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 66(1)**, 103(3) (with s. 66(2)); S.I. 2014/416, art. 3(c)

139 Interest

(1) Regulations may make provision—

(a) for enabling an employment tribunal to include interest on an amount awarded by it in proceedings under this Act;

(b) specifying the manner in which, and the periods and rate by reference to which, the interest is to be determined.

(2) Regulations may modify the operation of an order made under section 14 of the Employment Tribunals Act 1996 (power to make provision as to interest on awards) in so far as it relates to an award in proceedings under this Act.

Commencement Information

I58 S. 139 wholly in force; s. 139 not in force at Royal Assent see s. 216; s. 139 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(j)** (with art. 15, and subject to transitional provision in art. 7)

[[F113]139A Equal pay audits

(1) Regulations may make provision requiring an employment tribunal to order the respondent to carry out an equal pay audit in any case where the tribunal finds that there has been an equal pay breach.

(2) An equal pay breach is—

(a) a breach of an equality clause, or

(b) a contravention in relation to pay of section 39(2), 49(6) or 50(6), so far as relating to sex discrimination.

(3) An equal pay audit is an audit designed to identify action to be taken to avoid equal pay breaches occurring or continuing.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) The regulations may make further provision about equal pay audits, including provision about—
  (a) the content of an audit;
  (b) the powers and duties of a tribunal for deciding whether its order has been complied with;
  (c) any circumstances in which an audit may be required to be published or may be disclosed to any person.

(5) The regulations must provide for an equal pay audit not to be ordered where the tribunal considers that—
  (a) an audit completed by the respondent in the previous 3 years meets requirements prescribed for this purpose,
  (b) it is clear without an audit whether any action is required to avoid equal pay breaches occurring or continuing,
  (c) the breach the tribunal has found gives no reason to think that there may be other breaches, or
  (d) the disadvantages of an equal pay audit would outweigh its benefits.

(6) The regulations may provide for an employment tribunal to have power, where a person fails to comply with an order to carry out an equal pay audit, to order that person to pay a penalty to the Secretary of State of not more than an amount specified in the regulations.

(7) The regulations may provide for that power—
  (a) to be exercisable in prescribed circumstances;
  (b) to be exercisable more than once, if the failure to comply continues.

(8) The first regulations made by virtue of subsection (6) must not specify an amount of more than £5,000.

(9) Sums received by the Secretary of State under the regulations must be paid into the Consolidated Fund.

(10) The first regulations under this section must specify an exemption period during which the requirement to order an equal pay audit does not apply in the case of a business that—
  (a) had fewer than 10 employees immediately before a specified time, or
  (b) was begun as a new business in a specified period.

(11) For the purposes of subsection (10)—
  (a) " specified " means specified in the regulations, and
  (b) the number of employees a business had or the time when a business was begun as a new business is to be determined in accordance with the regulations.

(12) Before making regulations under this section, a Minister of the Crown must consult any other Minister of the Crown with responsibility for employment tribunals.**]**

Textual Amendments

F113 S. 139A inserted (25.4.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 98(2)**, 103(1)

Status: *This version of this Act contains provisions that are prospective.*
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140 Conduct giving rise to separate proceedings

(1) This section applies in relation to conduct which has given rise to two or more separate proceedings under this Act, with at least one being for a contravention of section 111 (instructing, causing or inducing contraventions).

(2) A court may transfer proceedings to an employment tribunal.

(3) An employment tribunal may transfer proceedings to a court.

(4) A court or employment tribunal is to be taken for the purposes of this Part to have jurisdiction to determine a claim or complaint transferred to it under this section; accordingly—

(a) a reference to a claim within section 114(1) includes a reference to a claim transferred to a court under this section, and

(b) a reference to a complaint within section 120(1) includes a reference to a complaint transferred to an employment tribunal under this section.

(5) A court or employment tribunal may not make a decision that is inconsistent with an earlier decision in proceedings arising out of the conduct.

(6) "Court" means—

(a) in relation to proceedings in England and Wales, **[**[F114]the county court**]**;

(b) in relation to proceedings in Scotland, the sheriff.

Textual Amendments

F114 Words in s. 140(6) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Commencement Information

I59 S. 140 wholly in force; s. 140 not in force at Royal Assent see s. 216; s. 140 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(j)** (with art. 15, and subject to transitional provision in art. 7)

[F115]140A Extension of time limits because of mediation in certain cross-border disputes

. . . . . .

Textual Amendments

F115 S. 140A omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 17(5)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

[[F116]140AA Extension of time limits because of alternative dispute resolution in certain cross border or domestic contractual disputes

(1) In this section—

[F117](a) . . . . . .

[[F118](b) "ADR entity" means a person whose name appears on a list maintained in accordance with regulation 10 of the Alternative Dispute Resolution for

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Consumer Disputes (Competent Authorities and Information) Regulations 2015 (S.I. 2015/542)**]**.

F119(c) . . . . . .

[F120(d) "ADR procedure" means a procedure for the out-of-court resolution of disputes through the intervention of an ADR entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution**]**

[F121(da) "consumer" means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;**]**

(e) "non-binding ADR procedure" means an ADR procedure the outcome of which is not binding on the parties;

[F122(f) "relevant dispute" means a dispute that—

(a) concerns obligations under a sales contract or a service contract, and

(b) is between a trader established in the United Kingdom or the European Union and a consumer resident in the United Kingdom, which the parties attempt to settle by recourse to a non-binding ADR procedure.**]**

[F123(g) "sales contract" means a contract under which a trader transfers, or agrees to transfer, the ownership of goods to a consumer and the consumer pays, or agrees to pay, the price, including any contract that has both goods and services as its object;

(h) "service contract" means a contract, other than a sales contract, under which a trader supplies, or agrees to supply, a service to a consumer and the consumer pays, or agrees to pay, the price;

(i) "trader" means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.**]**

(2) Subsection (3) applies where—

(a) a time limit is set by section 118(1)(a) and (2) in relation to the whole or part of a relevant dispute;

(b) a non-binding ADR procedure in relation to the relevant dispute starts before the time limit expires; and

(c) if not extended by this section, the time limit would expire before the non-binding ADR procedure ends or less than eight weeks after it ends.

(3) For the purposes of initiating judicial proceedings, the time limit expires instead at the end of eight weeks after the non-binding ADR procedure ends (subject to subsection (4)).

(4) If a time limit has been extended by this section, subsections (2) and (3) apply to the extended time limit as they apply to a time limit mentioned in subsection (2)(a).

(5) Where more than one time limit applies in relation to a relevant dispute, the extension by subsection (3) of one of those time limits does not affect the others.

(6) For the purposes of this section, a non-binding ADR procedure starts in relation to a relevant dispute on the date when the dispute is first sent or otherwise communicated to the ADR entity in accordance with the entity's rules regarding the submission of complaints.

(7) For the purposes of this section, the non-binding ADR procedure ends on the date of the first of these to occur—

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(a) the parties reach an agreement in resolution of the relevant dispute;

(b) a party completes the notification of the other parties that it has withdrawn from the non-binding ADR procedure;

(c) a party to whom a qualifying request is made fails to give a response reaching the other parties within 14 days of the request;

(d) that the ADR entity notifies the party that submitted the relevant dispute to the ADR entity that, in accordance with its policy, the ADR entity refuses to deal with the relevant dispute;

(e) after the parties are notified that the ADR entity can no longer act in relation to the relevant dispute (for whatever reason), the parties fail to agree within 14 days to submit the dispute to an alternative ADR entity;

(f) the non-binding ADR procedure otherwise comes to an end pursuant to the rules of the ADR entity.

(8) For the purpose of subsection (6), a qualifying request is a request by a party that another (A) confirm to all parties that A is continuing with the non-binding ADR procedure.

(9) In the case of any relevant dispute, references in this section to a non-binding ADR procedure are references to the non-binding ADR procedure so far as it relates to that dispute, and references to a party are to be read accordingly.

(10) Where a court or tribunal has power under section 118(1)(b) to extend a period of limitation, the power is exercisable in relation to the period of limitation as extended by this section.**]**

Textual Amendments

F116 S. 140AA inserted (9.7.2015) by The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (S.I. 2015/1392), regs. 1(2), **7(3)** (with reg. 1(3))

F117 S. 140AA(1)(a) omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(2)(a)** (with reg. 10) (as amended by S.I. 2020/1139, regs. 1(2), 6(3); 2020 c. 1, Sch. 5 para. 1(1))

F118 S. 140AA(1)(b) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(2)(b)** (with reg. 10) (as substituted by S.I. 2020/1139, regs. 1(2), **6(2)(a)** (with reg. 7))

F119 S. 140AA(1)(c) omitted (9.1.2016) by virtue of The Alternative Dispute Resolution for Consumer Disputes (Amendment) (No. 2) Regulations 2015 (S.I. 2015/1972), regs. 1, **5(2)**

F120 S. 140AA(1)(d) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(2)(c)** (with reg. 10) (as amended by S.I. 2020/1139, regs. 1(2), 6(3); 2020 c. 1, Sch. 5 para. 1(1))

F121 S. 140AA(1)(da) inserted (31.12.2020) by S.I. 2019/305, reg. 5(2)(ca) (as inserted by The Alternative Dispute Resolution for Consumer Disputes (Extension of Time Limits for Legal Proceedings) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1139), regs. 1(2), **6(2)(b)** (with reg. 7))

F122 S. 140AA(1)(f) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(2)(d)** (with reg. 10) (as amended by S.I. 2020/1139, regs. 1(2), 6(2)(c)(3); 2020 c. 1, Sch. 5 para. 1(1))

F123 S. 140AA(1)(g)-(i) inserted (31.12.2020) by S.I. 2019/305, reg. 5(2)(e) (as inserted by The Alternative Dispute Resolution for Consumer Disputes (Extension of Time Limits for Legal Proceedings) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1139), regs. 1(2), **6(2)(d)** (with reg. 7))

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[F124 140B Extension of time limits to facilitate conciliation before institution of proceedings

(1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).

F125 …

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.]

Textual Amendments

F124 S.140B inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **Sch. 2 para. 45**; S.I. 2014/253, **art. 3(g)**

F125 Words in s. 140B(1) omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 17(6)** (with reg. 5 (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6))); 2020 c. 1, Sch. 5 para. 1(1)

141 Interpretation, etc.

(1) This section applies for the purposes of this Part.

(2) A reference to the responsible person, in relation to an equality clause or rule, is to be construed in accordance with Chapter 3 of Part 5.

(3) A reference to a worker is a reference to the person to the terms of whose work the proceedings in question relate; and, for the purposes of proceedings relating to an equality rule or a non-discrimination rule, a reference to a worker includes a reference to a member of the occupational pension scheme in question.

(4) A reference to the terms of a person's work is to be construed in accordance with Chapter 3 of Part 5.

(5) A reference to a member of an occupational pension scheme includes a reference to a prospective member.

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(6) In relation to proceedings in England and Wales, a person has an incapacity if the person—
  (a) has not attained the age of 18, or
  (b) lacks capacity (within the meaning of the Mental Capacity Act 2005).

(7) In relation to proceedings in Scotland, a person has an incapacity if the person—
  (a) has not attained the age of 16, or
  (b) is incapable (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).

[[F126](8) Service complaint" means a complaint made under section 340A(1) or (2) of the Armed Forces Act 2006.**]**

(9) "Criminal matter" means—
  (a) an investigation into the commission of an alleged offence;
  (b) a decision whether to commence criminal proceedings;
  (c) criminal proceedings.

Textual Amendments

F126 S. 141(8) substituted (1.1.2016) by Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19), s. 7(1), **Sch. para. 15**; S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

Commencement Information

I60 S. 141 wholly in force; s. 141 not in force at Royal Assent see s. 216; s. 141 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(j)** (with art. 15, and subject to transitional provision in art. 7)

PART 10

CONTRACTS, ETC.

Contracts and other agreements

142 Unenforceable terms

(1) A term of a contract is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act.

(2) A relevant non-contractual term is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act, in so far as this Act relates to disability.

(3) A relevant non-contractual term is a term which—
  (a) is a term of an agreement that is not a contract, and
  (b) relates to the provision of an employment service within section 56(2)(a) to (e) or to the provision under a group insurance arrangement of facilities by way of insurance.

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(4) A reference in subsection (1) or (2) to treatment of a description prohibited by this Act does not include—
  (a) a reference to the inclusion of a term in a contract referred to in section 70(2)(a) or 76(2), or
  (b) a reference to the failure to include a term in a contract as referred to in section 70(2)(b).

(5) Subsection (4) does not affect the application of section 148(2) to this section.

143 Removal or modification of unenforceable terms

(1) **[**[F127]The county court**]** or the sheriff may, on an application by a person who has an interest in a contract or other agreement which includes a term that is unenforceable as a result of section 142, make an order for the term to be removed or modified.

(2) An order under this section must not be made unless every person who would be affected by it—
  (a) has been given notice of the application (except where notice is dispensed with in accordance with rules of court), and
  (b) has been afforded an opportunity to make representations to the county court or sheriff.

(3) An order under this section may include provision in respect of a period before the making of the order.

Textual Amendments

F127 Words in s. 143(1) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

144 Contracting out

(1) A term of a contract is unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of or made under this Act.

(2) A relevant non-contractual term (as defined by section 142) is unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of or made under this Act, in so far as the provision relates to disability.

(3) This section does not apply to a contract which settles a claim within section 114.

(4) This section does not apply to a contract which settles a complaint within section 120 if the contract—
  (a) is made with the assistance of a conciliation officer, or
  (b) is a qualifying **[**[F128]settlement agreement **]**.

(5) A contract within subsection (4) includes a contract which settles a complaint relating to a breach of an equality clause or rule or of a non-discrimination rule.

(6) A contract within subsection (4) includes an agreement by the parties to a dispute to submit the dispute to arbitration if—

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(a) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and

(b) the agreement is to submit the dispute to arbitration in accordance with the scheme.

Textual Amendments

F128 Words in s. 144(4)(b) substituted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(5)**, 103(3); S.I. 2013/1648, art. 2(c)

Collective agreements and rules of undertakings

145 Void and unenforceable terms

(1) A term of a collective agreement is void in so far as it constitutes, promotes or provides for treatment of a description prohibited by this Act.

(2) A rule of an undertaking is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of the person that is of a description prohibited by this Act.

146 Declaration in respect of void term, etc.

(1) A qualifying person (P) may make a complaint to an employment tribunal that a term is void, or that a rule is unenforceable, as a result of section 145.

(2) But subsection (1) applies only if—

(a) the term or rule may in the future have effect in relation to P, and

(b) where the complaint alleges that the term or rule provides for treatment of a description prohibited by this Act, P may in the future be subjected to treatment that would (if P were subjected to it in present circumstances) be of that description.

(3) If the tribunal finds that the complaint is well-founded, it must make an order declaring that the term is void or the rule is unenforceable.

(4) An order under this section may include provision in respect of a period before the making of the order.

(5) In the case of a complaint about a term of a collective agreement, where the term is one made by or on behalf of a person of a description specified in the first column of the table, a qualifying person is a person of a description specified in the second column.

Description of person who made collective agreement	***Qualifying person***
Employer	A person who is, or is seeking to be, an employee of that employer
Organisation of employers	A person who is, or is seeking to be, an employee of an employer who is a member of that organisation

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Association of organisations of employers	A person who is, or is seeking to be, an employee of an employer who is a member of an organisation in that association

(6) In the case of a complaint about a rule of an undertaking, where the rule is one made by or on behalf of a person of a description specified in the first column of the table, a qualifying person is a person of a description specified in the second column.

Description of person who made rule of undertaking	***Qualifying person***
Employer	A person who is, or is seeking to be, an employee of that employer
Trade organisation or qualifications body	A person who is, or is seeking to be, a member of the organisation or body
	A person upon whom the body has conferred a relevant qualification
	A person seeking conferment by the body of a relevant qualification

Supplementary

147 Meaning of "qualifying [F129settlement agreement]"

(1) This section applies for the purposes of this Part.

(2) A qualifying **[**F130settlement agreement**]** is a contract in relation to which each of the conditions in subsection (3) is met.

(3) Those conditions are that—
- (a) the contract is in writing,
- (b) the contract relates to the particular complaint,
- (c) the complainant has, before entering into the contract, received advice from an independent adviser about its terms and effect (including, in particular, its effect on the complainant's ability to pursue the complaint before an employment tribunal),
- (d) on the date of the giving of the advice, there is in force a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising from the advice,
- (e) the contract identifies the adviser, and
- (f) the contract states that the conditions in paragraphs (c) and (d) are met.

(4) Each of the following is an independent adviser—
- (a) a qualified lawyer;
- (b) an officer, official, employee or member of an independent trade union certified in writing by the trade union as competent to give advice and as authorised to do so on its behalf;

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(c) a worker at an advice centre (whether as an employee or a volunteer) certified in writing by the centre as competent to give advice and as authorised to do so on its behalf;

(d) a person of such description as may be specified by order.

(5) Despite subsection (4), none of the following is an independent adviser **[**[F131]to the complainant**]** in relation to a qualifying **[**[F130]settlement agreement**]**—

(a) a person **[**[F132](other than the complainant)**]** who is a party to the contract or the complaint;

(b) a person who is connected to a person within paragraph (a);

(c) a person who is employed by a person within paragraph (a) or (b);

(d) a person who is acting for a person within paragraph (a) or (b) in relation to the contract or the complaint;

(e) a person within subsection (4)(b) or (c), if the trade union or advice centre is a person within paragraph (a) or (b);

(f) a person within subsection (4)(c) to whom the complainant makes a payment for the advice.

(6) A "qualified lawyer", for the purposes of subsection (4)(a), is—

(a) in relation to England and Wales, a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation;

(b) in relation to Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(7) "Independent trade union" has the meaning given in section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992.

(8) Two persons are connected for the purposes of subsection (5) if—

(a) one is a company of which the other (directly or indirectly) has control, or

(b) both are companies of which a third person (directly or indirectly) has control.

(9) Two persons are also connected for the purposes of subsection (5) in so far as a connection between them gives rise to a conflict of interest in relation to the contract or the complaint.

Textual Amendments

F129 Words in s. 147 heading substituted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(6)**, 103(3); S.I. 2013/1648, art. 2(c)

F130 Words in s. 147(2)(5) substituted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(6)**, 103(3); S.I. 2013/1648, art. 2(c)

F131 Words in s. 147(5) inserted (6.4.2012) by The Equality Act 2010 (Amendment) Order 2012 (S.I. 2012/334), **art. 2(2)**

F132 Words in s. 147(5)(a) inserted (6.4.2012) by The Equality Act 2010 (Amendment) Order 2012 (S.I. 2012/334), **art. 2(3)**

Commencement Information

I61 S. 147 wholly in force at 1.10.2010; s. 147 not in force at Royal Assent see s. 216; s. 147(4) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; s. 147 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(10)(b)** (with art. 15)

Status: *This version of this Act contains provisions that are prospective.*
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148 Interpretation

(1) This section applies for the purposes of this Part.

(2) A reference to treatment of a description prohibited by this Act does not include treatment in so far as it is treatment that would contravene—
  (a) Part 1 (public sector duty regarding socio-economic inequalities), or
  (b) Chapter 1 of Part 11 (public sector equality duty).

(3) "Group insurance arrangement" means an arrangement between an employer and another person for the provision by that other person of facilities by way of insurance to the employer's employees (or a class of those employees).

(4) "Collective agreement" has the meaning given in section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992.

(5) A rule of an undertaking is a rule within subsection (6) or (7).

(6) A rule within this subsection is a rule made by a trade organisation or a qualifications body for application to—
  (a) its members or prospective members,
  (b) persons on whom it has conferred a relevant qualification, or
  (c) persons seeking conferment by it of a relevant qualification.

(7) A rule within this subsection is a rule made by an employer for application to—
  (a) employees,
  (b) persons who apply for employment, or
  (c) persons the employer considers for employment.

(8) "Trade organisation", "qualifications body" and "relevant qualification" each have the meaning given in Part 5 (work).

PART 11

ADVANCEMENT OF EQUALITY

Modifications etc. (not altering text)

C16 Pt. 11 applied (with modifications) (22.11.2012) by The Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 (S.I. 2012/2734), **regs. 3-6**, Sch.

CHAPTER 1

PUBLIC SECTOR EQUALITY DUTY

149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—
  (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—

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

(8) A reference to conduct that is prohibited by or under this Act includes a reference to—

(a) a breach of an equality clause or rule;

(b) a breach of a non-discrimination rule.

(9) Schedule 18 (exceptions) has effect.

150 Public authorities and public functions

(1) A public authority is a person who is specified in Schedule 19.

Status: *This version of this Act contains provisions that are prospective.*
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(2) In that Schedule—

Part 1 specifies public authorities generally;

Part 2 specifies relevant Welsh authorities;

Part 3 specifies relevant Scottish authorities.

(3) A public authority specified in Schedule 19 is subject to the duty imposed by section 149(1) in relation to the exercise of all of its functions unless subsection (4) applies.

(4) A public authority specified in that Schedule in respect of certain specified functions is subject to that duty only in respect of the exercise of those functions.

(5) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

Commencement Information

I62 S. 150 wholly in force at 5.4.2011; s. 150 not in force at Royal Assent see 216; s. 150 in force for certain purposes at 18.1.2011 by S.I. 2011/96, **art. 2(a)**; s. 150 in force so far as not already in force at 5.4.2011 by S.I. 2011/1066, **art. 2(b)**

151 Power to specify public authorities

(1) A Minister of the Crown may by order amend Part 1, 2 or 3 of Schedule 19.

(2) The Welsh Ministers may by order amend Part 2 of Schedule 19.

(3) The Scottish Ministers may by order amend Part 3 of Schedule 19.

(4) The power under subsection (1), (2) or (3) may not be exercised so as to—

(a) add an entry to Part 1 relating to a relevant Welsh or Scottish authority or a cross-border Welsh or Scottish authority;

(b) add an entry to Part 2 relating to a person who is not a relevant Welsh authority;

(c) add an entry to Part 3 relating to a person who is not a relevant Scottish authority.

(5) A Minister of the Crown may by order amend Schedule 19 so as to make provision relating to a cross-border Welsh or Scottish authority.

(6) On the first exercise of the power under subsection (5) to add an entry relating to a cross-border Welsh or Scottish authority to Schedule 19, a Minister of the Crown must—

(a) add a Part 4 to the Schedule for cross-border authorities, and

(b) add the cross-border Welsh or Scottish authority to that Part.

(7) Any subsequent exercise of the power under subsection (5) to add an entry relating to a cross-border Welsh or Scottish authority to Schedule 19 must add that entry to Part 4 of the Schedule.

(8) An order may not be made under this section so as to extend the application of section 149 unless the person making it considers that the extension relates to a person by whom a public function is exercisable.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(9) An order may not be made under this section so as to extend the application of section 149 to—

(a) the exercise of a function referred to in paragraph 3 of Schedule 18 (judicial functions, etc);

(b) a person listed in paragraph 4(2)(a) to (e) of that Schedule (Parliament, devolved legislatures and General Synod);

(c) the exercise of a function listed in paragraph 4(3) of that Schedule (proceedings in Parliament or devolved legislatures).

152 Power to specify public authorities: consultation [F133]...

(1) Before making an order under a provision specified in the first column of the Table, a Minister of the Crown must consult the person or persons specified in the second column.

Provision	*Consultees*
Section 151(1)	The Commission
Section 151(1), so far as relating to a relevant Welsh authority	The Welsh Ministers
Section 151(1), so far as relating to a relevant Scottish authority	The Scottish Ministers
Section 151(5)	The Commission
Section 151(5), so far as relating to a cross-border Welsh authority	The Welsh Ministers
Section 151(5), so far as relating to a cross-border Scottish authority	The Scottish Ministers

(2) Before making an order under section 151(2), the Welsh Ministers must **[**[F134]consult the Commission, and after making such an order they must inform a Minister of the Crown.**]**

(3) Before making an order under section 151(3), the Scottish Ministers must **[**[F135]consult the Commission, and after making such an order they must inform a Minister of the Crown.**]**

Textual Amendments

F133 Words in s. 152 heading omitted (1.4.2018) by virtue of Wales Act 2017 (c. 4), **ss. 44(2)(b)**, 71(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(i)

F134 Words in s. 152(2) substituted (1.4.2018) by Wales Act 2017 (c. 4), **ss. 44(2)(a)**, 71(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(i)

F135 Words in s. 152(3) substituted (23.5.2016) by Scotland Act 2016 (c. 11), **ss. 37(7)**, 72(7)

153 Power to impose specific duties

(1) A Minister of the Crown may by regulations impose duties on a public authority specified in Part 1 of Schedule 19 for the purpose of enabling the better performance by the authority of the duty imposed by section 149(1).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) The Welsh Ministers may by regulations impose duties on a public authority specified in Part 2 of Schedule 19 for that purpose.

(3) The Scottish Ministers may by regulations impose duties on a public authority specified in Part 3 of Schedule 19 for that purpose.

(4) Before making regulations under this section, the person making them must consult the Commission.

154 Power to impose specific duties: cross-border authorities

(1) If a Minister of the Crown exercises the power in section 151(5) to add an entry for a public authority to Part 4 of Schedule 19, the Minister must include after the entry a letter specified in the first column of the Table in subsection (3).

(2) Where a letter specified in the first column of the Table in subsection (3) is included after an entry for a public authority in Part 4 of Schedule 19, the person specified in the second column of the Table—

(a) may by regulations impose duties on the authority for the purpose of enabling the better performance by the authority of the duty imposed by section 149(1), subject to such limitations as are specified in that column;

(b) must in making the regulations comply with the procedural requirement specified in that column.

(3) This is the Table—

Letter	*Person by whom regulations may be made and procedural requirements*
A	Regulations may be made by a Minister of the Crown in relation to the authority's functions that are not devolved Welsh functions. The Minister of the Crown must consult the Welsh Ministers before making the regulations. Regulations may be made by the Welsh Ministers in relation to the authority's devolved Welsh functions. **[**[F136]The Welsh Ministers must inform a Minister of the Crown after**]** making the regulations.
B	Regulations may be made by a Minister of the Crown in relation to the authority's functions that are not devolved Scottish functions. The Minister of the Crown must consult the Scottish Ministers before making the regulations. Regulations may be made by the Scottish Ministers in relation to the authority's devolved Scottish functions. **[**[F137]The Scottish Ministers must inform a Minister of the Crown after**]** making the regulations.
C	Regulations may be made by a Minister of the Crown in relation to the authority's functions that are neither devolved Welsh functions nor devolved Scottish functions.

Status: *This version of this Act contains provisions that are prospective.*
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	The Minister of the Crown must consult the Welsh Ministers and the Scottish Ministers before making the regulations.
	Regulations may be made by the Welsh Ministers in relation to the authority's devolved Welsh functions.
	[[F136]The Welsh Ministers must inform a Minister of the Crown after**]** making the regulations.
	Regulations may be made by the Scottish Ministers in relation to the authority's devolved Scottish functions.
	[[F137]The Scottish Ministers must inform a Minister of the Crown after**]** making the regulations.
D	The regulations may be made by a Minister of the Crown.
	The Minister of the Crown must consult the Welsh Ministers before making the regulations.

(4) Before making regulations under subsection (2), the person making them must consult the Commission.

Textual Amendments

F136 Words in s. 154(3) substituted (1.4.2018) by Wales Act 2017 (c. 4), **ss. 44(3)**, 71(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(i)

F137 Words in s. 154(3) table substituted (23.5.2016) by Scotland Act 2016 (c. 11), **ss. 37(8)**, 72(7)

155 Power to impose specific duties: supplementary

(1) Regulations under section 153 or 154 may require a public authority to consider such matters as may be specified from time to time by—

(a) a Minister of the Crown, where the regulations are made by a Minister of the Crown;

(b) the Welsh Ministers, where the regulations are made by the Welsh Ministers;

(c) the Scottish Ministers, where the regulations are made by the Scottish Ministers.

(2) Regulations under section 153 or 154 may impose duties on a public authority that is a contracting authority within the meaning of the **[**[F138]Public Contracts Regulations**]** in connection with its public procurement functions.

(3) In subsection (2)—

[[F139]"Public Contracts Regulations" means the Public Contracts Regulations 2015 (S.I. 2015/102) or, in Scotland, the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time;

"public procurement functions" means functions the exercise of which is regulated by Part 2 of the Public Contracts Regulations 2015 (S.I. 2015/102) or by the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time.**]**

(4) Subsections (1) and (2) do not affect the generality of section 153 or 154(2)(a).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) A duty imposed on a public authority under section 153 or 154 may be modified or removed by regulations made by—

(a) a Minister of the Crown, where the original duty was imposed by regulations made by a Minister of the Crown;

(b) the Welsh Ministers, where the original duty was imposed by regulations made by the Welsh Ministers;

(c) the Scottish Ministers, where the original duty was imposed by regulations made by the Scottish Ministers.

Textual Amendments

F138 Words in s. 155(2) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **4(2)(a)** (with Sch. para. 3, 4)

F139 Words in s. 155(3) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **4(2)(b)** (with Sch. para. 3, 4)

156 Enforcement

A failure in respect of a performance of a duty imposed by or under this Chapter does not confer a cause of action at private law.

157 Interpretation

(1) This section applies for the purposes of this Chapter.

[[F140](2) A relevant Welsh authority is a devolved Welsh authority (within the meaning given by section 157A of the Government of Wales Act 2006) other than the Assembly Commission.**]**

(3) A cross-border Welsh authority is a person other than a relevant Welsh authority (or the Assembly Commission) who has any function that—

(a) is exercisable in or as regards Wales, and

(b) is a devolved Welsh function.

(4) The Assembly Commission has the same meaning as in the Government of Wales Act 2006.

[[F141](5) A function is a devolved Welsh function if—

(a) it relates to a matter in respect of which functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government, or

(b) provision conferring the function would be within the legislative competence of the National Assembly for Wales.**]**

(6) A relevant Scottish authority is a public body, public office or holder of a public office—

(a) which is not a cross-border Scottish authority or the Scottish Parliamentary Corporate Body,

(b) whose functions are exercisable only in or as regards Scotland, and

(c) at least some of whose functions do not relate to reserved matters.

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(7) A cross-border Scottish authority is a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998.

(8) A function is a devolved Scottish function if it—
  (a) is exercisable in or as regards Scotland, and
  (b) does not relate to reserved matters.

(9) Reserved matters has the same meaning as in the Scotland Act 1998.

Textual Amendments

F140 S. 157(2) substituted (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 84(2)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(r)

F141 S. 157(5) substituted (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 84(3)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(r)

CHAPTER 2

POSITIVE ACTION

158 Positive action: general

(1) This section applies if a person (P) reasonably thinks that—
  (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,
  (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
  (c) participation in an activity by persons who share a protected characteristic is disproportionately low.

(2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of—
  (a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,
  (b) meeting those needs, or
  (c) enabling or encouraging persons who share the protected characteristic to participate in that activity.

(3) Regulations may specify action, or descriptions of action, to which subsection (2) does not apply.

(4) This section does not apply to—
  (a) action within section 159(3), or
  (b) anything that is permitted by virtue of section 104.

(5) If section 104(7) is repealed by virtue of section 105, this section will not apply to anything that would have been so permitted but for the repeal.

(6) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

Status: *This version of this Act contains provisions that are prospective.*
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Modifications etc. (not altering text)

C17 S. 158 excluded (S.) (29.5.2020) by Gender Representation on Public Boards (Scotland) Act 2018 (asp 4), **ss. 11(1)**, 13; S.S.I. 2020/119, reg. 2

159 Positive action: recruitment and promotion

(1) This section applies if a person (P) reasonably thinks that—

(a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or

(b) participation in an activity by persons who share a protected characteristic is disproportionately low.

(2) Part 5 (work) does not prohibit P from taking action within subsection (3) with the aim of enabling or encouraging persons who share the protected characteristic to—

(a) overcome or minimise that disadvantage, or

(b) participate in that activity.

(3) That action is treating a person (A) more favourably in connection with recruitment or promotion than another person (B) because A has the protected characteristic but B does not.

(4) But subsection (2) applies only if—

(a) A is as qualified as B to be recruited or promoted,

(b) P does not have a policy of treating persons who share the protected characteristic more favourably in connection with recruitment or promotion than persons who do not share it, and

(c) taking the action in question is a proportionate means of achieving the aim referred to in subsection (2).

(5) "Recruitment" means a process for deciding whether to—

(a) offer employment to a person,

(b) make contract work available to a contract worker,

(c) offer a person a position as a partner in a firm or proposed firm,

(d) offer a person a position as a member of an LLP or proposed LLP,

(e) offer a person a pupillage or tenancy in barristers' chambers,

(f) take a person as an advocate's devil or offer a person membership of an advocate's stable,

(g) offer a person an appointment to a personal office,

(h) offer a person an appointment to a public office, recommend a person for such an appointment or approve a person's appointment to a public office, or

(i) offer a person a service for finding employment.

(6) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

Modifications etc. (not altering text)

C18 S. 159 excluded by 2005 c. 4, s. 27(5A)(a) (as inserted (15.7.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 9**; S.I. 2013/1725, art. 2(g))

Status: *This version of this Act contains provisions that are prospective.*
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C19 S. 159 excluded (S.) (29.5.2020) by Gender Representation on Public Boards (Scotland) Act 2018 (asp 4), **ss. 11(1)**, 13; S.S.I. 2020/119, reg. 2

Commencement Information

I63 S. 159 wholly in force at 6.4.2011; s. 159 not in force at Royal Assent see s. 216; s. 159(3) in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(11)(b)** (with art. 15); s. 159 in force so far as not already in force at 6.4.2011 by S.I. 2011/96, **art. 3**

PART 12

DISABLED PERSONS: TRANSPORT

CHAPTER 1

TAXIS, ETC.

PROSPECTIVE

160 Taxi accessibility regulations

(1) The Secretary of State may make regulations (in this Chapter referred to as "taxi accessibility regulations") for securing that it is possible for disabled persons—
- (a) to get into and out of taxis in safety;
- (b) to do so while in wheelchairs;
- (c) to travel in taxis in safety and reasonable comfort;
- (d) to do so while in wheelchairs.

(2) The regulations may, in particular, require a regulated taxi to conform with provision as to—
- (a) the size of a door opening for the use of passengers;
- (b) the floor area of the passenger compartment;
- (c) the amount of headroom in the passenger compartment;
- (d) the fitting of restraining devices designed to ensure the stability of a wheelchair while the taxi is moving.

(3) The regulations may also—
- (a) require the driver of a regulated taxi which is plying for hire, or which has been hired, to comply with provisions as to the carrying of ramps or other devices designed to facilitate the loading and unloading of wheelchairs;
- (b) require the driver of a regulated taxi in which a disabled person is being carried while in a wheelchair to comply with provisions as to the position in which the wheelchair is to be secured.

(4) The driver of a regulated taxi which is plying for hire or has been hired commits an offence—
- (a) by failing to comply with a requirement of the regulations, or
- (b) if the taxi fails to conform with any provision of the regulations with which it is required to conform.

Status: *This version of this Act contains provisions that are prospective.*
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(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) In this section—

"passenger compartment" has such meaning as is specified in taxi accessibility regulations;

"regulated taxi" means a taxi to which taxi accessibility regulations are expressed to apply.

161 Control of numbers of licensed taxis: exception

(1) This section applies if—

(a) an application for a licence in respect of a vehicle is made under section 37 of the Town Police Clauses Act 1847,

(b) it is possible for a disabled person—

(i) to get into and out of the vehicle in safety,

(ii) to travel in the vehicle in safety and reasonable comfort, and

(iii) to do the things mentioned in sub-paragraphs (i) and (ii) while in a wheelchair of a size prescribed by the Secretary of State, and

(c) the proportion of taxis licensed in respect of the area to which the licence would (if granted) apply that conform to the requirement in paragraph (b) is less than the proportion that is prescribed by the Secretary of State.

(2) Section 16 of the Transport Act 1985 (which modifies the provisions of the Town Police Clauses Act 1847 about hackney carriages to allow a licence to ply for hire to be refused in order to limit the number of licensed carriages) does not apply in relation to the vehicle; and those provisions of the Town Police Clauses Act 1847 are to have effect subject to this section.

(3) In section 16 of the Transport Act 1985, after "shall" insert " (subject to section 161 of the Equality Act 2010) ".

Commencement Information

I64 S. 161 partly in force; s. 161 not in force at Royal Assent see s. 216; s. 161 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(12)(a)** (with art. 15)

PROSPECTIVE

162 Designated transport facilities

(1) The appropriate authority may by regulations provide for the application of any taxi provision (with or without modification) to—

(a) vehicles used for the provision of services under a franchise agreement, or

(b) drivers of such vehicles.

(2) A franchise agreement is a contract entered into by the operator of a designated transport facility for the provision, by the other party to the contract, of hire car services—

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(a) for members of the public using any part of the facility, and
(b) which involve vehicles entering any part of the facility.

(3) In this section—

"appropriate authority" means—
(a) in relation to transport facilities in England and Wales, the Secretary of State;
(b) in relation to transport facilities in Scotland, the Scottish Ministers;

"designated" means designated by order made by the appropriate authority;

"hire car" has such meaning as is prescribed by the appropriate authority;

"operator", in relation to a transport facility, means a person who is concerned with the management or operation of the facility;

"taxi provision" means a provision of—
(a) this Chapter, or
(b) regulations made in pursuance of section 20(2A) of the Civic Government (Scotland) Act 1982,

which applies in relation to taxis or drivers of taxis;

"transport facility" means premises which form part of a port, airport, railway station or bus station.

F142(4) . . . . . .

Textual Amendments

F142 S. 162(4) omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(3)**; 2020 c. 1, Sch. 5 para. 1(1)

PROSPECTIVE

163 Taxi licence conditional on compliance with taxi accessibility regulations

(1) A licence for a taxi to ply for hire must not be granted unless the vehicle conforms with the provisions of taxi accessibility regulations with which a vehicle is required to conform if it is licensed.

(2) Subsection (1) does not apply if a licence is in force in relation to the vehicle at any time during the period of 28 days immediately before the day on which the licence is granted.

(3) The Secretary of State may by order provide for subsection (2) to cease to have effect on a specified date.

(4) The power under subsection (3) may be exercised differently for different areas or localities.

Status: *This version of this Act contains provisions that are prospective.*
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PROSPECTIVE

164 Exemption from taxi accessibility regulations

(1) The Secretary of State may by regulations provide for a relevant licensing authority to apply for an order (an "exemption order") exempting the authority from the requirements of section 163.

(2) Regulations under subsection (1) may, in particular, make provision requiring an authority proposing to apply for an exemption order—
- (a) to carry out such consultation as is specified;
- (b) to publish its proposals in the specified manner;
- (c) before applying for the order, to consider representations made about the proposal;
- (d) to make the application in the specified form.

In this subsection "specified" means specified in the regulations.

(3) An authority may apply for an exemption order only if it is satisfied—
- (a) that, having regard to the circumstances in its area, it is inappropriate for section 163 to apply, and
- (b) that the application of that section would result in an unacceptable reduction in the number of taxis in its area.

(4) After consulting the Disabled Persons Transport Advisory Committee and such other persons as the Secretary of State thinks appropriate, the Secretary of State may—
- (a) make an exemption order in the terms of the application for the order;
- (b) make an exemption order in such other terms as the Secretary of State thinks appropriate;
- (c) refuse to make an exemption order.

(5) The Secretary of State may by regulations make provision requiring a taxi plying for hire in an area in respect of which an exemption order is in force to conform with provisions of the regulations as to the fitting and use of swivel seats.

(6) Regulations under subsection (5) may make provision corresponding to section 163.

(7) In this section—

"relevant licensing authority" means an authority responsible for licensing taxis in any area of England and Wales other than the area to which the Metropolitan Public Carriage Act 1869 applies;

"swivel seats" has such meaning as is specified in regulations under subsection (5).

[F143 164A Disabled passengers: duties of drivers

(1) This section imposes duties on the driver of a taxi or private hire vehicle which has been hired—
- (a) by or for a disabled person, or
- (b) by another person who wishes to be accompanied by a disabled person.

(2) This section also imposes duties on the driver of a taxi or private hire vehicle if—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) the vehicle is being used to provide a local service (within the meaning of section 2 of the Transport Act 1985), and
(b) a person within subsection (1)(a) or (b) has indicated to the driver that the person wishes to travel on the service.

(3) But this section does not impose duties on a driver in a case in which—
(a) the taxi or private hire vehicle is designated, and
(b) the disabled person is in a wheelchair.

For provision that applies in such a case, see section 165.

(4) For the purposes of this section—
(a) a taxi or private hire vehicle is "designated" if it appears on a list maintained under section 167;
(b) "the passenger" means the disabled person concerned.

(5) The duties are—
(a) to carry the passenger;
(b) if the passenger is in or has with them a wheelchair, to carry the wheelchair;
(c) if the passenger has with them any mobility aids, to carry the mobility aids;
(d) to take such steps as are reasonable to ensure that the passenger is carried in safety and reasonable comfort;
(e) to give the passenger such mobility assistance as is reasonably required;
(f) not to make, or propose to make, any additional charge for complying with a duty mentioned in paragraphs (a) to (e).

(6) For the purposes of this section "mobility aids" means any item the passenger uses to assist with their mobility but does not include—
(a) a wheelchair, or
(b) an assistance dog (sections 168 and 170 make provision about the carrying of assistance dogs).

(7) For the purposes of this section "mobility assistance" means assistance—
(a) to enable the passenger to get into or out of the vehicle;
(b) to load the passenger's luggage, wheelchair or mobility aids into or out of the vehicle.

(8) This section does not require the driver—
(a) unless the vehicle is of a description prescribed by the Secretary of State, to carry more than one wheelchair on any one journey;
(b) to carry a person in circumstances in which it would otherwise be lawful for the driver to refuse to carry the person.

(9) The driver of a taxi or private hire vehicle commits an offence by failing to comply with a duty imposed on the driver by this section.

(10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) It is a defence for a person charged with an offence under subsection (9) in relation to the duty mentioned in subsection (5)(a) or (d) to show that at the time of the alleged offence the person could not reasonably have known that the passenger was disabled.

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Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(12) It is a defence for a person charged with an offence under subsection (9) in relation to the duty mentioned in subsection (5)(b) or (c) to show that at the time of the alleged offence—

(a) it would not have been possible for the wheelchair or mobility aids to be carried safely in the vehicle, or

(b) it would not otherwise have been reasonable in all the circumstances for the wheelchair or mobility aids to be carried in the vehicle.

(13) It is a defence for a person charged with an offence under subsection (9) in relation to the duty mentioned in subsection (5)(e) to show that at the time of the alleged offence the person could not reasonably have known that the passenger required mobility assistance of the type required by the passenger.**]**

Textual Amendments

F143 S. 164A inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(2)**, 6(2)

165 [F144Disabled passengers in wheelchairs: duties of drivers of designated vehicles]

(1) This section imposes duties on the driver of a designated taxi **[**F145or designated private hire vehicle**]** which has been hired—

(a) by or for a disabled person who is in a wheelchair, or

(b) by another person who wishes to be accompanied by a disabled person who is in a wheelchair.

F146(2) . . . . . .

[F147(2A) This section also imposes duties on the driver of a designated taxi or designated private hire vehicle if—

(a) the vehicle is being used to provide a local service (within the meaning of section 2 of the Transport Act 1985), and

(b) a person within subsection (1)(a) or (b) has indicated to the driver that the person wishes to travel on the service.**]**

(3) For the purposes of this section—

(a) a taxi or private hire vehicle is "designated" if it appears on a list maintained under section 167;

(b) "the passenger" means the disabled person concerned.

(4) The duties are—

(a) to carry the passenger while in the wheelchair;

F148(b) . . . . . .

(c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;

[F149(ca) if the passenger has with them any mobility aids, to carry the mobility aids;**]**

(d) to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;

(e) to give the passenger such mobility assistance as is reasonably required.

[F150(f) not to make, or propose to make, any additional charge for complying with a duty mentioned in paragraphs (a) to (e).**]**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[[F151](4A) For the purposes of this section "mobility aids" means any item the passenger uses to assist with their mobility but does not include—

(a) a wheelchair, or

(b) an assistance dog (sections 168 and 170 make provision about the carrying of assistance dogs).**]**

(5) **[**[F152]For the purposes of this section "mobility assistance" means**]** assistance—

(a) to enable the passenger to get into or out of the vehicle;

(b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;

(c) to load the passenger's luggage **[**[F153]or mobility aids**]** into or out of the vehicle;

(d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

(6) This section does not require the driver—

(a) unless the vehicle is of a description prescribed by the Secretary of State, to carry more than one person in a wheelchair, or more than one wheelchair, on any one journey;

(b) to carry a person in circumstances in which it would otherwise be lawful for the driver to refuse to carry the person.

(7) A driver of a designated taxi or designated private hire vehicle commits an offence by failing to comply with a duty imposed on the driver by this section.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) It is a defence for a person charged with **[**[F154]an offence under subsection (7) in relation to the duty mentioned in subsection (4)(a) or (c)**]** to show that at the time of the alleged offence—

(a) the vehicle conformed to the accessibility requirements which applied to it, but

(b) it would not have been possible for the wheelchair to be carried safely in the vehicle.

[[F155](9A) It is a defence for a person charged with an offence under subsection (7) in relation to the duty mentioned in subsection (4)(ca) to show that at the time of the alleged offence—

(a) it would not have been possible for the mobility aids to be carried safely in the vehicle, or

(b) it would not otherwise have been reasonable in all the circumstances for the mobility aids to be carried in the vehicle.**]**

[F156](10) . . . . . .

Textual Amendments

F144 S. 165 heading substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(a)**, 6(2)

F145 Words in s. 165(1) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(b)**, 6(2)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F146 S. 165(2) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(c)**, 6(2)

F147 S. 165(2A) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(d)**, 6(2)

F148 S. 165(4)(b) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(e)(i)**, 6(2)

F149 S. 165(4)(ca) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(e)(ii)**, 6(2)

F150 S. 165(4)(f) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(e)(iii)**, 6(2)

F151 S. 165(4A) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(f)**, 6(2)

F152 Words in s. 165(5) substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(g)(i)**, 6(2)

F153 Words in s. 165(5)(c) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(g)(ii)**, 6(2)

F154 Words in s. 165(9) substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(h)**, 6(2)

F155 S. 165(9A) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(i)**, 6(2)

F156 S. 165(10) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(3)(j)**, 6(2)

Commencement Information

I65 S. 165 partly in force; s. 165 not in force at Royal Assent see s. 216; s. 165 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(12)(b)** (with art. 15)

I66 S. 165 in force at 6.4.2017 in so far as not already in force by S.I. 2017/107, **art. 2(a)**

[F157 165A Disabled passengers: assistance to identify and find vehicle

(1) This section imposes duties on the driver of a private hire vehicle or pre-booked taxi where the following two conditions are met.

(2) The first condition is that the private hire vehicle or pre-booked taxi has been hired—
- (a) by or for a disabled person, or
- (b) by another person who wishes to be accompanied by a disabled person.

(3) The second condition is that the driver of the private hire vehicle or pre-booked taxi has been made aware before the start of the passenger's journey in the vehicle that the passenger requires assistance to identify or find that vehicle.

(4) For the purposes of this section—
- (a) a taxi is "pre-booked" if it has been hired otherwise than as a result of plying or standing for hire;
- (b) "the passenger" means the disabled person concerned.

(5) The duties are—
- (a) to take such steps as are reasonable to assist the passenger to identify and find the vehicle which has been hired;
- (b) not to make, or propose to make, any additional charge for complying with the duty mentioned in paragraph (a).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) The driver of a private hire vehicle or pre-booked taxi commits an offence by failing to comply with a duty imposed on the driver by this section.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.**]**

Textual Amendments

F157 S. 165A inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 1(4)**, 6(2)

166 [F158Disabled passengers]: exemption certificates

(1) A licensing authority must issue a person with a certificate exempting the person from the **[**F159mobility assistance duties**]** (an "exemption certificate") if satisfied that it is appropriate to do so—

(a) on medical grounds, or

(b) on the ground that the person's physical condition makes it impossible or unreasonably difficult for the person to comply with those duties.

(2) An exemption certificate is valid for such period as is specified in the certificate.

[F160(2A) For the purposes of this section "the mobility assistance duties" means—

(a) the duty mentioned in section 164A(5)(e), and

(b) the duty mentioned in section 165(4)(e).**]**

(3) The driver of a F161... taxi is exempt from the **[**F162mobility assistance duties**]** if—

(a) an exemption certificate issued to the driver is in force, and

(b) the prescribed notice of the exemption is exhibited on the taxi in the prescribed manner.

(4) The driver of a F163... private hire vehicle is exempt from the **[**F164mobility assistance duties**]** if—

(a) an exemption certificate issued to the driver is in force, and

(b) the prescribed notice of the exemption is exhibited on the vehicle in the prescribed manner.

F165(5) . . . . . .

(6) In this section and section 167 "licensing authority", in relation to any area, means the authority responsible for licensing taxis or, as the case may be, private hire vehicles in that area.

Textual Amendments

F158 Words in s. 166 heading substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 2(2)**, 6(2)

F159 Words in s. 166(1) substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 2(3)**, 6(2)

F160 S. 166(2A) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 2(4)**, 6(2)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F161 Word in s. 166(3) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 2(5)(a)**, 6(2)

F162 Words in s. 166(3) substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 2(5)(b)**, 6(2)

F163 Word in s. 166(4) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 2(6)(a)**, 6(2)

F164 Words in s. 166(4) substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 2(6)(b)**, 6(2)

F165 S. 166(5) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 2(7)**, 6(2)

167 Lists of wheelchair-accessible vehicles

(1) For the purposes of section 165, a licensing authority **[**[F166]must**]** maintain **[**[F167]and publish**]** a list of vehicles falling within subsection (2).

(2) A vehicle falls within this subsection if—

(a) it is either a taxi or a private hire vehicle, and

(b) it conforms to such accessibility requirements as the licensing authority thinks fit.

[F168](3) . . . . . .

[F169](4) . . . . . .

(5) "Accessibility requirements" are requirements for securing that it is possible for disabled persons in wheelchairs—

(a) to get into and out of vehicles in safety, and

(b) to travel in vehicles in safety and reasonable comfort,

either staying in their wheelchairs or not (depending on which they prefer).

(6) The Secretary of State may issue guidance to licensing authorities as to—

(a) the accessibility requirements which they should apply for the purposes of this section;

[[F170](aa) how a list under subsection (1) is to be maintained and published;**]**

(b) any other aspect of their functions under or by virtue of this section.

(7) A licensing authority [F171]... must have regard to any guidance issued under subsection (6).

Textual Amendments

F166 Word in s. 167(1) substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 3(2)(a)**, 6(2)

F167 Words in s. 167(1) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 3(2)(b)**, 6(2)

F168 S. 167(3) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 3(3)**, 6(2)

F169 S. 167(4) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 3(3)**, 6(2)

F170 S. 167(6)(aa) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 3(4)**, 6(2)

Status: *This version of this Act contains provisions that are prospective.*
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F171 Words in s. 167(7) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 3(5)**, 6(2)

Commencement Information

I67 S. 167 partly in force; s. 167 not in force at Royal Assent see s. 216; s. 167(6) wholly in force and s. 167(1)-(5)(7) in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(12)(d)(e)** (with art. 15)

I68 S. 167(1)-(5) (7) in force at 6.4.2017 in so far as not already in force by S.I. 2017/107, **art. 2(b)**

[F172 167A Disabled passengers: duties of operators of private hire vehicles

(1) The operator of a private hire vehicle commits an offence by failing or refusing to accept a booking for the vehicle if—

(a) the booking is requested by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and

(b) the reason for the failure or refusal is—

(i) that the passenger has a disability, or

(ii) to prevent the driver of the private hire vehicle being made subject to a duty which would otherwise be imposed on the driver by section 164A, 165 or 165A.

(2) The operator of a private hire vehicle commits an offence by making, or proposing to make, an additional charge for the carrying out of any duty imposed on the driver of the private hire vehicle under section 164A, 165 or 165A.

(3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) It is a defence for a person charged with an offence under subsection (1) to show that it was reasonable not to have accepted the booking due to a lack of suitable vehicles.

(5) In this section "the passenger" means the disabled person concerned.]

Textual Amendments

F172 S. 167A inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 4**, 6(2)

168 Assistance dogs in taxis

(1) This section imposes duties on the driver of a taxi which has been hired—

(a) by or for a disabled person who is accompanied by an assistance dog, or

(b) by another person who wishes to be accompanied by a disabled person with an assistance dog.

(2) The driver must—

(a) carry the disabled person's dog and allow it to remain with that person;

(b) not make [F173, or propose to make,] any additional charge for doing so.

(3) The driver of a taxi commits an offence by failing to comply with a duty imposed by this section.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Textual Amendments

F173 Words in s. 168(2)(b) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(2)**, 6(2)

169 Assistance dogs in taxis: exemption certificates

(1) A licensing authority must issue a person with a certificate exempting the person from the duties imposed by section 168 (an "exemption certificate") if satisfied that it is appropriate to do so on medical grounds.

(2) In deciding whether to issue an exemption certificate the authority must have regard, in particular, to the physical characteristics of the taxi which the person drives or those of any kind of taxi in relation to which the person requires the certificate.

(3) An exemption certificate is valid—

(a) in respect of a specified taxi or a specified kind of taxi;

(b) for such period as is specified in the certificate.

(4) The driver of a taxi is exempt from the duties imposed by section 168 if—

(a) an exemption certificate issued to the driver is in force with respect to the taxi, and

(b) the prescribed notice of the exemption is exhibited on the taxi in the prescribed manner.

The power to make regulations under paragraph (b) is exercisable by the Secretary of State.

(5) In this section "licensing authority" means—

(a) in relation to the area to which the Metropolitan Public Carriage Act 1869 applies, Transport for London;

(b) in relation to any other area in England and Wales, the authority responsible for licensing taxis in that area.

170 Assistance dogs in private hire vehicles

(1) The operator of a private hire vehicle commits an offence by failing or refusing to accept a booking for the vehicle—

(a) if the booking is requested by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and

[[F174](b) the reason for the failure or refusal is—

(i) that the disabled person will be accompanied by an assistance dog, or

(ii) to prevent the driver of the private hire vehicle being made subject to a duty which would otherwise be imposed on the driver by this section.**]**

(2) The operator **[**[F175]or driver of a private hire vehicle**]** commits an offence by making **[**[F176], or proposing to make,**]** an additional charge for carrying an assistance dog which is accompanying a disabled person.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) The driver of a private hire vehicle commits an offence by failing or refusing to carry out a booking accepted by the operator—

(a) if the booking is made by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and

(b) the reason for the failure or refusal is that the disabled person is accompanied by an assistance dog.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) In this section—

"driver" means a person who holds a licence under—

(a) section 13 of the Private Hire Vehicles (London) Act 1998 [F177]...,

(b) section 51 of the Local Government (Miscellaneous Provisions) Act 1976 [F178]..., or

(c) an equivalent provision of a local enactment;

"licensing authority", in relation to any area in England and Wales, means the authority responsible for licensing private hire vehicles in that area;

[F179]...

[F179]...

Textual Amendments

F174 S. 170(1)(b) substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(3)(a)**, 6(2)

F175 Words in s. 170(2) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(3)(b)(i)**, 6(2)

F176 Words in s. 170(2) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(3)(b)(ii)**, 6(2)

F177 Words in s. 170(5) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(3)(c)(i)**, 6(2)

F178 Words in s. 170(5) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(3)(c)(ii)**, 6(2)

F179 Words in s. 170(5) omitted (28.6.2022) by virtue of Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(3)(c)(iii)**, 6(2)

171 Assistance dogs in private hire vehicles: exemption certificates

(1) A licensing authority must issue a driver with a certificate exempting the driver from the offence under section 170(3) (an "exemption certificate") if satisfied that it is appropriate to do so on medical grounds.

(2) In deciding whether to issue an exemption certificate the authority must have regard, in particular, to the physical characteristics of the private hire vehicle which the person drives or those of any kind of private hire vehicle in relation to which the person requires the certificate.

(3) An exemption certificate is valid—

(a) in respect of a specified private hire vehicle or a specified kind of private hire vehicle;

(b) for such period as is specified in the certificate.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) A driver does not commit an offence under section 170(3) if—

(a) an exemption certificate issued to the driver is in force with respect to the private hire vehicle, and

(b) the prescribed notice of the exemption is exhibited on the vehicle in the prescribed manner.

The power to make regulations under paragraph (b) is exercisable by the Secretary of State.

(5) In this section "driver" **[**[F180]and "licensing authority"**]** have the same meaning as in section 170.

Textual Amendments

F180 Words in s. 171(5) substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(4)**, 6(2)

172 Appeals

(1) A person who is aggrieved by the refusal of a licensing authority in England and Wales to issue an exemption certificate under section 166, 169 or 171 may appeal to a magistrates' court before the end of the period of 28 days beginning with the date of the refusal.

(2) A person who is aggrieved by the refusal of a licensing authority in Scotland to issue an exemption certificate under section 166 may appeal to the sheriff before the end of the period of 28 days beginning with the date of the refusal.

(3) On an appeal under subsection (1) or (2), the magistrates' court or sheriff may direct the licensing authority to issue the exemption certificate to have effect for such period as is specified in the direction.

(4) A person who is aggrieved by the decision of a licensing authority to include a vehicle on a list maintained under section 167 may appeal to a magistrates' court or, in Scotland, the sheriff before the end of the period of 28 days beginning with the date of the inclusion.

173 Interpretation

(1) In this Chapter—

"accessibility requirements" has the meaning given in section 167(5);

"assistance dog" means—

(a) a dog which has been trained to guide a blind person;

(b) a dog which has been trained to assist a deaf person;

(c) a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person's mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects;

(d) a dog of a prescribed category which has been trained to assist a disabled person who has a disability (other than one falling within paragraph (c)) of a prescribed kind;

[[F181]"operator", in relation to a private hire vehicle—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) means a person who holds a licence under—
  (i) section 55 of the Local Government (Miscellaneous Provisions) Act 1976,
  (ii) section 3 of the Private Hire Vehicles (London) Act 1998, or
  (iii) a provision of a local enactment equivalent to the provision mentioned in sub-paragraph (i) or (ii); and

(b) in section 167A, also includes a person who holds a licence under Part I of the Civic Government (Scotland) Act 1982 in relation to the use of premises for the carrying on of a business which consists to any extent of the taking of bookings, by any means of communication, from members of the public for the hire of a private hire car licenced under section 10 of that Act;

"private hire vehicle"—

(a) means a vehicle licensed under—
  (i) section 48 of the Local Government (Miscellaneous Provisions) Act 1976,
  (ii) section 7 of the Private Hire Vehicles (London) Act 1998, or
  (iii) a provision of a local enactment equivalent to the provision mentioned in sub-paragraph (i) or (ii); and

(b) in sections 164A to 167A, also includes a private hire car licensed under section 10 of the Civic Government (Scotland) Act 1982;**]**

"taxi"—

(a) means a vehicle which is licensed under section 37 of the Town Police Clauses Act 1847 or section 6 of the Metropolitan Public Carriage Act 1869, and

(b) in sections 162 and **[**[F182]164A**]** to 167, also includes a taxi licensed under section 10 of the Civic Government (Scotland) Act 1982,

but does not include a vehicle drawn by a horse or other animal;

"taxi accessibility regulations" has the meaning given by section 160(1).

(2) A power to make regulations under paragraph (c) or (d) of the definition of "assistance dog" in subsection (1) is exercisable by the Secretary of State.

Textual Amendments

F181 Words in s. 173(1) inserted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(5)(a)**, 6(2)

F182 Word in s. 173(1) substituted (28.6.2022) by Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (c. 29), **ss. 5(5)(b)**, 6(2)

CHAPTER 2

PUBLIC SERVICE VEHICLES

174 PSV accessibility regulations

(1) The Secretary of State may make regulations (in this Chapter referred to as "PSV accessibility regulations") for securing that it is possible for disabled persons—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) to get on to and off regulated public service vehicles in safety and without unreasonable difficulty (and, in the case of disabled persons in wheelchairs, to do so while remaining in their wheelchairs), and
(b) to travel in such vehicles in safety and reasonable comfort.

(2) The regulations may, in particular, make provision as to the construction, use and maintenance of regulated public service vehicles, including provision as to—
(a) the fitting of equipment to vehicles;
(b) equipment to be carried by vehicles;
(c) the design of equipment to be fitted to, or carried by, vehicles;
(d) the fitting and use of restraining devices designed to ensure the stability of wheelchairs while vehicles are moving;
(e) the position in which wheelchairs are to be secured while vehicles are moving.

(3) In this section "public service vehicle" means a vehicle which is—
(a) adapted to carry more than 8 passengers, and
(b) a public service vehicle for the purposes of the Public Passenger Vehicles Act 1981;

and in this Chapter "regulated public service vehicle" means a public service vehicle to which PSV accessibility regulations are expressed to apply.

(4) The regulations may make different provision—
(a) as respects different classes or descriptions of vehicle;
(b) as respects the same class or description of vehicle in different circumstances.

(5) The Secretary of State must not make regulations under this section or section 176 or 177 without consulting—
(a) the Disabled Persons Transport Advisory Committee, and
(b) such other representative organisations as the Secretary of State thinks fit.

175 Offence of contravening PSV accessibility regulations

(1) A person commits an offence by—
(a) contravening a provision of PSV accessibility regulations;
(b) using on a road a regulated public service vehicle which does not conform with a provision of the regulations with which it is required to conform;
(c) causing or permitting such a regulated public service vehicle to be used on a road.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) If an offence under this section committed by a body corporate is committed with the consent or connivance of, or is attributable to neglect on the part of, a responsible person, the responsible person as well as the body corporate is guilty of the offence.

(4) In subsection (3) a responsible person, in relation to a body corporate, is—
(a) a director, manager, secretary or similar officer;
(b) a person purporting to act in the capacity of a person mentioned in paragraph (a);
(c) in the case of a body corporate whose affairs are managed by its members, a member.

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(5) If, in Scotland, an offence committed by a partnership or an unincorporated association is committed with the consent or connivance of, or is attributable to neglect on the part of, a partner or person concerned in the management of the association, the partner or person as well as the partnership or association is guilty of the offence.

176 Accessibility certificates

(1) A regulated public service vehicle must not be used on a road unless—
- (a) a vehicle examiner has issued a certificate (an "accessibility certificate") that such provisions of PSV accessibility regulations as are prescribed are satisfied in respect of the vehicle, or
- (b) an approval certificate has been issued under section 177 in respect of the vehicle.

(2) Regulations may make provision—
- (a) with respect to applications for, and the issue of, accessibility certificates;
- (b) providing for the examination of vehicles in respect of which applications have been made;
- (c) with respect to the issue of copies of accessibility certificates which have been lost or destroyed.

(3) The operator of a regulated public service vehicle commits an offence if the vehicle is used in contravention of this section.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) A power to make regulations under this section is exercisable by the Secretary of State.

(6) In this section "operator" has the same meaning as in the Public Passenger Vehicles Act 1981.

177 Approval certificates

(1) The Secretary of State may approve a vehicle for the purposes of this section if satisfied that such provisions of PSV accessibility regulations as are prescribed for the purposes of section 176 are satisfied in respect of the vehicle.

(2) A vehicle which is so approved is referred to in this section as a "type vehicle".

(3) Subsection (4) applies if a declaration in the prescribed form is made by an authorised person that a particular vehicle conforms in design, construction and equipment with a type vehicle.

(4) A vehicle examiner may issue a certificate in the prescribed form (an "approval certificate") that it conforms to the type vehicle.

(5) Regulations may make provision—
- (a) with respect to applications for, and grants of, approval under subsection (1);
- (b) with respect to applications for, and the issue of, approval certificates;
- (c) providing for the examination of vehicles in respect of which applications have been made;

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(d) with respect to the issue of copies of approval certificates in place of certificates which have been lost or destroyed.

(6) The Secretary of State may at any time withdraw approval of a type vehicle.

(7) If an approval is withdrawn—

(a) no further approval certificates are to be issued by reference to the type vehicle; but

(b) an approval certificate issued by reference to the type vehicle before the withdrawal continues to have effect for the purposes of section 176.

(8) A power to make regulations under this section is exercisable by the Secretary of State.

(9) In subsection (3) "authorised person" means a person authorised by the Secretary of State for the purposes of that subsection.

178 Special authorisations

(1) The Secretary of State may by order authorise the use on roads of—

(a) a regulated public service vehicle of a class or description specified by the order, or

(b) a regulated public service vehicle which is so specified.

(2) Nothing in sections 174 to 177 prevents the use of a vehicle in accordance with the order.

(3) The Secretary of State may by order make provision for securing that provisions of PSV accessibility regulations apply to regulated public service vehicles of a description specified by the order, subject to any modifications or exceptions specified by the order.

(4) An order under subsection (1) or (3) may make the authorisation or provision (as the case may be) subject to such restrictions and conditions as are specified by or under the order.

(5) Section 207(2) does not require an order under this section that applies only to a specified vehicle, or to vehicles of a specified person, to be made by statutory instrument; but such an order is as capable of being amended or revoked as an order made by statutory instrument.

179 Reviews and appeals

(1) Subsection (2) applies if the Secretary of State refuses an application for the approval of a vehicle under section 177(1) and, before the end of the prescribed period, the applicant—

(a) asks the Secretary of State to review the decision, and

(b) pays any fee fixed under section 180.

(2) The Secretary of State must—

(a) review the decision, and

(b) in doing so, consider any representations made in writing by the applicant before the end of the prescribed period.

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(3) A person applying for an accessibility certificate or an approval certificate may appeal to the Secretary of State against the refusal of a vehicle examiner to issue the certificate.

(4) An appeal must be made within the prescribed time and in the prescribed manner.

(5) Regulations may make provision as to the procedure to be followed in connection with appeals.

(6) On the determination of an appeal, the Secretary of State may—
  (a) confirm, vary or reverse the decision appealed against;
  (b) give directions to the vehicle examiner for giving effect to the Secretary of State's decision.

(7) A power to make regulations under this section is exercisable by the Secretary of State.

180 Fees

(1) The Secretary of State may charge such fees, payable at such times, as are prescribed in respect of—
  (a) applications for, and grants of, approval under section 177(1);
  (b) applications for, and the issue of, accessibility certificates and approval certificates;
  (c) copies of such certificates;
  (d) reviews and appeals under section 179.

(2) Fees received by the Secretary of State must be paid into the Consolidated Fund.

(3) The power to make regulations under subsection (1) is exercisable by the Secretary of State.

(4) The regulations may make provision for the repayment of fees, in whole or in part, in such circumstances as are prescribed.

(5) Before making the regulations the Secretary of State must consult such representative organisations as the Secretary of State thinks fit.

181 Interpretation

In this Chapter—

"accessibility certificate" has the meaning given in section 176(1);
"approval certificate" has the meaning given in section 177(4);
"PSV accessibility regulations" has the meaning given in section 174(1);
"regulated public service vehicle" has the meaning given in section 174(3).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[[F183]CHAPTER 2A

BUS SERVICES

Textual Amendments

F183 Pt. 12 Ch. 2A inserted (26.6.2018) by Bus Services Act 2017 (c. 21), **ss. 17(1)**, 26(2); S.I. 2018/758, reg. 2

181A Information for bus passengers

(1) The Secretary of State may, for the purpose of facilitating travel by disabled persons, make regulations requiring operators of local services to make available information about a local service to persons travelling on the service.

(2) The regulations may make provision about—
- (a) the descriptions of information that are to be made available;
- (b) how information is to be made available.

(3) The regulations may, in particular, require an operator of a local service to make available information of a prescribed description about—
- (a) the name or other designation of the local service;
- (b) the direction of travel;
- (c) stopping places;
- (d) diversions;
- (e) connecting local services.

(4) The regulations may, in particular—
- (a) specify when information of a prescribed description is to be made available;
- (b) specify how information of a prescribed description is to be made available, including requiring information to be both announced and displayed;
- (c) specify standards for the provision of information, including standards based on an announcement being audible or a display being visible to a person of a prescribed description in a prescribed location;
- (d) specify forms of communication that are not to be regarded as satisfying a requirement to make information available.

(5) Regulations under this section may make different provision—
- (a) as respects different descriptions of vehicle;
- (b) as respects the same description of vehicle in different circumstances.

(6) Before making regulations under this section, the Secretary of State must consult—
- (a) the Welsh Ministers;
- (b) the Scottish Ministers.

181B Exemptions etc

(1) The Secretary of State may by regulations make provision for securing that the provisions of regulations under section 181A do not apply or apply subject to such modifications or exceptions as the regulations may specify to—
- (a) public service vehicles of a prescribed description;

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(b) operators of a prescribed description;
(c) local services of a prescribed description.

(2) Regulations under subsection (1)(b) may, in particular, make provision by reference to an operator's size.

(3) Regulations under this section may also make provision for securing that the provisions of regulations under section 181A do not apply or apply subject to such modifications or exceptions as the regulations may specify to—
(a) a prescribed public service vehicle;
(b) public service vehicles of a prescribed operator;
(c) a prescribed local service.

(4) Regulations under subsection (1) or (3) may make the provision subject to such restrictions and conditions as are specified in the regulations.

(5) Regulations under subsection (1) or (3) may specify the period for which provisions of those regulations are to have effect.

(6) Regulations under subsection (1) may make different provision for different areas.

(7) Section 207(2) does not require regulations under this section that apply only to—
(a) a prescribed public service vehicle,
(b) public service vehicles of a prescribed operator, or
(c) a prescribed local service,

to be made by statutory instrument; but such regulations are as capable of being amended or revoked as regulations made by statutory instrument.

(8) Before making regulations under this section, the Secretary of State must consult—
(a) the Welsh Ministers;
(b) the Scottish Ministers.

181C Guidance

(1) The Secretary of State must issue guidance about the duties imposed on operators of local services by regulations under section 181A.

(2) The Secretary of State—
(a) must review the guidance issued under subsection (1), at intervals not exceeding five years, and
(b) may revise it.

(3) Before issuing the guidance or revising it in a way which would, in the opinion of the Secretary of State, result in a substantial change to it, the Secretary of State must consult—
(a) the Welsh Ministers,
(b) the Scottish Ministers,
(c) the Passengers' Council,
(d) such organisations representing disabled persons, including the Disabled Persons Transport Advisory Committee and the committee established under section 72 of the Transport (Scotland) Act 2001, as the Secretary of State thinks fit,

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(e) such organisations representing operators of local services as the Secretary of State thinks fit, and

(f) such other persons as the Secretary of State thinks fit.

(4) The Secretary of State must arrange for any guidance issued or revised under this section to be published in a way the Secretary of State considers appropriate.

181D Interpretation

(1) In this Chapter—

"local service" has the same meaning as in the Transport Act 1985;

"public service vehicle" means a vehicle that is a public service vehicle for the purposes of the Public Passenger Vehicles Act 1981;

"stopping place" has the same meaning as in the Transport Act 1985.

(2) For the purposes of this Chapter, a local service ("service A") is a connecting local service in relation to another local service ("service B") if service A has a stopping place at, or in the vicinity of, a stopping place of service B.

(3) References in this Chapter to the operator of a passenger transport service of any description are to be construed in accordance with section 137(7) of the Transport Act 1985.**]**

CHAPTER 3

RAIL VEHICLES

182 Rail vehicle accessibility regulations

(1) The Secretary of State may make regulations (in this Chapter referred to as "rail vehicle accessibility regulations") for securing that it is possible for disabled persons—

(a) to get on to and off regulated rail vehicles in safety and without unreasonable difficulty;

(b) to do so while in wheelchairs;

(c) to travel in such vehicles in safety and reasonable comfort;

(d) to do so while in wheelchairs.

(2) The regulations may, in particular, make provision as to the construction, use and maintenance of regulated rail vehicles including provision as to—

(a) the fitting of equipment to vehicles;

(b) equipment to be carried by vehicles;

(c) the design of equipment to be fitted to, or carried by, vehicles;

(d) the use of equipment fitted to, or carried by, vehicles;

(e) the toilet facilities to be provided in vehicles;

(f) the location and floor area of the wheelchair accommodation to be provided in vehicles;

(g) assistance to be given to disabled persons.

(3) The regulations may contain different provision—

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(a) as respects different classes or descriptions of rail vehicle;

(b) as respects the same class or description of rail vehicle in different circumstances;

(c) as respects different networks.

(4) In this section—

"network" means any permanent way or other means of guiding or supporting rail vehicles, or any section of it;

"rail vehicle" means a vehicle constructed or adapted to carry passengers on a railway, tramway or prescribed system other than a vehicle used in the provision of a service for the carriage of passengers on the **[**[F184]trans-European rail system located in Great Britain**]**;

"regulated rail vehicle" means a rail vehicle to which provisions of rail vehicle accessibility regulations are expressed to apply.

(5) In subsection (4)—

[F185] . . . . . .

"prescribed system" means a system using a mode of guided transport ("guided transport" having the same meaning as in the Transport and Works Act 1992) that is specified in rail vehicle accessibility regulations;

"railway" and "tramway" have the same meaning as in the Transport and Works Act 1992.

[[F186]"trans-European rail system" has the meaning given in regulation 2(1) of the Railways (Interoperability) Regulations 2011**]**

(6) The Secretary of State must exercise the power to make rail vehicle accessibility regulations so as to secure that on and after 1 January 2020 every rail vehicle is a regulated rail vehicle.

(7) Subsection (6) does not affect subsection (3), section 183(1) or section 207(4)(a).

(8) Before making regulations under subsection (1) or section 183, the Secretary of State must consult—

(a) the Disabled Persons Transport Advisory Committee, and

(b) such other representative organisations as the Secretary of State thinks fit.

Textual Amendments

F184 Words in s. 182(4) substituted (16.1.2012) by The Railways (Interoperability) Regulations 2011 (S.I. 2011/3066), reg. 48, **Sch. para. 1(a)** (with reg. 3)

F185 Definitions in s. 182(5) omitted (16.1.2012) by virtue of The Railways (Interoperability) Regulations 2011 (S.I. 2011/3066), reg. 48, **Sch. para. 1(b)(i)** (with reg. 3)

F186 Definition in s. 182(5) inserted (16.1.2012) by The Railways (Interoperability) Regulations 2011 (S.I. 2011/3066), reg. 48, **Sch. para. 1(b)(ii)** (with reg. 3)

183 Exemptions from rail vehicle accessibility regulations

(1) The Secretary of State may by order (an "exemption order")—

(a) authorise the use for carriage of a regulated rail vehicle even though the vehicle does not conform with the provisions of rail vehicle accessibility regulations with which it is required to conform;

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(b) authorise a regulated rail vehicle to be used for carriage otherwise than in conformity with the provisions of rail vehicle accessibility regulations with which use of the vehicle is required to conform.

(2) Authority under subsection (1)(a) or (b) may be for—

(a) a regulated rail vehicle that is specified or of a specified description,

(b) use in specified circumstances of a regulated rail vehicle, or

(c) use in specified circumstances of a regulated rail vehicle that is specified or of a specified description.

[F187](3) . . . . . .

(4) After consulting the Disabled Persons Transport Advisory Committee and such other persons as the Secretary of State thinks appropriate, the Secretary of State may—

(a) make an exemption order in the terms of the application for the order;

(b) make an exemption order in such other terms as the Secretary of State thinks appropriate;

(c) refuse to make an exemption order.

(5) The Secretary of State may make an exemption order subject to such conditions and restrictions as are specified.

(6) "Specified" means specified in an exemption order.

[[F188](7) Section 207(2) does not require an exemption order to be made by statutory instrument; but such an order is as capable of being amended or revoked as an order made by statutory instrument.**]**

Textual Amendments

F187 S. 183(3) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 10 para. 29(2)**; S.I. 2015/994, art. 11(p)

F188 S. 183(7) inserted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 10 para. 29(3)**; S.I. 2015/994, art. 11(p)

[F189]184 Procedure for making exemption orders

. . . . . .

Textual Amendments

F189 S. 184 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 10 para. 30(a)**; S.I. 2015/994, art. 11(p)

185 Annual report on exemption orders

(1) After the end of each calendar year the Secretary of State must prepare a report on—

(a) the exercise in that year of the power to make orders under section 183(1);

[F190](b) . . . . . .

(2) A report under subsection (1) must (in particular) contain—

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(a) details of each order made under section 183(1) in the year in question;

(b) details of consultation carried out under **[**[F191]section 183(4)**]** in connection with orders made in that year under section 183(1).

(3) The Secretary of State must lay before Parliament each report prepared under this section.

Textual Amendments

F190 S. 185(1)(b) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 10 para. 30(b)(i)**; S.I. 2015/994, art. 11(p)

F191 Words in s. 185(2)(b) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 10 para. 30(b)(ii)**; S.I. 2015/994, art. 11(p)

186 Rail vehicle accessibility: compliance

[F192] . . . . . .

Textual Amendments

F192 S. 186 repealed (31.12.2010) by Equality Act 2010 (c. 15), **ss. 186(2)**, 216 (with ss. 6(4), 205)

187 Interpretation

(1) In this Chapter—

"rail vehicle" and "regulated rail vehicle" have the meaning given in section 182(4);

"rail vehicle accessibility regulations" has the meaning given in section 182(1).

(2) For the purposes of this Chapter a vehicle is used "for carriage" if it is used for the carriage of passengers.

CHAPTER 4

SUPPLEMENTARY

188 Forgery, etc.

(1) In this section "relevant document" means—

(a) an exemption certificate issued under section 166, 169 or 171;

(b) a notice of a kind mentioned in section 166(3)(b), 169(4)(b) or 171(4)(b);

(c) an accessibility certificate (see section 176);

(d) an approval certificate (see section 177).

(2) A person commits an offence if, with intent to deceive, the person—

(a) forges, alters or uses a relevant document;

(b) lends a relevant document to another person;

(c) allows a relevant document to be used by another person;

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(d) makes or has possession of a document which closely resembles a relevant document.

(3) A person guilty of an offence under subsection (2) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(4) A person commits an offence by knowingly making a false statement for the purpose of obtaining an accessibility certificate or an approval certificate.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART 13

DISABILITY: MISCELLANEOUS

189 Reasonable adjustments

Schedule 21 (reasonable adjustments: supplementary) has effect.

Commencement Information

I69 S. 189 wholly in force at 1.10.2010; s. 189 not in force at Royal Assent see s. 216; s. 189 in force for certain purposes at 4.8.2010 by S.I. 2010/1966, **art. 2**; s. 189 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(13)(a)** (with art. 15)

190 Improvements to let dwelling houses

(1) This section applies in relation to a lease of a dwelling house if each of the following applies—

(a) the tenancy is not a protected tenancy, a statutory tenancy or a secure tenancy;

[[F193](aa) the tenancy is not a secure contract in relation to which the landlord is a local authority;**]**

(b) the tenant or another person occupying or intending to occupy the premises is a disabled person;

(c) the disabled person occupies or intends to occupy the premises as that person's only or main home;

(d) the tenant is entitled, with the consent of the landlord, to make improvements to the premises;

(e) the tenant applies to the landlord for consent to make a relevant improvement.

(2) Where the tenant applies in writing for the consent—

(a) if the landlord refuses to give consent, the landlord must give the tenant a written statement of the reason why the consent was withheld;

(b) if the landlord neither gives nor refuses to give consent within a reasonable time, consent must be taken to have been unreasonably withheld.

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(3) If the landlord gives consent subject to a condition which is unreasonable, the consent must be taken to have been unreasonably withheld.

(4) If the landlord's consent is unreasonably withheld, it must be taken to have been given.

(5) On any question as to whether—

(a) consent was unreasonably withheld, or

(b) a condition imposed was unreasonable,

it is for the landlord to show that it was not.

(6) If the tenant fails to comply with a reasonable condition imposed by the landlord on the making of a relevant improvement, the failure is to be treated as a breach by the tenant of an obligation of the tenancy.

(7) An improvement to premises is a relevant improvement if, having regard to the disabled peron's disability, it is likely to facilitate that person's enjoyment of the premises.

(8) Subsections (2) to (7) apply only in so far as provision of a like nature is not made by the lease.

(9) In this section—

"improvement" means an alteration in or addition to the premises and includes—

(a) an addition to or alteration in the landlord's fittings and fixtures;

(b) an addition or alteration connected with the provision of services to the premises;

(c) the erection of a wireless or television aerial;

(d) carrying out external decoration;

"lease" includes a sub-lease or other tenancy, and "landlord" and "tenant" are to be construed accordingly;

"protected tenancy" has the same meaning as in section 1 of the Rent Act 1977;

"statutory tenancy" is to be construed in accordance with section 2 of that Act;

[[F194]"secure contract" has the same meaning as in the Renting Homes (Wales) Act 2016 (anaw 1) (see section 8 of that Act);**]**

"secure tenancy" has the same meaning as in section 79 of the Housing Act 1985.

Textual Amendments

F193 S. 190(1)(aa) inserted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **30(2)**

F194 Words in s. 190(9) inserted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **30(3)**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 14

GENERAL EXCEPTIONS

191 Statutory provisions

Schedule 22 (statutory provisions) has effect.

Commencement Information

I70 S. 191 partly in force; s. 191 not in force at Royal Assent see s. 216; s. 191 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(14)(a)** (with art. 15)

192 National security

A person does not contravene this Act only by doing, for the purpose of safeguarding national security, anything it is proportionate to do for that purpose.

193 Charities

(1) A person does not contravene this Act only by restricting the provision of benefits to persons who share a protected characteristic if—
  (a) the person acts in pursuance of a charitable instrument, and
  (b) the provision of the benefits is within subsection (2).

(2) The provision of benefits is within this subsection if it is—
  (a) a proportionate means of achieving a legitimate aim, or
  (b) for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic.

(3) It is not a contravention of this Act for—
  (a) a person who provides supported employment to treat persons who have the same disability or a disability of a prescribed description more favourably than those who do not have that disability or a disability of such a description in providing such employment;
  (b) a Minister of the Crown to agree to arrangements for the provision of supported employment which will, or may, have that effect.

(4) If a charitable instrument enables the provision of benefits to persons of a class defined by reference to colour, it has effect for all purposes as if it enabled the provision of such benefits—
  (a) to persons of the class which results if the reference to colour is ignored, or
  (b) if the original class is defined by reference only to colour, to persons generally.

(5) It is not a contravention of this Act for a charity to require members, or persons wishing to become members, to make a statement which asserts or implies membership or acceptance of a religion or belief; and for this purpose restricting the access by members to a benefit, facility or service to those who make such a statement is to be treated as imposing such a requirement.

(6) Subsection (5) applies only if—

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(a) the charity, or an organisation of which it is part, first imposed such a requirement before 18 May 2005, and

(b) the charity or organisation has not ceased since that date to impose such a requirement.

(7) It is not a contravention of section 29 for a person, in relation to an activity which is carried on for the purpose of promoting or supporting a charity, to restrict participation in the activity to persons of one sex.

(8) A charity regulator does not contravene this Act only by exercising a function in relation to a charity in a manner which the regulator thinks is expedient in the interests of the charity, having regard to the charitable instrument.

(9) Subsection (1) does not apply to a contravention of—

(a) section 39;

(b) section 40;

(c) section 41;

(d) section 55, so far as relating to the provision of vocational training.

(10) Subsection (9) does not apply in relation to disability.

194 Charities: supplementary

(1) This section applies for the purposes of section 193.

(2) That section does not apply to race, so far as relating to colour.

(3) "Charity"—

(a) in relation to England and Wales, has the meaning given by **[**[F195]section 1(1) of the Charities Act 2011**]**;

(b) in relation to Scotland, means a body entered in the Scottish Charity Register.

(4) "Charitable instrument" means an instrument establishing or governing a charity (including an instrument made or having effect before the commencement of this section).

(5) The charity regulators are—

(a) the Charity Commission for England and Wales;

(b) the Scottish Charity Regulator.

(6) Section 107(5) applies to references in subsection (5) of section 193 to members, or persons wishing to become members, of a charity.

(7) "Supported employment" means facilities provided, or in respect of which payments are made, under section 15 of the Disabled Persons (Employment) Act 1944.

Textual Amendments

F195 Words in s. 194(3)(a) substituted (14.3.2012) by Charities Act 2011 (c. 25), ss. 354(1), 355, **Sch. 7 para. 144**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

195 Sport

(1) A person does not contravene this Act, so far as relating to sex, only by doing anything in relation to the participation of another as a competitor in a gender-affected activity.

(2) A person does not contravene section 29, 33, 34 or 35, so far as relating to gender reassignment, only by doing anything in relation to the participation of a transsexual person as a competitor in a gender-affected activity if it is necessary to do so to secure in relation to the activity—

(a) fair competition, or

(b) the safety of competitors.

(3) A gender-affected activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors in events involving the activity.

(4) In considering whether a sport, game or other activity is gender-affected in relation to children, it is appropriate to take account of the age and stage of development of children who are likely to be competitors.

(5) A person who does anything to which subsection (6) applies does not contravene this Act only because of the nationality or place of birth of another or because of the length of time the other has been resident in a particular area or place.

(6) This subsection applies to—

(a) selecting one or more persons to represent a country, place or area or a related association, in a sport or game or other activity of a competitive nature;

(b) doing anything in pursuance of the rules of a competition so far as relating to eligibility to compete in a sport or game or other such activity.

[[F196](7) A person does not contravene this Act, so far as relating to age discrimination, only by doing anything in relation to the participation of another as a competitor in an age-banded activity if it is necessary to do so—

(a) to secure in relation to the activity fair competition or the safety of competitors,

(b) to comply with the rules of a national or international competition, or

(c) to increase participation in that activity.

(8) For the purposes of subsection (7), an age-banded activity is a sport, game or other activity of a competitive nature in circumstances in which the physical or mental strength, agility, stamina, physique, mobility, maturity or manual dexterity of average persons of a particular age group would put them at a disadvantage compared to average persons of another age group as competitors in events involving the activity.**]**

Textual Amendments

F196 S. 195(7)(8) inserted (1.10.2012) by The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 9**

196 General

Schedule 23 (general exceptions) has effect.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information

I71 S. 196 partly in force; s. 196 not in force at Royal Assent see s. 216; s. 196 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(14)(c)** (with art. 15)

197 Age

(1) A Minister of the Crown may by order amend this Act to provide that any of the following does not contravene this Act so far as relating to age—

(a) specified conduct;

(b) anything done for a specified purpose;

(c) anything done in pursuance of arrangements of a specified description.

(2) Specified conduct is conduct—

(a) of a specified description,

(b) carried out in specified circumstances, or

(c) by or in relation to a person of a specified description.

(3) An order under this section may—

(a) confer on a Minister of the Crown or the Treasury a power to issue guidance about the operation of the order (including, in particular, guidance about the steps that may be taken by persons wishing to rely on an exception provided for by the order);

(b) require the Minister or the Treasury to carry out consultation before issuing guidance under a power conferred by virtue of paragraph (a);

(c) make provision (including provision to impose a requirement) that refers to guidance issued under a power conferred by virtue of paragraph (a).

(4) Guidance given by a Minister of the Crown or the Treasury in anticipation of the making of an order under this section is, on the making of the order, to be treated as if it has been issued in accordance with the order.

(5) For the purposes of satisfying a requirement imposed by virtue of subsection (3)(b), the Minister or the Treasury may rely on consultation carried out before the making of the order that imposes the requirement (including consultation carried out before the commencement of this section).

(6) Provision by virtue of subsection (3)(c) may, in particular, refer to provisions of the guidance that themselves refer to a document specified in the guidance.

(7) Guidance issued (or treated as issued) under a power conferred by virtue of subsection (3)(a) comes into force on such day as the person who issues the guidance may by order appoint; and an order under this subsection may include the text of the guidance or of extracts from it.

(8) This section is not affected by any provision of this Act which makes special provision in relation to age.

(9) The references to this Act in subsection (1) do not include references to—

(a) Part 5 (work);

(b) Chapter 2 of Part 6 (further and higher education).

Status: *This version of this Act contains provisions that are prospective.*
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PROSPECTIVE

PART 15

FAMILY PROPERTY

198 Abolition of husband's duty to maintain wife

The rule of common law that a husband must maintain his wife is abolished.

199 Abolition of presumption of advancement

(1) The presumption of advancement (by which, for example, a husband is presumed to be making a gift to his wife if he transfers property to her, or purchases property in her name) is abolished.

(2) The abolition by subsection (1) of the presumption of advancement does not have effect in relation to—
  (a) anything done before the commencement of this section, or
  (b) anything done pursuant to any obligation incurred before the commencement of this section.

200 Amendment of Married Women's Property Act 1964

(1) In section 1 of the Married Women's Property Act 1964 (money and property derived from housekeeping allowance made by husband to be treated as belonging to husband and wife in equal shares)—
  (a) for “the husband for” substitute “ either of them for ”, and
  (b) for “the husband and the wife” substitute “ them ”.

(2) Accordingly, that Act may be cited as the Matrimonial Property Act 1964.

(3) The amendments made by this section do not have effect in relation to any allowance made before the commencement of this section.

201 Civil partners: housekeeping allowance

(1) After section 70 of the Civil Partnership Act 2004 insert—

“70A **Money and property derived from housekeeping allowance**

Section 1 of the Matrimonial Property Act 1964 (money and property derived from housekeeping allowance to be treated as belonging to husband and wife in equal shares) applies in relation to—
  (a) money derived from any allowance made by a civil partner for the expenses of the civil partnership home or for similar purposes, and
  (b) any property acquired out of such money,

as it applies in relation to money derived from any allowance made by a husband or wife for the expenses of the matrimonial home or for similar purposes, and any property acquired out of such money.”

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) The amendment made by this section does not have effect in relation to any allowance made before the commencement of this section.

PART 16

GENERAL AND MISCELLANEOUS

Civil partnerships

202 Civil partnerships on religious premises

(1) The Civil Partnership Act 2004 is amended as follows.

(2) Omit section 6(1)(b) and (2) (prohibition on use of religious premises for registration of civil partnership).

(3) In section 6A (power to approve premises for registration of civil partnership), after subsection (2), insert—

"(2A) Regulations under this section may provide that premises approved for the registration of civil partnerships may differ from those premises approved for the registration of civil marriages.

(2B) Provision by virtue of subsection (2)(b) may, in particular, provide that applications for approval of premises may only be made with the consent (whether general or specific) of a person specified, or a person of a description specified, in the provision.

(2C) The power conferred by section 258(2), in its application to the power conferred by this section, includes in particular—

(a) power to make provision in relation to religious premises that differs from provision in relation to other premises;

(b) power to make different provision for different kinds of religious premises."

(4) In that section, after subsection (3), insert—

"(3A) 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.

(3B) "Civil marriage" means marriage solemnised otherwise than according to the rites of the Church of England or any other religious usages.

(3C) "Religious premises" means premises which—

(a) are used solely or mainly for religious purposes, or

(b) have been so used and have not subsequently been used solely or mainly for other purposes."

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information

I72 S. 202 wholly in force at 5.12.2011; s. 202 not in force at Royal Assent see 216; s. 202(3) wholly in force and s. 202(1)(4) in force for certain purposes at 11.7.2011 by S.I. 2011/1636, **art. 2(b)-(d)**; s. 202 in force so far as not already in force at 5.12.2011 by S.I. 2011/2646, **art. 2**

EU obligations

F197 203 Harmonisation

. . . . . .

Textual Amendments

F197 S. 203 omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(4)**; 2020 c. 1, Sch. 5 para. 1(1)

F198 204 Harmonisation: procedure

. . . . . .

Textual Amendments

F198 S. 204 omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Application

205 Crown application

(1) The following provisions of this Act bind the Crown—
- (a) Part 1 (public sector duty regarding socio-economic inequalities);
- (b) Part 3 (services and public functions), so far as relating to the exercise of public functions;
- (c) Chapter 1 of Part 11 (public sector equality duty).

(2) Part 5 (work) binds the Crown as provided for by that Part.

(3) The remainder of this Act applies to Crown acts as it applies to acts done by a private person.

(4) For the purposes of subsection (3), an act is a Crown act if (and only if) it is done—
- (a) by or on behalf of a member of the executive,
- (b) by a statutory body acting on behalf of the Crown, or
- (c) by or on behalf of the holder of a statutory office acting on behalf of the Crown.

(5) A statutory body or office is a body or office established by an enactment.

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(6) The provisions of Parts 2 to 4 of the Crown Proceedings Act 1947 apply to proceedings against the Crown under this Act as they apply to proceedings in England and Wales which, as a result of section 23 of that Act, are treated for the purposes of Part 2 of that Act as civil proceedings by or against the Crown.

(7) The provisions of Part 5 of that Act apply to proceedings against the Crown under this Act as they apply to proceedings in Scotland which, as a result of that Part, are treated as civil proceedings by or against the Crown.

(8) But the proviso to section 44 of that Act (removal of proceedings from the sheriff to the Court of Session) does not apply to proceedings under this Act.

206 Information society services

Schedule 25 (information society services) has effect.

Subordinate legislation

207 Exercise of power

(1) A power to make an order or regulations under this Act is exercisable by a Minister of the Crown, unless there is express provision to the contrary.

(2) Orders, regulations or rules under this Act must be made by statutory instrument.

(3) Subsection (2) does not apply to—
- (a) a transitional exemption order under Part 1 of Schedule 11,
- (b) a transitional exemption order under Part 1 of Schedule 12, or
- (c) an order under paragraph 1(3) of Schedule 14 that does not modify an enactment.

(4) Orders or regulations under this Act—
- (a) may make different provision for different purposes;
- (b) may include consequential, incidental, supplementary, transitional, transitory or saving provision.

(5) Nothing in section 163(4), 174(4) **[**[F199], 181A(5), 181B(6)**]** or 182(3) affects the generality of the power under subsection (4)(a).

(6) The power under subsection (4)(b), in its application to section 37, **[**[F200]139A,**]** 153, 154(2), 155(5), 197 or 216 or to paragraph 7(1) of Schedule 11 or paragraph 1(3) or 2(3) of Schedule 14, includes power to amend an enactment (including, in the case of section **[**[F200]139A,**]** 197 or 216, this Act).

(7) In the case of section 216 (commencement), provision by virtue of subsection (4)(b) may be included in a separate order from the order that provides for the commencement to which the provision relates; and, for that purpose, it does not matter—
- (a) whether the order providing for the commencement includes provision by virtue of subsection (4)(b);
- (b) whether the commencement has taken place.

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(8) A statutory instrument containing an Order in Council under section 82 (offshore work) is subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F199 Words in s. 207(5) inserted (26.6.2018) by Bus Services Act 2017 (c. 21), **ss. 17(2)**, 26(2); S.I. 2018/758, reg. 2

F200 Words in s. 207(6) inserted (25.4.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 98(3)**, 103(1)

208 Ministers of the Crown, etc.

(1) This section applies where the power to make an order or regulations under this Act is exercisable by a Minister of the Crown or the Treasury.

(2) A statutory instrument containing (whether alone or with other provision) an order or regulations that amend this Act or another Act of Parliament, or an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales, is subject to the affirmative procedure.

(3) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains—

(a) an order under section 59 (local authority functions);

(b) an order under section 151 (power to amend list of public authorities for the purposes of the public sector equality duty) that provides for the omission of an entry where the authority concerned has ceased to exist or the variation of an entry where the authority concerned has changed its name;

(c) an order under paragraph 1(3) of Schedule 14 (educational charities and endowments) that modifies an enactment.

(4) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (5) is subject to the affirmative procedure.

(5) The orders and regulations referred to in subsection (4) are—

(a) regulations under section 30 (services: ships and hovercraft);

(b) regulations under section 78 (gender pay gap information);

(c) regulations under section 81 (work: ships and hovercraft);

(d) an order under section 105 (election candidates: expiry of provision);

(e) regulations under section 106 (election candidates: diversity information);

[[F201](ea) regulations under section 139A (equal pay audits);**]**

(f) regulations under section 153 or 154(2) (public sector equality duty: powers to impose specific duties);

[[F202](fa) regulations under section 181A or 181B (information for bus passengers);**]**

[F203](g) . . . . . .

[F204](h) . . . . . .

(i) regulations under paragraph 9(3) of Schedule 20 (rail vehicle accessibility: determination of turnover for purposes of penalties).

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(6) A statutory instrument that is not subject to the affirmative procedure by virtue of subsection (2) or (4) is subject to the negative procedure.

(7) But a statutory instrument is not subject to the negative procedure by virtue of subsection (6) merely because it contains—

F205(a) . . . . . .

(b) an order under section 216 (commencement) that—

(i) does not amend an Act of Parliament, an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales, and

(ii) is not made in reliance on section 207(7).

(8) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of each House of Parliament.

(9) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of either House of Parliament.

(10) If a draft of a statutory instrument containing an order or regulations under section 2, 151, 153, 154(2) or 155(5) would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

Textual Amendments

F201 S. 208(5)(ea) inserted (25.4.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 98(4)**, 103(1)

F202 S. 208(5)(fa) inserted (26.6.2018) by Bus Services Act 2017 (c. 21), **ss. 17(3)**, 26(2); S.I. 2018/758, reg. 2

F203 S. 208(5)(g) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 10 para. 30(c)(i)**; S.I. 2015/994, art. 11(p)

F204 S. 208(5)(h) omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(6)**; 2020 c. 1, Sch. 5 para. 1(1)

F205 S. 208(7)(a) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 10 para. 30(c)(ii)**; S.I. 2015/994, art. 11(p)

209 The Welsh Ministers

(1) This section applies where the power to make an order or regulations under this Act is exercisable by the Welsh Ministers.

(2) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (3) is subject to the affirmative procedure.

(3) The orders and regulations referred to in subsection (2) are—

(a) regulations under section 2 (socio-economic inequalities);

(b) an order under section 151 (power to amend list of public authorities for the purposes of the public sector equality duty);

(c) regulations under section 153 or 154(2) (public sector equality duty: powers to impose specific duties);

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(d) regulations under section 155(5) that amend an Act of Parliament or an Act or Measure of the National Assembly for Wales (public sector equality duty: power to modify or remove specific duties);

[[F206](e) regulations under paragraph 6, 6A or 6F of Schedule 17 (tribunal procedure, case friends and capacity of parents and persons over compulsory school age).**]**

(4) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains an order under section 151 that provides for—

(a) the omission of an entry where the authority concerned has ceased to exist, or

(b) the variation of an entry where the authority concerned has changed its name.

(5) A statutory instrument that is not subject to the affirmative procedure by virtue of subsection (2) is subject to the negative procedure.

(6) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of the National Assembly for Wales.

(7) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

Textual Amendments

F206 S. 209(3)(e) inserted (2.11.2020 for specified purposes, 1.9.2021 in so far as not already in force) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(4)**; S.I. 2020/1182, reg. 3(1)(n); S.I. 2021/373, art. 8(j)(xxxiii)

210 The Scottish Ministers

(1) This section applies where the power to make an order, regulations or rules under this Act is exercisable by the Scottish Ministers.

(2) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (3) is subject to the affirmative procedure.

(3) The orders and regulations referred to in subsection (2) are—

(a) regulations under section 2 (socio-economic inequalities);

(b) regulations under section 37 (power to make provision about adjustments to common parts in Scotland);

(c) an order under section 151 (power to amend list of public authorities for the purposes of the public sector equality duty);

(d) regulations under section 153 or 154(2) (public sector equality duty: powers to impose specific duties);

(e) regulations under section 155(5) that amend an Act of Parliament or an Act of the Scottish Parliament (public sector equality duty: power to modify or remove specific duties).

(4) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains an order under section 151 that provides for—

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Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) the omission of an entry where the authority concerned has ceased to exist, or
(b) the variation of an entry where the authority concerned has changed its name.

(5) A statutory instrument that is not subject to the affirmative procedure by virtue of subsection (2) is subject to the negative procedure.

(6) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of the Scottish Parliament.

(7) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Amendments, etc.

211 Amendments, repeals and revocations

(1) Schedule 26 (amendments) has effect.

(2) Schedule 27 (repeals and revocations) has effect.

Commencement Information

I73 S. 211 partly in force; s. 211 not in force at Royal Assent see s. 216; s. 211(1) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 3(1)(a)**; s. 211(1) in force for certain purposes at 4.8.2010 by S.I. 2010/1966, **art. 3(a)**; 211(1)(2) in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(15)(b)(c)** (with art. 15); s. 211(1)(2) in force for certain purposes at 5.4.2011 by S.I. 2011/1066, **art. 2(d)(e)**

Interpretation

212 General interpretation

(1) In this Act—

"armed forces" means any of the naval, military or air forces of the Crown;

"the Commission" means the Commission for Equality and Human Rights;

"detriment" does not, subject to subsection (5), include conduct which amounts to harassment;

"the Education Acts" has the meaning given in section 578 of the Education Act 1996;

"employment" and related expressions are (subject to subsection (11)) to be read with section 83;

"enactment" means an enactment contained in—

(a) an Act of Parliament,
(b) an Act of the Scottish Parliament,
(c) an Act or Measure of the National Assembly for Wales, or
(d) subordinate legislation;

"equality clause" means a sex equality clause or maternity equality clause;

"equality rule" means a sex equality rule or maternity equality rule;

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"man" means a male of any age;

"maternity equality clause" has the meaning given in section 73;

"maternity equality rule" has the meaning given in section 75;

"non-discrimination rule" has the meaning given in section 61;

"occupational pension scheme" has the meaning given in section 1 of the Pension Schemes Act 1993;

"parent" has the same meaning as in—

(a) the Education Act 1996 (in relation to England and Wales);

(b) the Education (Scotland) Act 1980 (in relation to Scotland);

"prescribed" means prescribed by regulations;

"profession" includes a vocation or occupation;

"sex equality clause" has the meaning given in section 66;

"sex equality rule" has the meaning given in section 67;

"subordinate legislation" means—

(a) subordinate legislation within the meaning of the Interpretation Act 1978, or

(b) an instrument made under an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales;

"substantial" means more than minor or trivial;

"trade" includes any business;

"woman" means a female of any age.

(2) A reference (however expressed) to an act includes a reference to an omission.

(3) A reference (however expressed) to an omission includes (unless there is express provision to the contrary) a reference to—

(a) a deliberate omission to do something;

(b) a refusal to do it;

(c) a failure to do it.

(4) A reference (however expressed) to providing or affording access to a benefit, facility or service includes a reference to facilitating access to the benefit, facility or service.

(5) Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic.

(6) A reference to occupation, in relation to premises, is a reference to lawful occupation.

(7) The following are members of the executive—

(a) a Minister of the Crown;

(b) a government department;

(c) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government;

(d) any part of the Scottish Administration.

(8) A reference to a breach of an equality clause or rule is a reference to a breach of a term modified by, or included by virtue of, an equality clause or rule.

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(9) A reference to a contravention of this Act does not include a reference to a breach of an equality clause or rule, unless there is express provision to the contrary.

(10) "Member", in relation to an occupational pension scheme, means an active member, a deferred member or a pensioner member (within the meaning, in each case, given by section 124 of the Pensions Act 1995).

(11) "Employer", "deferred member", "pension credit member", "pensionable service", "pensioner member" and "trustees or managers" each have, in relation to an occupational pension scheme, the meaning given by section 124 of the Pensions Act 1995.

(12) A reference to the accrual of rights under an occupational pension scheme is to be construed in accordance with that section.

(13) Nothing in section 28, 32, 84, 90, 95 or 100 is to be regarded as an express exception.

213 References to maternity leave, etc.

(1) This section applies for the purposes of this Act.

(2) A reference to a woman on maternity leave is a reference to a woman on—
- (a) compulsory maternity leave,
- (b) ordinary maternity leave, or
- (c) additional maternity leave.

(3) A reference to a woman on compulsory maternity leave is a reference to a woman absent from work because she satisfies the conditions prescribed for the purposes of section 72(1) of the Employment Rights Act 1996.

(4) A reference to a woman on ordinary maternity leave is a reference to a woman absent from work because she is exercising the right to ordinary maternity leave.

(5) A reference to the right to ordinary maternity leave is a reference to the right conferred by section 71(1) of the Employment Rights Act 1996.

(6) A reference to a woman on additional maternity leave is a reference to a woman absent from work because she is exercising the right to additional maternity leave.

(7) A reference to the right to additional maternity leave is a reference to the right conferred by section 73(1) of the Employment Rights Act 1996.

(8) "Additional maternity leave period" has the meaning given in section 73(2) of that Act.

214 Index of defined expressions

Schedule 28 lists the places where expressions used in this Act are defined or otherwise explained.

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Final provisions

215 Money

There is to be paid out of money provided by Parliament any increase attributable to this Act in the expenses of a Minister of the Crown.

216 Commencement

(1) The following provisions come into force on the day on which this Act is passed—

(a) section 186(2) (rail vehicle accessibility: compliance);

(b) this Part (except sections 202 (civil partnerships on religious premises), 206 (information society services) and 211 (amendments, etc)).

(2) Part 15 (family property) comes into force on such day as the Lord Chancellor may by order appoint.

(3) **[**[F207]Subject to **[**[F208]subsections (4) and (6)**]** ,**]** the other provisions of this Act come into force on such day as a Minister of the Crown may by order appoint.

[[F209](4) The following provisions of Part 1 (socio-economic inequalities) come into force on such day as the Scottish Ministers may by order appoint—

(a) section 1, so far as it applies to a relevant authority as defined by section 2(5);

(b) section 2, so far as it confers a power on the Scottish Ministers;

(c) section 3, for the purposes of section 1 to the extent mentioned in paragraph (a).

(5) The following do not apply to an order under subsection (4)—

(a) section 207(2) (see instead section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010: powers exercisable by Scottish statutory instrument), and

(b) section 210.**]**

[[F210](6) The following provisions of Part 1 come into force on such day as the Welsh Ministers may by order appoint—

(a) section 1, so far as it applies to a relevant authority as defined by section 2(6);

(b) section 2, so far as it confers a power on the Welsh Ministers;

(c) section 3, for the purposes of section 1 to the extent mentioned in paragraph (a).

(7) Section 209 does not apply to an order under subsection (6).**]**

Subordinate Legislation Made

P1 S. 216 power partly exercised; various dates appointed for specified provisions and purposes as follows:
6.7.2010 by {S. I. 2010/1736}, arts. 2, 3;
4.8.2010 by {S.I. 2010/1966}, arts. 2, 3;
3.9.2010 by {S.I. 2010/2191}, art. 2;
1.10.2010 and 18.3.2011 by {S.I. 2010/2317}, art. 2 (subject to arts. 3-25, as amended by {S.I. 2010/2337}, art. 2), art. 3;
18.1.2011 and 6.4.2011 by {S.I. 2011/96}, arts. 2, 3;
5.4.2011 by {S.I. 2011/1066}, art. 2;

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11.7.2011 by {S.I. 2011/1636}, art. 2;
5.12.2011 by {S.I. 2011/2646}, art. 2;
19.6.2012 and 1.10.2012 by {S.I. 2012/1569}, arts. 2, 3;
1.9.2012 by {S.I. 2012/2184}, art. 2

Textual Amendments

F207 Words in s. 216(3) inserted (23.5.2016) by Scotland Act 2016 (c. 11), **ss. 38(9)**, 72(7)

F208 Words in s. 216(3) substituted (1.4.2018) by Wales Act 2017 (c. 4), **ss. 45(5)**, 71(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(i)

F209 S. 216(4)(5) inserted (23.5.2016) by Scotland Act 2016 (c. 11), **ss. 38(9)**, 72(7)

F210 S. 216(6)(7) inserted (1.4.2018) by Wales Act 2017 (c. 4), **ss. 45(6)**, 71(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(i)

217 Extent

(1) This Act forms part of the law of England and Wales.

(2) This Act, apart from section 190 (improvements to let dwelling houses) and Part 15 (family property), forms part of the law of Scotland.

(3) Each of the following also forms part of the law of Northern Ireland—
- (a) section 82 (offshore work);
- (b) section 105(3) and (4) (expiry of Sex Discrimination (Election Candidates) Act 2002);
- (c) section 199 (abolition of presumption of advancement).

218 Short title

This Act may be cited as the Equality Act 2010.

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SCHEDULES

SCHEDULE 1

Section 6

DISABILITY: SUPPLEMENTARY PROVISION

PART 1

DETERMINATION OF DISABILITY

Impairment

1 Regulations may make provision for a condition of a prescribed description to be, or not to be, an impairment.

Commencement Information

I74 Sch. 1 para. 1 wholly in force at 1.10.2010; para. 1 not in force at Royal Assent see s. 216; para. 1 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

Long-term effects

2 (1) The effect of an impairment is long-term if—
(a) it has lasted for at least 12 months,
(b) it is likely to last for at least 12 months, or
(c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

(3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

(4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

Commencement Information

I75 Sch. 1 para. 2 wholly in force at 1.10.2010; para. 2 not in force at Royal Assent see s. 216; para. 2 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

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Severe disfigurement

3 (1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.

(2) Regulations may provide that in prescribed circumstances a severe disfigurement is not to be treated as having that effect.

(3) The regulations may, in particular, make provision in relation to deliberately acquired disfigurement.

Commencement Information

I76 Sch. 1 para. 3 wholly in force at 1.10.2010; para. 3 not in force at Royal Assent see s. 216; para. 3 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

Substantial adverse effects

4 Regulations may make provision for an effect of a prescribed description on the ability of a person to carry out normal day-to-day activities to be treated as being, or as not being, a substantial adverse effect.

Commencement Information

I77 Sch. 1 para. 4 wholly in force at 1.10.2010; para. 4 not in force at Royal Assent see s. 216; para. 4 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

Effect of medical treatment

5 (1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—

(a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.

(2) "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

(3) Sub-paragraph (1) does not apply—

(a) in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;

(b) in relation to such other impairments as may be prescribed, in such circumstances as are prescribed.

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Commencement Information

I78 Sch. 1 para. 5 wholly in force at 1.10.2010; para. 5 not in force at Royal Assent see s. 216; para. 5 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

Certain medical conditions

6 (1) Cancer, HIV infection and multiple sclerosis are each a disability.

(2) HIV infection is infection by a virus capable of causing the Acquired Immune Deficiency Syndrome.

Deemed disability

7 (1) Regulations may provide for persons of prescribed descriptions to be treated as having disabilities.

(2) The regulations may prescribe circumstances in which a person who has a disability is to be treated as no longer having the disability.

(3) This paragraph does not affect the other provisions of this Schedule.

Commencement Information

I79 Sch. 1 para. 7 wholly in force at 1.10.2010; para. 7 not in force at Royal Assent see s. 216; para. 7 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

Progressive conditions

8 (1) This paragraph applies to a person (P) if—

(a) P has a progressive condition,

(b) as a result of that condition P has an impairment which has (or had) an effect on P's ability to carry out normal day-to-day activities, but

(c) the effect is not (or was not) a substantial adverse effect.

(2) P is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment.

(3) Regulations may make provision for a condition of a prescribed description to be treated as being, or as not being, progressive.

Commencement Information

I80 Sch. 1 para. 8 wholly in force at 1.10.2010; para. 8 not in force at Royal Assent see s. 216; para. 8 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

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Past disabilities

9 (1) A question as to whether a person had a disability at a particular time ("the relevant time") is to be determined, for the purposes of section 6, as if the provisions of, or made under, this Act were in force when the act complained of was done had been in force at the relevant time.

(2) The relevant time may be a time before the coming into force of the provision of this Act to which the question relates.

PART 2

GUIDANCE

Preliminary

10 This Part of this Schedule applies in relation to guidance referred to in section 6(5).

Commencement Information

I81 Sch. 1 para. 10 wholly in force at 1.10.2010; para. 10 not in force at Royal Assent see s. 216; para. 10 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

Examples

11 The guidance may give examples of—

(a) effects which it would, or would not, be reasonable, in relation to particular activities, to regard as substantial adverse effects;

(b) substantial adverse effects which it would, or would not, be reasonable to regard as long-term.

Commencement Information

I82 Sch. 1 para. 11 wholly in force at 1.10.2010; para. 11 not in force at Royal Assent see s. 216; para. 11 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

Adjudicating bodies

12 (1) In determining whether a person is a disabled person, an adjudicating body must take account of such guidance as it thinks is relevant.

(2) An adjudicating body is—

(a) a court;

(b) a tribunal;

(c) a person (other than a court or tribunal) who may decide a claim relating to a contravention of Part 6 (education).

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Representations

13 Before issuing the guidance, the Minister must—

(a) publish a draft of it;

(b) consider any representations made to the Minister about the draft;

(c) make such modifications as the Minister thinks appropriate in the light of the representations.

Commencement Information

I83 Sch. 1 para. 13 wholly in force at 1.10.2010; para. 13 not in force at Royal Assent see s. 216; para. 13 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

Parliamentary procedure

14 (1) If the Minister decides to proceed with proposed guidance, a draft of it must be laid before Parliament.

(2) If, before the end of the 40-day period, either House resolves not to approve the draft, the Minister must take no further steps in relation to the proposed guidance.

(3) If no such resolution is made before the end of that period, the Minister must issue the guidance in the form of the draft.

(4) Sub-paragraph (2) does not prevent a new draft of proposed guidance being laid before Parliament.

(5) The 40-day period—

(a) begins on the date on which the draft is laid before both Houses (or, if laid before each House on a different date, on the later date);

(b) does not include a period during which Parliament is prorogued or dissolved;

(c) does not include a period during which both Houses are adjourned for more than 4 days.

Commencement Information

I84 Sch. 1 para. 14 wholly in force at 1.10.2010; para. 14 not in force at Royal Assent see s. 216; para. 14 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

Commencement

15 The guidance comes into force on the day appointed by order by the Minister.

Commencement Information

I85 Sch. 1 para. 15 wholly in force at 1.10.2010; para. 15 not in force at Royal Assent see s. 216; para. 15 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

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Revision and revocation

16 (1) The Minister may—

(a) revise the whole or part of guidance and re-issue it;

(b) by order revoke guidance.

(2) A reference to guidance includes a reference to guidance which has been revised and re-issued.

Commencement Information

I86 Sch. 1 para. 16 wholly in force at 1.10.2010; para. 16 not in force at Royal Assent see s. 216; para. 16 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(2)(g)** (with art. 15)

SCHEDULE 2

Section 31

SERVICES AND PUBLIC FUNCTIONS: REASONABLE ADJUSTMENTS

Preliminary

1 This Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part.

Commencement Information

I87 Sch. 2 para. 1 wholly in force at 1.9.2012; para. 1 not in force at Royal assent see s. 216; para. 1 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; para. 1 in force so far as not already in force at 1.9.2012 by S.I. 2012/2184, **art. 2(a)**

The duty

2 (1) A must comply with the first, second and third requirements.

(2) For the purposes of this paragraph, the reference in section 20(3), (4) or (5) to a disabled person is to disabled persons generally.

(3) Section 20 has effect as if, in subsection (4), for "to avoid the disadvantage" there were substituted—

"(a) to avoid the disadvantage, or

(b) to adopt a reasonable alternative method of providing the service or exercising the function."

(4) In relation to each requirement, the relevant matter is the provision of the service, or the exercise of the function, by A.

(5) Being placed at a substantial disadvantage in relation to the exercise of a function means—

(a) if a benefit is or may be conferred in the exercise of the function, being placed at a substantial disadvantage in relation to the conferment of the benefit, or

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(b) if a person is or may be subjected to a detriment in the exercise of the function, suffering an unreasonably adverse experience when being subjected to the detriment.

(6) In relation to the second requirement, a physical feature includes a physical feature brought by or on behalf of A, in the course of providing the service or exercising the function, on to premises other than those that A occupies (as well as including a physical feature in or on premises that A occupies).

(7) If A is a service-provider, nothing in this paragraph requires A to take a step which would fundamentally alter—
(a) the nature of the service, or
(b) the nature of A's trade or profession.

(8) If A exercises a public function, nothing in this paragraph requires A to take a step which A has no power to take.

Commencement Information

I88 Sch. 2 para. 2 wholly in force at 1.9.2012; para. 2 not in force at Royal assent see s. 216; para. 2 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; para. 2 in force so far as not already in force at 1.9.2012 by S.I. 2012/2184, **art. 2(a)**

Special provision about transport

3 (1) This paragraph applies where A is concerned with the provision of a service which involves transporting people by land, air or water.

(2) It is never reasonable for A to have to take a step which would—
(a) involve the alteration or removal of a physical feature of a vehicle used in providing the service;
(b) affect whether vehicles are provided;
(c) affect what vehicles are provided;
(d) affect what happens in the vehicle while someone is travelling in it.

(3) But, for the purpose of complying with the first or third requirement, A may not rely on sub-paragraph (2)(b), (c) or (d) if the vehicle concerned is—
(a) a hire-vehicle designed and constructed for the carriage of passengers, comprising more than 8 seats in addition to the driver's seat and having a maximum mass not exceeding 5 tonnes,
(b) a hire-vehicle designed and constructed for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes,
(c) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976 or section 7 of the Private Hire Vehicles (London) Act 1998 (or under a provision of a local Act corresponding to either of those provisions),
(d) a private hire car (within the meaning of section 23 of the Civic Government (Scotland) Act 1982),
(e) a public service vehicle (within the meaning given by section 1 of the Public Passenger Vehicles Act 1981),

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(f) a vehicle built or adapted to carry passengers on a railway or tramway (within the meaning, in each case, of the Transport and Works Act 1992),

(g) a taxi,

(h) a vehicle deployed to transport the driver and passengers of a vehicle that has broken down or is involved in an accident, or

(i) a vehicle deployed on a system using a mode of guided transport (within the meaning of the Transport and Works Act 1992).

(4) In so far as the second requirement requires A to adopt a reasonable alternative method of providing the service to disabled persons, A may not, for the purpose of complying with the requirement, rely on sub-paragraph (2)(b), (c) or (d) if the vehicle is within sub-paragraph (3)(h).

(5) A may not, for the purpose of complying with the first, second or third requirement rely on sub-paragraph (2) of this paragraph if A provides the service by way of a hire-vehicle built to carry no more than 8 passengers.

(6) For the purposes of sub-paragraph (5) in its application to the second requirement, a part of a vehicle is to be regarded as a physical feature if it requires alteration in order to facilitate the provision of—

(a) hand controls to enable a disabled person to operate braking and accelerator systems in the vehicle, or

(b) facilities for the stowage of a wheelchair.

(7) For the purposes of sub-paragraph (6)(a), fixed seating and in-built electrical systems are not physical features; and for the purposes of sub-paragraph (6)(b), fixed seating is not a physical feature.

(8) In the case of a vehicle within sub-paragraph (3), a relevant device is not an auxiliary aid for the purposes of the third requirement.

(9) A relevant device is a device or structure, or equipment, the installation, operation or maintenance of which would necessitate making a permanent alteration to, or which would have a permanent effect on, the internal or external fabric of the vehicle.

(10) Regulations may amend this paragraph so as to provide for sub-paragraph (2) not to apply, or to apply only so far as is prescribed, in relation to vehicles of a prescribed description.

Commencement Information

I89 Sch. 2 para. 3 wholly in force at 1.9.2012; para. 3 not in force at Royal assent see s. 216; para. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; para. 3 in force so far as not already in force at 1.9.2012 by S.I. 2012/2184, **art. 2(a)**

Interpretation

4 (1) This paragraph applies for the purposes of paragraph 3.

(2) A "hire-vehicle" is a vehicle hired (by way of a trade) under a hiring agreement to which section 66 of the Road Traffic Offenders Act 1988 applies.

(3) A "taxi", in England and Wales, is a vehicle—

(a) licensed under section 37 of the Town Police Clauses Act 1847,

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Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) licensed under section 6 of the Metropolitan Public Carriage Act 1869, or
(c) drawn by one or more persons or animals.

(4) A "taxi", in Scotland, is—
(a) a hire car engaged, by arrangements made in a public place between the person to be transported (or a person acting on that person's behalf) and the driver, for a journey starting there and then, or
(b) a vehicle drawn by one or more persons or animals.

Commencement Information

I90 Sch. 2 para. 4 wholly in force at 1.9.2012; para. 4 not in force at Royal assent see s. 216; para. 4 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; para. 4 in force so far as not already in force at 1.9.2012 by S.I. 2012/2184, **art. 2(a)**

SCHEDULE 3

Section 31

SERVICES AND PUBLIC FUNCTIONS: EXCEPTIONS

PART 1

CONSTITUTIONAL MATTERS

Parliament

1 (1) Section 29 does not apply to the exercise of—
(a) a function of Parliament;
(b) a function exercisable in connection with proceedings in Parliament.

(2) Sub-paragraph (1) does not permit anything to be done to or in relation to an individual unless it is done by or in pursuance of a resolution or other deliberation of either House or of a Committee of either House.

Commencement Information

I91 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Legislation

2 (1) Section 29 does not apply to preparing, making or considering—
(a) an Act of Parliament;
(b) a Bill for an Act of Parliament;
(c) an Act of the Scottish Parliament;
(d) a Bill for an Act of the Scottish Parliament;
(e) an Act of the National Assembly for Wales;

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(f) a Bill for an Act of the National Assembly for Wales.

(2) Section 29 does not apply to preparing, making, approving or considering—
(a) a Measure of the National Assembly for Wales;
(b) a proposed Measure of the National Assembly for Wales.

(3) Section 29 does not apply to preparing, making, confirming, approving or considering an instrument which is made under an enactment by—
(a) a Minister of the Crown;
(b) the Scottish Ministers or a member of the Scottish Executive;
(c) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

(4) Section 29 does not apply to preparing, making, confirming, approving or considering an instrument to which paragraph 6(a) of Schedule 2 to the Synodical Government Measure 1969 (1969 No. 2) (Measures, Canons, Acts of Synod, orders, etc.) applies.

(5) Section 29 does not apply to anything done in connection with the preparation, making, consideration, approval or confirmation of an instrument made by—
(a) Her Majesty in Council;
(b) the Privy Council.

(6) Section 29 does not apply to anything done in connection with the imposition of a requirement or condition which comes within Schedule 22 (statutory provisions).

Commencement Information

I92 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Judicial functions

3 (1) Section 29 does not apply to—
(a) a judicial function;
(b) anything done on behalf of, or on the instructions of, a person exercising a judicial function;
(c) a decision not to commence or continue criminal proceedings;
(d) anything done for the purpose of reaching, or in pursuance of, a decision not to commence or continue criminal proceedings.

(2) A reference in sub-paragraph (1) to a judicial function includes a reference to a judicial function conferred on a person other than a court or tribunal.

Commencement Information

I93 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

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Armed forces

4 (1) Section 29(6), so far as relating to relevant discrimination, does not apply to anything done for the purpose of ensuring the combat effectiveness of the armed forces.

(2) "Relevant discrimination" is—

(a) age discrimination;
(b) disability discrimination;
(c) gender reassignment discrimination;
(d) sex discrimination.

Commencement Information

I94 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Security services, etc.

5 Section 29 does not apply to—

(a) the Security Service;
(b) the Secret Intelligence Service;
(c) the Government Communications Headquarters;
(d) a part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

Commencement Information

I95 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

PART 2

EDUCATION

6 In its application to a local authority in England and Wales, section 29, so far as relating to age discrimination or religious or belief-related discrimination, does not apply to—

(a) the exercise of the authority's functions under section 14 of the Education Act 1996 (provision of schools);
(b) the exercise of its function under section 13 of that Act in so far as it relates to a function of its under section 14 of that Act.

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Commencement Information

I96 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

7 In its application to an education authority, section 29, so far as relating to age discrimination or religious or belief-related discrimination, does not apply to—

(a) the exercise of the authority's functions under section 17 of the Education (Scotland) Act 1980 (provision of schools);

(b) the exercise of its functions under section 1 of that Act, section 2 of the Standards in Scotland's Schools etc. Act 2000 (asp 6) or section 4 or 5 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (general responsibility for education) in so far as it relates to a matter specified in paragraph (a);

(c) the exercise of its functions under subsection (1) of section 50 of the Education (Scotland) Act 1980 (education of pupils in exceptional circumstances) in so far as it consists of making arrangements of the description referred to in subsection (2) of that section.

Commencement Information

I97 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

8 (1) In its application to a local authority in England and Wales or an education authority, section 29, so far as relating to sex discrimination, does not apply to the exercise of the authority's functions in relation to the establishment of a school.

(2) But nothing in sub-paragraph (1) is to be taken as disapplying section 29 in relation to the exercise of the authority's functions under section 14 of the Education Act 1996 or section 17 of the Education (Scotland) Act 1980.

Commencement Information

I98 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

9 Section 29, so far as relating to age discrimination, does not apply in relation to anything done in connection with—

(a) the curriculum of a school,

(b) admission to a school,

(c) transport to or from a school, or

(d) the establishment, alteration or closure of schools.

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Commencement Information

I99 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

10 (1) Section 29, so far as relating to disability discrimination, does not require a local authority in England or Wales exercising functions under the Education Acts or an education authority exercising relevant functions to remove or alter a physical feature.

(2) Relevant functions are functions under—

(a) the Education (Scotland) Act 1980,

(b) the Education (Scotland) Act 1996,

(c) the Standards in Scotland's Schools etc. Act 2000, or

(d) the Education (Additional Support for Learning) (Scotland) Act 2004.

Commencement Information

I100 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

11 Section 29, so far as relating to religious or belief-related discrimination, does not apply in relation to anything done in connection with—

(a) the curriculum of a school;

(b) admission to a school which has a religious ethos;

(c) acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum);

(d) the responsible body of a school which has a religious ethos;

(e) transport to or from a school;

(f) the establishment, alteration or closure of schools.

Commencement Information

I101 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

12 This Part of this Schedule is to be construed in accordance with Chapter 1 of Part 6.

Commencement Information

I102 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

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PART 3

HEALTH AND CARE

Blood services

13 (1) A person operating a blood service does not contravene section 29 only by refusing to accept a donation of an individual's blood if—

(a) the refusal is because of an assessment of the risk to the public, or to the individual, based on clinical, epidemiological or other data obtained from a source on which it is reasonable to rely, and

(b) the refusal is reasonable.

(2) A blood service is a service for the collection and distribution of human blood for the purposes of medical services.

(3) "Blood" includes blood components.

Commencement Information

I103 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Health and safety

14 (1) A service-provider (A) who refuses to provide the service to a pregnant woman does not discriminate against her in contravention of section 29 because she is pregnant if—

(a) A reasonably believes that providing her with the service would, because she is pregnant, create a risk to her health or safety,

(b) A refuses to provide the service to persons with other physical conditions, and

(c) the reason for that refusal is that A reasonably believes that providing the service to such persons would create a risk to their health or safety.

(2) A service-provider (A) who provides, or offers to provide, the service to a pregnant woman on conditions does not discriminate against her in contravention of section 29 because she is pregnant if—

(a) the conditions are intended to remove or reduce a risk to her health or safety,

(b) A reasonably believes that the provision of the service without the conditions would create a risk to her health or safety,

(c) A imposes conditions on the provision of the service to persons with other physical conditions, and

(d) the reason for the imposition of those conditions is that A reasonably believes that the provision of the service to such persons without those conditions would create a risk to their health or safety.

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Commencement Information

I104 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Care within the family

15 A person (A) does not contravene section 29 only by participating in arrangements under which (whether or not for reward) A takes into A's home, and treats as members of A's family, persons requiring particular care and attention.

Commencement Information

I105 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

PART 4

IMMIGRATION

[F211 Age

Textual Amendments

F211 Sch. 3 para. 15A and cross-heading inserted (1.10.2012) by The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 2**

15A (1) This paragraph applies in relation to age discrimination.

(2) Section 29 does not apply to anything done by a relevant person in the exercise of **[**F212relevant functions**]**.

(3) A relevant person is —

(a) a Minister of the Crown acting personally, or

(b) a person acting in accordance with a relevant authorisation.

(4) A relevant authorisation is a requirement imposed or express authorisation given—

(a) with respect to a particular case or class of case, **[**F213by or under anything mentioned in sub-paragraph (5)(a) to (c)**]**;

(b) with respect to a particular class of case, by a relevant enactment or by an instrument made under or by virtue of a relevant enactment.

(5) **[**F214"Relevant functions" means functions exercisable by virtue of **]** —

(a) the Immigration Acts,

(b) the Special Immigration Appeals Commission Act 1997, **[**F215or**]**

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(c) **[**[F216]anything which forms part of retained EU law by virtue of section 2(2)(a), 3 or 4 of the European Union (Withdrawal) Act 2018 and**]** relates to immigration or asylum. [F217]...

[F217](d) . . . . . .

(6) The reference in sub-paragraph (5)(a) to the Immigration Acts does not include a reference to—

(a) sections 28A to 28K of the Immigration Act 1971 (powers of arrest, entry and search, etc.), or

(b) section 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (power of arrest). **]**

Textual Amendments

F212 Words in Sch. 3 para. 15A(2) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F213 Words in Sch. 3 para. 15A(4)(b) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F214 Words in Sch. 3 para. 15A(5) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(a)(iii)(aa)**; 2020 c. 1, Sch. 5 para. 1(1)

F215 Word in Sch. 3 para. 15A(5)(b) inserted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(a)(iii)(bb)**; 2020 c. 1, Sch. 5 para. 1(1)

F216 Words in Sch. 3 para. 15A(5)(c) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(a)(iii)(cc)**; 2020 c. 1, Sch. 5 para. 1(1)

F217 Sch. 3 para. 15A(5)(d) and word omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(a)(iii)(dd)**; 2020 c. 1, Sch. 5 para. 1(1)

Disability

16 (1) This paragraph applies in relation to disability discrimination.

(2) Section 29 does not apply to—

(a) a decision within sub-paragraph (3);

(b) anything done for the purposes of or in pursuance of a decision within that sub-paragraph.

(3) A decision is within this sub-paragraph if it is a decision (whether or not taken in accordance with immigration rules) to do any of the following on the ground that doing so is necessary for the public good—

(a) to refuse entry clearance;

(b) to refuse leave to enter or remain in the United Kingdom;

(c) to cancel leave to enter or remain in the United Kingdom;

(d) to vary leave to enter or remain in the United Kingdom;

(e) to refuse an application to vary leave to enter or remain in the United Kingdom.

(4) Section 29 does not apply to—

(a) a decision taken, or guidance given, by the Secretary of State in connection with a decision within sub-paragraph (3);

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(b) a decision taken in accordance with guidance given by the Secretary of State in connection with a decision within that sub-paragraph.

Commencement Information

I106 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Nationality and ethnic or national origins

17 (1) This paragraph applies in relation to race discrimination so far as relating to—

(a) nationality, or

(b) ethnic or national origins.

(2) Section 29 does not apply to anything done by a relevant person in the exercise of **[**[F218]relevant functions**]**.

(3) A relevant person is—

(a) a Minister of the Crown acting personally, or

(b) a person acting in accordance with a relevant authorisation.

(4) A relevant authorisation is a requirement imposed or express authorisation given—

(a) with respect to a particular case or class of case, by a Minister of the Crown acting personally;

(b) with respect to a particular class of case, **[**[F219]by or under anything mentioned in sub-paragraph (5)(a) to (c)**]**.

(5) **[**[F220]"Relevant functions" means functions exercisable by virtue of **]** —

(a) the Immigration Acts,

(b) the Special Immigration Appeals Commission Act 1997, **[**[F221]or**]**

(c) **[**[F222]anything which forms part of retained EU law by virtue of section 2(2)(a), 3 or 4 of the European Union (Withdrawal) Act 2018 and**]** relates to immigration or asylum.[F223]...

[F223](d) . . . . . .

(6) The reference in sub-paragraph (5)(a) to the Immigration Acts does not include a reference to—

(a) sections 28A to 28K of the Immigration Act 1971 (powers of arrest, entry and search, etc.), or

(b) section 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (power of arrest).

Textual Amendments

F218 Words in Sch. 3 para. 17(2) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F219 Words in Sch. 3 para. 17(4)(b) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

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F220 Words in Sch. 3 para. 17(5) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(b)(iii)(aa)**; 2020 c. 1, Sch. 5 para. 1(1)

F221 Word in Sch. 3 para. 17(5)(b) inserted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(b)(iii)(bb)**; 2020 c. 1, Sch. 5 para. 1(1)

F222 Words in Sch. 3 para. 17(5)(c) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(b)(iii)(cc)**; 2020 c. 1, Sch. 5 para. 1(1)

F223 Sch. 3 para. 17(4)(d) and word omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(7)(b)(iii)(dd)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I107 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Religion or belief

18 (1) This paragraph applies in relation to religious or belief-related discrimination.

(2) Section 29 does not apply to a decision within sub-paragraph (3) or anything done for the purposes of or in pursuance of a decision within that sub-paragraph.

(3) A decision is within this sub-paragraph if it is a decision taken in accordance with immigration rules—

(a) to refuse entry clearance or leave to enter the United Kingdom, or to cancel leave to enter or remain in the United Kingdom, on the grounds that the exclusion of the person from the United Kingdom is conducive to the public good, or

(b) to vary leave to enter or remain in the United Kingdom, or to refuse an application to vary leave to enter or remain in the United Kingdom, on the grounds that it is undesirable to permit the person to remain in the United Kingdom.

(4) Section 29 does not apply to a decision within sub-paragraph (5), or anything done for the purposes of or in pursuance of a decision within that sub-paragraph, if the decision is taken on grounds mentioned in sub-paragraph (6).

(5) A decision is within this sub-paragraph if it is a decision (whether or not taken in accordance with immigration rules) in connection with an application for entry clearance or for leave to enter or remain in the United Kingdom.

(6) The grounds referred to in sub-paragraph (4) are—

(a) the grounds that a person holds an office or post in connection with a religion or belief or provides a service in connection with a religion or belief,

(b) the grounds that a religion or belief is not to be treated in the same way as certain other religions or beliefs, or

(c) the grounds that the exclusion from the United Kingdom of a person to whom paragraph (a) applies is conducive to the public good.

(7) Section 29 does not apply to—

(a) a decision taken, or guidance given, by the Secretary of State in connection with a decision within sub-paragraph (3) or (5);

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(b) a decision taken in accordance with guidance given by the Secretary of State in connection with a decision within either of those sub-paragraphs.

Commencement Information

I108 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Interpretation

19 A reference to entry clearance, leave to enter or remain or immigration rules is to be construed in accordance with the Immigration Act 1971.

Commencement Information

I109 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

PART 5

[[F224]INSURANCE AND OTHER FINANCIAL SERVICES]

Textual Amendments

F224 Sch. 3 Pt. 5 heading substituted (1.10.2012) by virtue of The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 3**

Services arranged by employer

20 (1) Section 29 does not apply to the provision of a relevant financial service if the provision is in pursuance of arrangements made by an employer for the service-provider to provide the service to the employer's employees, and other persons, as a consequence of the employment.

(2) "Relevant financial service" means—

(a) insurance or a related financial service, or

(b) a service relating to membership of or benefits under a personal pension scheme (within the meaning given by section 1 of the Pension Schemes Act 1993).

Commencement Information

I110 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F225 Age

Textual Amendments

F225 Sch. 3 para. 20A and cross-heading inserted (1.10.2012) by The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 3**

20A (1) A person (A) does not contravene section 29, so far as relating to age discrimination, by doing anything in connection with the provision of a financial service.

(2) Where A conducts an assessment of risk for the purposes of providing the financial service to another person (B), A may rely on sub-paragraph (1) only if the assessment of risk, so far as it involves a consideration of B's age, is carried out by reference to information which is relevant to the assessment of risk and from a source on which it is reasonable to rely.

(3) In this paragraph, " financial service " includes a service of a banking, credit, insurance, personal pension, investment or payment nature. **]**

Disability

21 (1) It is not a contravention of section 29, so far as relating to disability discrimination, to do anything in connection with insurance business if—

(a) that thing is done by reference to information that is both relevant to the assessment of the risk to be insured and from a source on which it is reasonable to rely, and

(b) it is reasonable to do that thing.

(2) "Insurance business" means business which consists of effecting or carrying out contracts of insurance; and that definition is to be read with—

(a) section 22 of the Financial Services and Markets Act 2000,

(b) any relevant order under that Act, and

(c) Schedule 2 to that Act.

Commencement Information

I111 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Sex, gender reassignment, pregnancy and maternity

22 F226 . . . . . .

Textual Amendments

F226 Sch. 3 para. 22 omitted (21.12.2012) by virtue of The Equality Act 2010 (Amendment) Regulations 2012 (S.I. 2012/2992), **reg. 2** (with reg. 3)

Status: *This version of this Act contains provisions that are prospective.*
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Commencement Information

I112 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Existing insurance policies

23 (1) It is not a contravention of section 29, so far as relating to relevant discrimination, to do anything in connection with insurance business in relation to an existing insurance policy.

(2) "Relevant discrimination" is—

(a) age discrimination;
(b) disability discrimination;
(c) gender reassignment discrimination;
(d) pregnancy and maternity discrimination;
(e) race discrimination;
(f) religious or belief-related discrimination;
(g) sex discrimination;
(h) sexual orientation discrimination.

(3) An existing insurance policy is a policy of insurance entered into before the date on which this paragraph comes into force.

(4) Sub-paragraph (1) does not apply where an existing insurance policy was renewed, or the terms of such a policy were reviewed, on or after the date on which this paragraph comes into force.

(5) A review of an existing insurance policy which was part of, or incidental to, a general reassessment by the service-provider of the pricing structure for a group of policies is not a review for the purposes of sub-paragraph (4).

(6) "Insurance business" has the meaning given in paragraph 21.

Commencement Information

I113 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

PART 6

[F227 MARRIAGE: GENDER REASSIGNMENT]

Textual Amendments

F227 Sch. 3 Pt. 6 heading substituted (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 7 para. 44**; S.I. 2014/93, art. 3(k)(iv)

Status: *This version of this Act contains provisions that are prospective.*
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Gender reassignment: England and Wales

24 (1) A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in reliance on section 5B of the Marriage Act 1949 (solemnisation of marriages involving person of acquired gender).

(2) A person (A) whose consent to the solemnisation of the marriage of a person (B) is required under section 44(1) of the Marriage Act 1949 (solemnisation in registered building) does not contravene section 29, so far as relating to gender reassignment discrimination, by refusing to consent if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.

(3) Sub-paragraph (4) applies to a person (A) who may, in a case that comes within the Marriage Act 1949 (other than the case mentioned in sub-paragraph (1)), solemnise marriages according to a form, rite or ceremony of a body of persons who meet for religious worship.

(4) A does not contravene section 29, so far as relating to gender reassignment discrimination, by refusing to solemnise, in accordance with a form, rite or ceremony as described in sub-paragraph (3), the marriage of a person (B) if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.

Commencement Information

I114 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

[F228PART 6ZA

MARRIAGE AND CIVIL PARTNERSHIP: SCOTLAND]

Textual Amendments

F228 Sch. 3 Pt. 6ZA heading inserted (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 5 para. 19(5)(a)**

Gender reassignment: Scotland

25 (1) An approved celebrant (A) does not contravene section 29, so far as relating to gender reassignment discrimination, only by refusing to solemnise the marriage of a person (B) if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.

(2) In sub-paragraph (1) "approved celebrant" has the meaning given in section 8(2)(a) of the Marriage (Scotland) Act 1977 (persons who may solemnise marriage).

[F229(3) An approved celebrant (A) does not contravene section 29, so far as relating to gender reassignment discrimination, only by refusing to register the civil partnership of a

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person (B) if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.

(4) In sub-paragraph (3) "approved celebrant" has the meaning given in section 94A(4)(a) of the Civil Partnership Act 2004.**]**

Textual Amendments

F229 Sch. 3 para. 25(3)(4) inserted (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 5 para. 19(5)(b)**

Commencement Information

I115 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

[F230PART 6A

MARRIAGE OF SAME SEX COUPLES [F231AND CIVIL PARTNERSHIP] IN ENGLAND AND WALES

Textual Amendments

F230 Sch. 3 Pt. 6A inserted (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), **ss. 2(6)**, 21(3); S.I. 2014/93, art. 3(a)

F231 Words in Sch. 3 Pt. 6A heading inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **10(3)(a)**

Marriage according to religious rites: no compulsion to solemnize etc

25A (1) A person does not contravene section 29 only because the person—

(a) does not conduct a relevant marriage,

(b) is not present at, does not carry out, or does not otherwise participate in, a relevant marriage, or

(c) does not consent to a relevant marriage being conducted,

for the reason that the marriage is the marriage of a same sex couple.

(2) Expressions used in this paragraph and in section 2 of the Marriage (Same Sex Couples) Act 2013 have the same meanings in this paragraph as in that section.**]**

No compulsion for religious organisations or persons acting on their behalf to act in relation to civil partnerships

[F232**25AA.** (1) A protected person does not contravene section 29 only because the person—

(a) does not allow religious premises to be used as the place at which two people register as civil partners of each other under Part 2 of the Civil Partnership Act 2004 ("the 2004 Act"), or

(b) does not provide, arrange, facilitate or participate in, or is not present at—

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(i) an occasion during which two people register as civil partners of each other on religious premises under Part 2 of the 2004 Act, or

(ii) a ceremony or event in England or Wales to mark the formation of a civil partnership,

for the reason that the person does not wish to do things of that sort in relation to civil partnerships generally, or those between two people of the same sex, or those between two people of the opposite sex.

(2) An employer or principal does not contravene section 29 only because the employer or principal is treated under section 109 as doing something that does not, by virtue of sub-paragraph (1), amount to a contravention of section 29 by the employee or agent who in fact does it.

(3) In this paragraph—

"protected person" has the meaning given by section 30ZA(2) of the 2004 Act;

"religious premises" has the meaning given by section 6A(3C) of the 2004 Act.**]**

Textual Amendments

F232 Sch. 3 Pt. 6A para. 25AA inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **10(3)(b)**

[F233PART 6B

[F234CIVIL PARTNERSHIP, MARRIAGE OF SAME SEX COUPLES AND MARRIAGE OF CIVIL PARTNERS: SCOTLAND]

Textual Amendments

F233 Sch. 3 Pt. 6B inserted (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 5 para. 19(5)(c)**

F234 Sch. 3 Pt. 6B substituted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(3)**

[F235Marriage and civil partnership: Scotland]

25B (1) An approved celebrant does not contravene section 29 only by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.

F236(1A) **[** An approved celebrant does not contravene section 29 only by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the opposite sex who are in a civil partnership with each other.**]**

(2) An approved celebrant does not contravene section 29 only by refusing to register a relevant Scottish civil partnership for the reason that **[**F237the approved celebrant

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does not wish to register civil partnerships generally, or those between two persons of the same sex, or those between two persons of the opposite sex**]**.

(3) A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the solemnising of a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.

F238(3A) **[** A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the solemnising of a relevant Scottish marriage for the reason that the marriage is a marriage of two persons of the opposite sex who are in a civil partnership with each other.**]**

(4) A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the registration of a relevant Scottish civil partnership for the reason that **[**F239the person does not wish to participate in such ceremonies in relation to civil partnerships generally, or those between two persons of the same sex, or those between two persons of the opposite sex**]**.

(5) For the purposes of this paragraph, a person is an approved celebrant for the purposes of both marriage and civil partnership whether the person is an approved celebrant within the meaning of section 8(2)(a) of the Marriage (Scotland) Act 1977 or section 94A(4)(a) of the Civil Partnership Act 2004.

(6) In this paragraph—

"relevant Scottish civil partnership" means a religious or belief civil partnership within the meaning of section 94A(4)(b) of the Civil Partnership Act 2004;

"relevant Scottish marriage" means a religious or belief marriage F240... within the meaning of section 8(2)(a) of the Marriage (Scotland) Act 1977.

Textual Amendments

F235 Sch. 3 para. 25B heading substituted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(4)(f)**

F236 Sch. 3 para. 25B(1A) inserted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(4)(a)**

F237 Words in Sch. 3 para. 25B(2) substituted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(4)(b)**

F238 Sch. 3 para. 25B(3A) inserted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(4)(c)**

F239 Words in Sch. 3 para. 25B(4) substituted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(4)(d)**

F240 Words in Sch. 3 para. 25B(6) omitted (27.1.2022) by virtue of The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(4)(e)**

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Marriage of same sex couples: Scottish forces marriages

25C (1) A chaplain does not contravene section 29 only by refusing to solemnise a relevant Scottish forces marriage according to religious rites or usages for the reason that the marriage is the marriage of two persons of the same sex.

(2) In this paragraph—

"chaplain" has the meaning given by paragraph (a) of the definition of "authorised person" in paragraph 12(2) of Schedule 6 to the Marriage (Same Sex Couples) Act 2013;

"forces marriage" has the meaning given by paragraph 12(2) of Schedule 6 to the Marriage (Same Sex Couples) Act 2013;

"relevant Scottish forces marriage" means a forces marriage of two persons of the same sex where Scotland is the relevant part of the United Kingdom within the meaning of paragraph 12 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013.**]**

PART 7

[F241 SEPARATE, SINGLE AND CONCESSIONARY SERVICES, ETC]

Textual Amendments

F241 Sch. 3 Pt. 7 heading substituted (1.10.2012) by virtue of The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 4**

Separate services for the sexes

26 (1) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services for persons of each sex if—

(a) a joint service for persons of both sexes would be less effective, and

(b) the limited provision is a proportionate means of achieving a legitimate aim.

(2) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services differently for persons of each sex if—

(a) a joint service for persons of both sexes would be less effective,

(b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service otherwise than as a separate service provided differently for each sex, and

(c) the limited provision is a proportionate means of achieving a legitimate aim.

(3) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.

Commencement Information

I116 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

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Single-sex services

27 (1) A person does not contravene section 29, so far as relating to sex discrimination, by providing a service only to persons of one sex if—

(a) any of the conditions in sub-paragraphs (2) to (7) is satisfied, and

(b) the limited provision is a proportionate means of achieving a legitimate aim.

(2) The condition is that only persons of that sex have need of the service.

(3) The condition is that—

(a) the service is also provided jointly for persons of both sexes, and

(b) the service would be insufficiently effective were it only to be provided jointly.

(4) The condition is that—

(a) a joint service for persons of both sexes would be less effective, and

(b) the extent to which the service is required by persons of each sex makes it not reasonably practicable to provide separate services.

(5) The condition is that the service is provided at a place which is, or is part of—

(a) a hospital, or

(b) another establishment for persons requiring special care, supervision or attention.

(6) The condition is that—

(a) the service is provided for, or is likely to be used by, two or more persons at the same time, and

(b) the circumstances are such that a person of one sex might reasonably object to the presence of a person of the opposite sex.

(7) The condition is that—

(a) there is likely to be physical contact between a person (A) to whom the service is provided and another person (B), and

(b) B might reasonably object if A were not of the same sex as B.

(8) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.

Commencement Information

I117 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Gender reassignment

28 (1) A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in relation to a matter within sub-paragraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim.

(2) The matters are—

(a) the provision of separate services for persons of each sex;

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(b) the provision of separate services differently for persons of each sex;
(c) the provision of a service only to persons of one sex.

Commencement Information
I118 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Services relating to religion

29 (1) A minister does not contravene section 29, so far as relating to sex discrimination, by providing a service only to persons of one sex or separate services for persons of each sex, if—
(a) the service is provided for the purposes of an organised religion,
(b) it is provided at a place which is (permanently or for the time being) occupied or used for those purposes, and
(c) the limited provision of the service is necessary in order to comply with the doctrines of the religion or is for the purpose of avoiding conflict with the strongly held religious convictions of a significant number of the religion's followers.

(2) The reference to a minister is a reference to a minister of religion, or other person, who—
(a) performs functions in connection with the religion, and
(b) holds an office or appointment in, or is accredited, approved or recognised for purposes of, a relevant organisation in relation to the religion.

(3) An organisation is a relevant organisation in relation to a religion if its purpose is—
(a) to practise the religion,
(b) to advance the religion,
(c) to teach the practice or principles of the religion,
(d) to enable persons of the religion to receive benefits, or to engage in activities, within the framework of that religion, or
(e) to foster or maintain good relations between persons of different religions.

(4) But an organisation is not a relevant organisation in relation to a religion if its sole or main purpose is commercial.

Commencement Information
I119 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Services generally provided only for persons who share a protected characteristic

30 If a service is generally provided only for persons who share a protected characteristic, a person (A) who normally provides the service for persons who share that characteristic does not contravene section 29(1) or (2)—

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(a) by insisting on providing the service in the way A normally provides it, or
(b) if A reasonably thinks it is impracticable to provide the service to persons who do not share that characteristic, by refusing to provide the service.

Commencement Information

I120 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

[F242 Concessions

Textual Amendments

F242 Sch. 3 para. 30A and cross-heading inserted (1.10.2012) by The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 4**

30A (1) A person does not contravene section 29, so far as relating to age discrimination, by giving a concession in respect of a service to persons of a particular age group.

(2) The reference to a concession in respect of a service is a reference to a benefit, right or privilege having the effect that the manner in which the service is provided is, or the terms on which it is provided are, more favourable than the manner in which, or the terms on which, it is usually provided to the public (or, where it is provided to a section of the public, that section).**]**

[F243 Age related holidays

Textual Amendments

F243 Sch. 3 para. 30B and cross-heading inserted (1.10.2012) by The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 5**

30B (1) A person (P) does not contravene section 29, so far as relating to age discrimination, by providing a relevant holiday service to persons of a particular age group.

(2) In sub-paragraph (1) " relevant holiday service " means a service—
(a) which involves the provision of at least two of the following together for a single price—
(i) travel;
(ii) accommodation;
(iii) access to activities or services not ancillary to travel or accommodation which form a significant part of the service or its cost;
(b) the provision of which is for a period of more than 24 hours or includes the provision of overnight accommodation;
(c) which P provides only to persons of the age group in question; and

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(d) an essential feature of which is the bringing together of persons of that age group with a view to facilitating their enjoyment of facilities or services designed with particular regard to persons of that age group.

(3) P may not rely on sub-paragraph (1) unless, before providing a person with a relevant holiday service, P provides the person with a written statement that the service is provided only to persons of the age group in question.

(4) For the purpose of sub-paragraph (2)(a)(i), " travel " includes an option for an individual to make alternative travel arrangements to those included in the relevant holiday service as offered by P. **]**

[F244 Age restricted services

Textual Amendments

F244 Sch. 3 para. 30C and cross-heading inserted (1.10.2012) by The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 6**

30C (1) This paragraph applies where a person (P)—

(a) provides a service the provision of which is prohibited by or under an enactment to persons under the age specified in or under the enactment ("the statutory age"), and

(b) displays on the premises on which the service is provided an age warning in relation to the provision of the service.

(2) An age warning in relation to the provision of a service is a statement to the effect that the service will not be provided to a person who—

(a) appears to P, or an employee or agent of P's, to be under the age specified in the statement, and

(b) on being required to do so by P or the employee or agent, fails to produce satisfactory identification.

(3) P does not contravene section 29, so far as relating to age discrimination, by not providing the service to a person, who—

(a) appears to P, or an employee or agent of P's, to be under the age specified in the age warning in relation to the provision of the service, and

(b) on being required to do so by P or the employee or agent, fails to produce satisfactory identification.

(4) In this paragraph—

(a) a reference to the provision of a service includes a reference to provision of access to the service, and

(b) " satisfactory identification ", in relation to a person, means a valid document which—

(i) in the case of licensed premises where an age condition applies, meets that condition, and

(ii) in any other case includes a photograph of the person and establishes that the person has attained the statutory age in relation to the provision of a service;

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

" licensed premises " means premises in respect of which a relevant premises licence within the meaning of section 19A of the Licensing Act 2003 (mandatory conditions where alcohol sold) has effect; and

" age condition " means a condition specified in an order under subsection (1) of section 19A of that Act requiring the age of certain persons to be verified in the manner specified in the condition before they are served alcohol in premises where the condition applies. **]**

[F245 Residential mobile homes

Textual Amendments

F245 Sch. 3 para. 30D and cross-heading inserted (1.10.2012) by The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 7**

30D (1) A person (A) who is the owner of a protected site does not contravene section 29, so far as relating to age discrimination, by—

(a) entering into a mobile home agreement with a person (B) that entitles only persons who have attained a particular age to station and occupy a mobile home on land forming part of the site, or

(b) refusing to permit assignment by B of a mobile home agreement to any person other than a person who has attained a particular age.

(2) A does not contravene section 29, so far as relating to age discrimination, by imposing a requirement in park rules that mobile homes stationed on land forming part of the site and occupied under mobile home agreements may be occupied only by persons who have attained a particular age.

(3) A does not contravene section 29, so far as relating to age discrimination, by—

(a) imposing in or under a mobile home rental agreement with a person (C) a requirement that the mobile home to which the agreement relates may be occupied only by persons who have attained a particular age, or

(b) refusing to permit assignment by C of a mobile home rental agreement to any person other than a person who has attained a particular age.

(4) But A may not rely on sub-paragraph (1) or (3) unless, before doing something mentioned in that sub-paragraph, A provides B or C, as the case may be, with a written statement to the effect that the mobile home in question may be occupied only by persons who have attained the age in question.

(5) In this paragraph,

" mobile home agreement " means an agreement to which the Mobile Homes Act 1983 **[**F246 or Part 4 of the Mobile Homes (Wales) Act 2013 **]** applies; and " owner ", " protected site " and " mobile home " have the same meaning as in that Act **[**F247 or that Part of that Act **]** ;

" park rules " means rules applying to residents of mobile homes on the protected site and required to be observed by a term in the mobile home agreement or the mobile home rental agreement as the case may be;

" mobile home rental agreement " means an agreement (other than an arrangement to occupy a mobile home for the purposes of a holiday) under which a person (" the occupier ") is entitled to occupy a mobile home on the

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protected site as the occupier's residence whether for a specified period or for successive periods of a specified duration subject to payment of money and the performance of other obligations. **]**

Textual Amendments

F246 Words in Sch. 3 para. 30D(5) inserted (E.W.) (5.11.2013) by Mobile Homes (Wales) Act 2013 (anaw 6), s. 64(1), **Sch. 4 para. 11(a)** (with Sch. 5 para. 7) (this amendment is to be treated as not having effect until 1.10.2014 by virtue of S.I. 2014/11, art. 3(2))

F247 Words in Sch. 3 para. 30D(5) inserted (E.W.) (5.11.2013) by Mobile Homes (Wales) Act 2013 (anaw 6), s. 64(1), **Sch. 4 para. 11(b)** (with Sch. 5 para. 7) (this amendment is to be treated as not having effect until 1.10.2014 by virtue of S.I. 2014/11, art. 3(2))

PART 8

TELEVISION, RADIO AND ON-LINE BROADCASTING AND DISTRIBUTION

31 (1) Section 29 does not apply to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003).

(2) Sub-paragraph (1) does not apply to the provision of an electronic communications network, electronic communications service or associated facility (each of which has the same meaning as in that Act).

Commencement Information

I121 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

PART 9

TRANSPORT

Application to disability

32 This Part of this Schedule applies in relation to disability discrimination.

Commencement Information

I122 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

Transport by air

33 (1) Section 29 does not apply to—

(a) transporting people by air;

(b) a service provided on a vehicle for transporting people by air.

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(2) Section 29 does not apply to anything governed by Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

Commencement Information

I123 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

[F248 Transport by land: road]

Textual Amendments

F248 Sch. 3 para. 34 cross-heading substituted (1.10.2010) by virtue of The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), **art. 9**

34 (1) Section 29 does not apply to transporting people by land, unless the vehicle concerned is—

(a) a hire-vehicle designed and constructed for the carriage of passengers and comprising no more than 8 seats in addition to the driver's seat,

(b) a hire-vehicle designed and constructed for the carriage of passengers, comprising more than 8 seats in addition to the driver's seat and having a maximum mass not exceeding 5 tonnes,

(c) a hire-vehicle designed and constructed for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes,

(d) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976 or section 7 of the Private Hire Vehicles (London) Act 1998 (or under a provision of a local Act corresponding to either of those provisions),

(e) a private hire car (within the meaning of section 23 of the Civic Government (Scotland) Act 1982),

(f) a public service vehicle (within the meaning given by section 1 of the Public Passenger Vehicles Act 1981),

(g) a vehicle built or adapted to carry passengers on a railway or tramway (within the meaning, in each case, of the Transport and Works Act 1992),

(h) a taxi,

(i) a vehicle deployed to transport the driver and passengers of a vehicle that has broken down or is involved in an accident, or

(j) a vehicle deployed on a system using a mode of guided transport (within the meaning of the Transport and Works Act 1992).

[F249 (1A) Sections 20 to 22 and section 29 do not apply to anything that is governed by Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 .]

(2) Paragraph 4 of Schedule 2 applies for the purposes of this paragraph as it applies for the purposes of paragraph 3 of that Schedule.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F249 Sch. 3 para. 34(1A) inserted (19.8.2013) by The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013 (S.I. 2013/1865), regs. 1(1), **13(4)**

Commencement Information

I124 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

[F250 Transport by land: rail

Textual Amendments

F250 Sch. 3 para. 34A and cross-heading inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), **art. 9**

34A Section 29 does not apply to anything governed by Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.][M1]

Marginal Citations

M1 OJ No. L315, 3.12.2007, p.14.

PART 10

SUPPLEMENTARY

Power to amend

35 (1) A Minister of the Crown may by order amend this Schedule—

(a) so as to add, vary or omit an exception to section 29, so far as relating to disability, religion or belief or sexual orientation;

(b) so as to add, vary or omit an exception to section 29(6), so far as relating to gender reassignment, pregnancy and maternity, race or sex.

(2) But provision by virtue of sub-paragraph (1) may not amend this Schedule—

(a) so as to omit an exception in paragraph 1, 2 or 3;

(b) so as to reduce the extent to which an exception in paragraph 1, 2 or 3 applies.

(3) For the purposes of an order under sub-paragraph (1)(a), so far as relating to disability, which makes provision in relation to transport by air, it does not matter whether the transport is within or outside the United Kingdom.

(4) Before making an order under this paragraph the Minister must consult the Commission.

Status: *This version of this Act contains provisions that are prospective.*
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(5) Nothing in this paragraph affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.

Commencement Information

I125 Sch. 3 wholly in force at 1.10.2012; Sch. 3 not in force at Royal assent see s. 216; Sch. 3 in force at 1.10.2010 for certain purposes by S.I. 2010/2317, **art. 2(3)**; Sch. 3 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(d)**

SCHEDULE 4

Section 38

PREMISES: REASONABLE ADJUSTMENTS

Preliminary

1 This Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part.

The duty in relation to let premises

2 (1) This paragraph applies where A is a controller of let premises.

(2) A must comply with the first and third requirements.

(3) For the purposes of this paragraph, the reference in section 20(3) to a provision, criterion or practice of A's includes a reference to a term of the letting.

(4) For those purposes, the reference in section 20(3) or (5) to a disabled person is a reference to a disabled person who—

(a) is a tenant of the premises, or

(b) is otherwise entitled to occupy them.

(5) In relation to each requirement, the relevant matters are—

(a) the enjoyment of the premises;

(b) the use of a benefit or facility, entitlement to which arises as a result of the letting.

(6) Sub-paragraph (2) applies only if A receives a request from or on behalf of the tenant or a person entitled to occupy the premises to take steps to avoid the disadvantage or provide the auxiliary aid.

(7) If a term of the letting that prohibits the tenant from making alterations puts the disabled person at the disadvantage referred to in the first requirement, A is required to change the term only so far as is necessary to enable the tenant to make alterations to the let premises so as to avoid the disadvantage.

(8) It is never reasonable for A to have to take a step which would involve the removal or alteration of a physical feature.

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(9) For the purposes of this paragraph, physical features do not include furniture, furnishings, materials, equipment or other chattels in or on the premises; and none of the following is an alteration of a physical feature—
  (a) the replacement or provision of a sign or notice;
  (b) the replacement of a tap or door handle;
  (c) the replacement, provision or adaptation of a door bell or door entry system;
  (d) changes to the colour of a wall, door or any other surface.

(10) The terms of a letting include the terms of an agreement relating to it.

The duty in relation to premises to let

3 (1) This paragraph applies where A is a controller of premises to let.

(2) A must comply with the first and third requirements.

(3) For the purposes of this paragraph, the reference in section 20(3) or (5) to a disabled person is a reference to a disabled person who is considering taking a letting of the premises.

(4) In relation to each requirement, the relevant matter is becoming a tenant of the premises.

(5) Sub-paragraph (2) applies only if A receives a request by or on behalf of a disabled person within sub-paragraph (3) for A to take steps to avoid the disadvantage or provide the auxiliary aid.

(6) Nothing in this paragraph requires A to take a step which would involve the removal or alteration of a physical feature.

(7) Sub-paragraph (9) of paragraph 2 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

The duty in relation to commonhold units

4 (1) This paragraph applies where A is a commonhold association; and the reference to a commonhold association is a reference to the association in its capacity as the person who manages a commonhold unit.

(2) A must comply with the first and third requirements.

(3) For the purposes of this paragraph, the reference in section 20(3) to a provision, criterion or practice of A's includes a reference to—
  (a) a term of the commonhold community statement, or
  (b) any other term applicable by virtue of the transfer of the unit to the unit-holder.

(4) For those purposes, the reference in section 20(3) or (5) to a disabled person is a reference to a disabled person who—
  (a) is the unit-holder, or
  (b) is otherwise entitled to occupy the unit.

(5) In relation to each requirement, the relevant matters are—
  (a) the enjoyment of the unit;

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(b) the use of a benefit or facility, entitlement to which arises as a result of a term within sub-paragraph (3)(a) or (b).

(6) Sub-paragraph (2) applies only if A receives a request from or on behalf of the unit-holder or a person entitled to occupy the unit to take steps to avoid the disadvantage or provide the auxiliary aid.

(7) If a term within sub-paragraph (3)(a) or (b) that prohibits the unit-holder from making alterations puts the disabled person at the disadvantage referred to in the first requirement, A is required to change the term only so far as is necessary to enable the unit-holder to make alterations to the unit so as to avoid the disadvantage.

(8) It is never reasonable for A to have to take a step which would involve the removal or alteration of a physical feature; and sub-paragraph (9) of paragraph 2 applies in relation to a commonhold unit as it applies in relation to let premises.

PROSPECTIVE

The duty in relation to common parts

5 (1) This paragraph applies where A is a responsible person in relation to common parts.

(2) A must comply with the second requirement.

(3) For the purposes of this paragraph, the reference in section 20(4) to a physical feature is a reference to a physical feature of the common parts.

(4) For those purposes, the reference in section 20(4) to a disabled person is a reference to a disabled person who—

(a) is a tenant of the premises,

(b) is a unit-holder, or

(c) is otherwise entitled to occupy the premises,

and uses or intends to use the premises as the person's only or main home.

(5) In relation to the second requirement, the relevant matter is the use of the common parts.

(6) Sub-paragraph (2) applies only if—

(a) A receives a request by or on behalf of a disabled person within sub-paragraph (4) for A to take steps to avoid the disadvantage, and

(b) the steps requested are likely to avoid or reduce the disadvantage.

PROSPECTIVE

Consultation on adjustments relating to common parts

6 (1) In deciding whether it is reasonable to take a step for the purposes of paragraph 5, A must consult all persons A thinks would be affected by the step.

(2) The consultation must be carried out within a reasonable period of the request being made.

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(3) A is not required to have regard to a view expressed against taking a step in so far as A reasonably believes that the view is expressed because of the disabled person's disability.

(4) Nothing in this paragraph affects anything a commonhold association is required to do pursuant to Part 1 of the Commonhold and Leasehold Reform Act 2002.

PROSPECTIVE

Agreement on adjustments relating to common parts

7 (1) If A decides that it is reasonable to take a step for the purposes of paragraph 5, A and the disabled person must agree in writing the rights and responsibilities of each of them in relation to the step.

(2) An agreement under this paragraph must, in particular, make provision as to the responsibilities of the parties in relation to—
- (a) the costs of any work to be undertaken;
- (b) other costs arising from the work;
- (c) the restoration of the common parts to their former condition if the relevant disabled person stops living in the premises.

(3) It is always reasonable before the agreement is made for A to insist that the agreement should require the disabled person to pay—
- (a) the costs referred to in paragraphs (a) and (b) of sub-paragraph (2), and
- (b) the costs of the restoration referred to in paragraph (c) of that sub-paragraph.

(4) If an agreement under this paragraph is made, A's obligations under the agreement become part of A's interest in the common parts and pass on subsequent disposals accordingly.

(5) Regulations may require a party to an agreement under this paragraph to provide, in prescribed circumstances, prescribed information about the agreement to persons of a prescribed description.

(6) The regulations may require the information to be provided in a prescribed form.

(7) Regulations may make provision as to circumstances in which an agreement under this paragraph is to cease to have effect, in so far as the agreement does not itself make provision for termination.

Victimisation

8 (1) This paragraph applies where the relevant disabled person comes within paragraph 2(4)(b), 4(4)(b) or 5(4)(c).

(2) A must not, because of costs incurred in connection with taking steps to comply with a requirement imposed for the purposes of paragraph 2, 4 or 5, subject to a detriment—
- (a) a tenant of the premises, or
- (b) the unit-holder.

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Commencement Information

I126 Sch. 4 para. 8 partly in force; para. 8 not in force at Royal Assent see s. 216; para. 8 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(4)(e)(ii)**

Regulations

9 (1) This paragraph applies for the purposes of section 36 and this Schedule.

(2) Regulations may make provision as to—

(a) circumstances in which premises are to be treated as let, or as not let, to a person;

(b) circumstances in which premises are to be treated as being, or as not being, to let;

(c) who is to be treated as being, or as not being, a person entitled to occupy premises otherwise than as tenant or unit-holder;

(d) who is to be treated as being, or as not being, a person by whom premises are let;

(e) who is to be treated as having, or as not having, premises to let;

(f) who is to be treated as being, or as not being, a manager of premises.

(3) Provision made by virtue of this paragraph may amend this Schedule.

Commencement Information

I127 Sch. 4 para. 9 wholly in force; para. 9 not in force at Royal Assent see s. 216; para. 9 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; para. 9 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(4)(e)(iii)** (with art. 15)

SCHEDULE 5

Section 38

PREMISES: EXCEPTIONS

Owner-occupier

1 (1) This paragraph applies to the private disposal of premises by an owner-occupier.

(2) A disposal is a private disposal only if the owner-occupier does not—

(a) use the services of an estate agent for the purpose of disposing of the premises, or

(b) publish (or cause to be published) an advertisement in connection with their disposal.

(3) Section 33(1) applies only in so far as it relates to race.

(4) Section 34(1) does not apply in so far as it relates to—

(a) religion or belief, or

(b) sexual orientation.

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(5) In this paragraph—

"estate agent" means a person who, by way of profession or trade, provides services for the purpose of—

(a) finding premises for persons seeking them, or

(b) assisting in the disposal of premises;

"owner-occupier" means a person who—

(a) owns an estate or interest in premises, and

(b) occupies the whole of them.

2 (1) Section 36(1)(a) does not apply if—

(a) the premises are, or have been, the only or main home of a person by whom they are let, and

(b) since entering into the letting, neither that person nor any other by whom they are let has used a manager for managing the premises.

(2) A manager is a person who, by profession or trade, manages let premises.

(3) Section 36(1)(b) does not apply if—

(a) the premises are, or have been, the only or main home of a person who has them to let, and

(b) neither that person nor any other who has the premises to let uses the services of an estate agent for letting the premises.

(4) "Estate agent" has the meaning given in paragraph 1.

Small premises

3 (1) This paragraph applies to anything done by a person in relation to the disposal, occupation or management of part of small premises if—

(a) the person or a relative of that person resides, and intends to continue to reside, in another part of the premises, and

(b) the premises include parts (other than storage areas and means of access) shared with residents of the premises who are not members of the same household as the resident mentioned in paragraph (a).

(2) Sections 33(1), 34(1) and 35(1) apply only in so far as they relate to race.

(3) Premises are small if—

(a) the only other persons occupying the accommodation occupied by the resident mentioned in sub-paragraph (1)(a) are members of the same household,

(b) the premises also include accommodation for at least one other household,

(c) the accommodation for each of those other households is let, or available for letting, on a separate tenancy or similar agreement, and

(d) the premises are not normally sufficient to accommodate more than two other households.

(4) Premises are also small if they are not normally sufficient to provide residential accommodation for more than six persons (in addition to the resident mentioned in sub-paragraph (1)(a) and members of the same household).

(5) In this paragraph, "relative" means—

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(a) spouse or civil partner,
(b) unmarried partner,
(c) parent or grandparent,
(d) child or grandchild (whether or not legitimate),
(e) the spouse, civil partner or unmarried partner of a child or grandchild,
(f) brother or sister (whether of full blood or half-blood), or
(g) a relative within paragraph (c), (d), (e) or (f) whose relationship arises as a result of marriage or civil partnership.

(6) In sub-paragraph (5), a reference to an unmarried partner is a reference to the other member of a couple consisting **[**[F251]of two people who are not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners.**]**

Textual Amendments

F251 Words in Sch. 5 para. 3(6) substituted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 32(4)**

4 (1) Section 36(1) does not apply if—
(a) the premises in question are small premises,
(b) the relevant person or a relative of that person resides, and intends to continue to reside, in another part of the premises, and
(c) the premises include parts (other than storage areas and means of access) shared with residents of the premises who are not members of the same household as the resident mentioned in paragraph (b).

(2) The relevant person is the person who, for the purposes of section 36(1), is—
(a) the controller of the premises, or
(b) the responsible person in relation to the common parts to which the premises relate.

(3) "Small premises" and "relative" have the same meaning as in paragraph 3.

5 A Minister of the Crown may by order amend paragraph 3 or 4.

SCHEDULE 6

Section 52

OFFICE-HOLDERS: EXCLUDED OFFICES

Work to which other provisions apply

1 (1) An office or post is not a personal or public office in so far as one or more of the provisions mentioned in sub-paragraph (2)—
(a) applies in relation to the office or post, or
(b) would apply in relation to the office or post but for the operation of some other provision of this Act.

(2) Those provisions are—
(a) section 39 (employment);

Status: *This version of this Act contains provisions that are prospective.*
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(b) section 41 (contract work);
(c) section 44 (partnerships).
(d) section 45 (LLPs);
(e) section 47 (barristers);
(f) section 48 (advocates);
(g) section 55 (employment services) so far as applying to the provision of work experience within section 56(2)(a) or arrangements within section 56(2)(c) for such provision.

Political offices

2 (1) An office or post is not a personal or public office if it is a political office.

(2) A political office is an office or post set out in the second column of the following Table—

Political setting	***Office or post***
Houses of Parliament	An office of the House of Commons held by a member of that House
	An office of the House of Lords held by a member of that House
	A Ministerial office within the meaning of section 2 of the House of Commons Disqualification Act 1975
	The office of the Leader of the Opposition within the meaning of the Ministerial and other Salaries Act 1975
	The office of the Chief Opposition Whip, or of an Assistant Opposition Whip, within the meaning of that Act
Scottish Parliament	An office of the Scottish Parliament held by a member of the Parliament
	The office of a member of the Scottish Executive
	The office of a junior Scottish Minister
National Assembly for Wales	An office of the National Assembly for Wales held by a member of the Assembly
	The office of a member of the Welsh Assembly Government
Local government in England (outside London)	An office of a county council, district council or parish council in England held by a member of the council
	An office of the Council of the Isles of Scilly held by a member of the Council

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Local government in London	An office of the Greater London Authority held by the Mayor of London or a member of the London Assembly
	An office of a London borough council held by a member of the council
	An office of the Common Council of the City of London held by a member of the Council
Local government in Wales	An office of a county council, county borough council or community council in Wales held by a member of the council
Local government in Scotland	An office of a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 held by a member of the council
	An office of a council established under section 51 of the Local Government (Scotland) Act 1973 held by a member of the council
Political parties	An office of a registered political party

(3) The reference to a registered political party is a reference to a party registered in the Great Britain register under Part 2 of the Political Parties, Elections and Referendums Act 2000.

Honours etc.

3 A life peerage (within the meaning of the Life Peerages Act 1958), or any other dignity or honour conferred by the Crown, is not a personal or public office.

[F252*Bishops*

Textual Amendments

F252 Sch. 6 para. 4 and cross-heading inserted (17.11.2014) by Bishops and Priests (Consecration and Ordination of Women) Measure 2014 (No. 2), **ss. 2**, 4(2); 2014 No. 5, art. 2

4 The office of diocesan or suffragan bishop is not a public office.**]**

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SCHEDULE 7

Section 80

EQUALITY OF TERMS: EXCEPTIONS

PART 1

TERMS OF WORK

Compliance with laws regulating employment of women, etc.

1 Neither a sex equality clause nor a maternity equality clause has effect in relation to terms of work affected by compliance with laws regulating—

(a) the employment of women;

(b) the appointment of women to personal or public offices.

Pregnancy, etc.

2 A sex equality clause does not have effect in relation to terms of work affording special treatment to women in connection with pregnancy or childbirth.

PART 2

OCCUPATIONAL PENSION SCHEMES

Preliminary

3 (1) A sex equality rule does not have effect in relation to a difference as between men and women in the effect of a relevant matter if the difference is permitted by or by virtue of this Part of this Schedule.

(2) "Relevant matter" has the meaning given in section 67.

State retirement pensions

4 (1) This paragraph applies where a man and a woman are eligible, in such circumstances as may be prescribed, to receive different amounts by way of pension.

(2) The difference is permitted if, in prescribed circumstances, it is attributable only to differences between men and women in the retirement benefits to which, in prescribed circumstances, the man and woman are or would be entitled.

(3) "Retirement benefits" are benefits under sections 43 to 55 of the Social Security Contributions and Benefits Act 1992 (state retirement pensions)**[**[F253]or sections 2 to 12 of the Pensions Act 2014 (state pension)**]**.

Textual Amendments

F253 Words in Sch. 7 para. 4(3) inserted (6.4.2016 art. 1(2)) by The Pensions Act 2014 (Consequential and Supplementary Amendments) Order 2016 (S.I. 2016/224), **art. 8**

Status: *This version of this Act contains provisions that are prospective.*
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Commencement Information

I128 Sch. 7 para. 4 wholly in force; para. 4 not in force at Royal Assent see s. 216; para. 4 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 7 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(5)(g)** (with art. 15)

Actuarial factors

5 (1) A difference as between men and women is permitted if it consists of applying to the calculation of the employer's contributions to an occupational pension scheme actuarial factors which—

(a) differ for men and women, and

(b) are of such description as may be prescribed.

(2) A difference as between men and women is permitted if it consists of applying to the determination of benefits of such description as may be prescribed actuarial factors which differ for men and women.

Commencement Information

I129 Sch. 7 para. 5 wholly in force; para. 5 not in force at Royal Assent see s. 216; para. 5 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 7 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(5)(g)** (with art. 15)

Power to amend

6 (1) Regulations may amend this Part of this Schedule so as to add, vary or omit provision about cases where a difference as between men and women in the effect of a relevant matter is permitted.

(2) The regulations may make provision about pensionable service before the date on which they come into force (but not about pensionable service before 17 May 1990).

Commencement Information

I130 Sch. 7 para. 6 wholly in force; para. 6 not in force at Royal Assent see s. 216; para. 6 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 7 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(5)(g)** (with art. 15)

Status: *This version of this Act contains provisions that are prospective.*
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SCHEDULE 8

Section 83

WORK: REASONABLE ADJUSTMENTS

PART 1

INTRODUCTORY

Preliminary

1 This Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part of this Act.

The duty

2 (1) A must comply with the first, second and third requirements.

(2) For the purposes of this paragraph—

(a) the reference in section 20(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;

(b) the reference in section 20(4) to a physical feature is a reference to a physical feature of premises occupied by A;

(c) the reference in section 20(3), (4) or (5) to a disabled person is to an interested disabled person.

(3) In relation to the first and third requirements, a relevant matter is any matter specified in the first column of the applicable table in Part 2 of this Schedule.

(4) In relation to the second requirement, a relevant matter is—

(a) a matter specified in the second entry of the first column of the applicable table in Part 2 of this Schedule, or

(b) where there is only one entry in a column, a matter specified there.

(5) If two or more persons are subject to a duty to make reasonable adjustments in relation to the same interested disabled person, each of them must comply with the duty so far as it is reasonable for each of them to do so.

3 (1) This paragraph applies if a duty to make reasonable adjustments is imposed on A by section 55 (except where the employment service which A provides is the provision of vocational training within the meaning given by section 56(6)(b)).

(2) The reference in section 20(3), (4) and (5) to a disabled person is a reference to an interested disabled person.

(3) In relation to each requirement, the relevant matter is the employment service which A provides.

(4) Sub-paragraph (5) of paragraph 2 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

Status: *This version of this Act contains provisions that are prospective.*
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PART 2

INTERESTED DISABLED PERSON

Preliminary

4 An interested disabled person is a disabled person who, in relation to a relevant matter, is of a description specified in the second column of the applicable table in this Part of this Schedule.

Employers (see section 39)

5 (1) This paragraph applies where A is an employer.

Relevant matter	***Description of disabled person***
Deciding to whom to offer employment.	A person who is, or has notified A that the person may be, an applicant for the employment.
Employment by A.	An applicant for employment by A. An employee of A's.

(2) Where A is the employer of a disabled contract worker (B), A must comply with the first, second and third requirements on each occasion when B is supplied to a principal to do contract work.

(3) In relation to the first requirement (as it applies for the purposes of sub-paragraph (2)) —

(a) the reference in section 20(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of all or most of the principals to whom B is or might be supplied,

(b) the reference to being put at a substantial disadvantage is a reference to being likely to be put at a substantial disadvantage that is the same or similar in the case of each of the principals referred to in paragraph (a), and

(c) the requirement imposed on A is a requirement to take such steps as it would be reasonable for A to have to take if the provision, criterion or practice were applied by or on behalf of A.

(4) In relation to the second requirement (as it applies for the purposes of sub-paragraph (2))—

(a) the reference in section 20(4) to a physical feature is a reference to a physical feature of premises occupied by each of the principals referred to in sub-paragraph (3)(a),

(b) the reference to being put at a substantial disadvantage is a reference to being likely to be put at a substantial disadvantage that is the same or similar in the case of each of those principals, and

(c) the requirement imposed on A is a requirement to take such steps as it would be reasonable for A to have to take if the premises were occupied by A.

(5) In relation to the third requirement (as it applies for the purposes of sub-paragraph (2))—

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(a) the reference in section 20(5) to being put at a substantial disadvantage is a reference to being likely to be put at a substantial disadvantage that is the same or similar in the case of each of the principals referred to in sub-paragraph (3)(a), and

(b) the requirement imposed on A is a requirement to take such steps as it would be reasonable for A to have to take if A were the person to whom B was supplied.

Principals in contract work (see section 41)

6 (1) This paragraph applies where A is a principal.

Relevant matter	***Description of disabled person***
Contract work that A may make available.	A person who is, or has notified A that the person may be, an applicant to do the work.
Contract work that A makes available.	A person who is supplied to do the work.

(2) A is not required to do anything that a disabled person's employer is required to do by virtue of paragraph 5.

Partnerships (see section 44)

7 (1) This paragraph applies where A is a firm or a proposed firm.

Relevant matter	***Description of disabled person***
Deciding to whom to offer a position as a partner.	A person who is, or has notified A that the person may be, a candidate for the position.
A position as a partner.	A candidate for the position. The partner who holds the position.

(2) Where a firm or proposed firm (A) is required by this Schedule to take a step in relation to an interested disabled person (B)—

(a) the cost of taking the step is to be treated as an expense of A;

(b) the extent to which B should (if B is or becomes a partner) bear the cost is not to exceed such amount as is reasonable (having regard in particular to B's entitlement to share in A's profits).

LLPs (see section 45)

8 (1) This paragraph applies where A is an LLP or a proposed LLP.

Relevant matter	***Description of disabled person***
Deciding to whom to offer a position as a member.	A person who is, or has notified A that the person may be, a candidate for the position.
A position as a member.	A candidate for the position.

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	The member who holds the position.

(2) Where an LLP or proposed LLP (A) is required by this Schedule to take a step in relation to an interested disabled person (B)—
  (a) the cost of taking the step is to be treated as an expense of A;
  (b) the extent to which B should (if B is or becomes a member) bear the cost is not to exceed such amount as is reasonable (having regard in particular to B's entitlement to share in A's profits).

Barristers and their clerks (see section 47)

9 This paragraph applies where A is a barrister or barrister's clerk.

Relevant matter	***Description of disabled person***
Deciding to whom to offer a pupillage or tenancy.	A person who is, or has notified A that the person may be, an applicant for the pupillage or tenancy.
A pupillage or tenancy.	An applicant for the pupillage or tenancy. The pupil or tenant.

Advocates and their clerks (see section 48)

10 This paragraph applies where A is an advocate or advocate's clerk.

Relevant matter	***Description of disabled person***
Deciding who to offer to take as a devil or to whom to offer membership of a stable.	A person who applies, or has notified A that the person may apply, to be taken as a devil or to become a member of the stable.
The relationship with a devil or membership of a stable.	An applicant to be taken as a devil or to become a member of the stable. The devil or member.

Persons making appointments to offices etc. (see sections 49 to 51)

11 This paragraph applies where A is a person who has the power to make an appointment to a personal or public office.

Relevant matter	***Description of disabled person***
Deciding to whom to offer the appointment.	A person who is, or has notified A that the person may be, seeking the appointment. A person who is being considered for the appointment.
Appointment to the office.	A person who is seeking, or being considered for, appointment to the office.

12 This paragraph applies where A is a relevant person in relation to a personal or public office.

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Relevant matter	*Description of disabled person*
Appointment to the office.	A person appointed to the office.

13 This paragraph applies where A is a person who has the power to make a recommendation for, or give approval to, an appointment to a public office.

Relevant matter	*Description of disabled person*
Deciding who to recommend or approve for appointment to the office.	A person who is, or has notified A that the person may be, seeking recommendation or approval for appointment to the office. A person who is being considered for recommendation or approval for appointment to the office.
An appointment to the office.	A person who is seeking, or being considered for, appointment to the office in question.

14 In relation to the second requirement in a case within paragraph 11, 12 or 13, the reference in paragraph 2(2)(b) to premises occupied by A is to be read as a reference to premises—

(a) under the control of A, and

(b) at or from which the functions of the office concerned are performed.

Qualifications bodies (see section 53)

15 (1) This paragraph applies where A is a qualifications body.

Relevant matter	*Description of disabled person*
Deciding upon whom to confer a relevant qualification.	A person who is, or has notified A that the person may be, an applicant for the conferment of the qualification.
Conferment by the body of a relevant qualification.	An applicant for the conferment of the qualification. A person who holds the qualification.

(2) A provision, criterion or practice does not include the application of a competence standard.

Employment service-providers (see section 55)

16 This paragraph applies where—

(a) A is an employment service-provider, and

(b) the employment service which A provides is vocational training within the meaning given by section 56(6)(b).

Relevant matter	*Description of disabled person*

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Deciding to whom to offer to provide the service.	A person who is, or has notified A that the person may be, an applicant for the provision of the service.
Provision by A of the service.	A person who applies to A for the provision of the service. A person to whom A provides the service.

Trade organisations (see section 57)

17 This paragraph applies where A is a trade organisation.

Relevant matter	***Description of disabled person***
Deciding to whom to offer membership of the organisation.	A person who is, or has notified A that the person may be, an applicant for membership.
Membership of the organisation.	An applicant for membership. A member.

Local authorities (see section 58)

18 (1) This paragraph applies where A is a local authority.

Relevant matter	***Description of disabled person***
A member's carrying-out of official business.	The member.

(2) Regulations may, for the purposes of a case within this paragraph, make provision—

(a) as to circumstances in which a provision, criterion or practice is, or is not, to be taken to put a disabled person at the disadvantage referred to in the first requirement;

(b) as to circumstances in which a physical feature is, or is not, to be taken to put a disabled person at the disadvantage referred to in the second requirement;

(c) as to circumstances in which it is, or in which it is not, reasonable for a local authority to be required to take steps of a prescribed description;

(d) as to steps which it is always, or which it is never, reasonable for a local authority to take.

Occupational pensions (see section 61)

19 This paragraph applies where A is, in relation to an occupational pension scheme, a responsible person within the meaning of section 61.

Relevant matter	***Description of disabled person***
Carrying out A's functions in relation to the scheme.	A person who is or may be a member of the scheme.

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PART 3

LIMITATIONS ON THE DUTY

Lack of knowledge of disability, etc.

20 (1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;

(b) **[**[F254]in any case referred to in Part 2 of this Schedule**]**, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

(2) An applicant is, in relation to the description of A specified in the first column of the table, a person of a description specified in the second column (and the reference to a potential applicant is to be construed accordingly).

Description of A	***Applicant***
An employer	An applicant for employment
A firm or proposed firm	A candidate for a position as a partner
An LLP or proposed LLP	A candidate for a position as a member
A barrister or barrister's clerk	An applicant for a pupillage or tenancy
An advocate or advocate's clerk	An applicant for being taken as an advocate's devil or for becoming a member of a stable
A relevant person in relation to a personal or public office	A person who is seeking appointment to, or recommendation or approval for appointment to, the office
A qualifications body	An applicant for the conferment of a relevant qualification
An employment service-provider	An applicant for the provision of an employment service
A trade organisation	An applicant for membership

(3) If the duty to make reasonable adjustments is imposed on A by section 55, this paragraph applies only in so far as the employment service which A provides is vocational training within the meaning given by section 56(6)(b).

Textual Amendments

F254 Words in Sch. 8 para. 20(1)(b) substituted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), **6(2)**

Status: *This version of this Act contains provisions that are prospective.*
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SCHEDULE 9

Section 83

WORK: EXCEPTIONS

PART 1

OCCUPATIONAL REQUIREMENTS

General

1 (1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to work a requirement to have a particular protected characteristic, if A shows that, having regard to the nature or context of the work—
- (a) it is an occupational requirement,
- (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

(2) The provisions are—
- (a) section 39(1)(a) or (c) or (2)(b) or (c);
- (b) section 41(1)(b);
- (c) section 44(1)(a) or (c) or (2)(b) or (c);
- (d) section 45(1)(a) or (c) or (2)(b) or (c);
- (e) section 49(3)(a) or (c) or (6)(b) or (c);
- (f) section 50(3)(a) or (c) or (6)(b) or (c);
- (g) section 51(1).

(3) The references in sub-paragraph (1) to a requirement to have a protected characteristic are to be read—
- (a) in the case of gender reassignment, as references to a requirement not to be a transsexual person (and section 7(3) is accordingly to be ignored);
- (b) in the case of marriage and civil partnership, as references to a requirement not to be married or a civil partner (and section 8(2) is accordingly to be ignored).

(4) In the case of a requirement to be of a particular sex, sub-paragraph (1) has effect as if in paragraph (c), the words from "(or" to the end were omitted.

Religious requirements relating to sex, marriage etc., sexual orientation

2 (1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to employment a requirement to which sub-paragraph (4) applies if A shows that—
- (a) the employment is for the purposes of an organised religion,
- (b) the application of the requirement engages the compliance or non-conflict principle, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

(2) The provisions are—

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(a) section 39(1)(a) or (c) or (2)(b) or (c);
(b) section 49(3)(a) or (c) or (6)(b) or (c);
(c) section 50(3)(a) or (c) or (6)(b) or (c);
(d) section 51(1).

(3) A person does not contravene section 53(1) or (2)(a) or (b) by applying in relation to a relevant qualification (within the meaning of that section) a requirement to which sub-paragraph (4) applies if the person shows that—
(a) the qualification is for the purposes of employment mentioned in sub-paragraph (1)(a), and
(b) the application of the requirement engages the compliance or non-conflict principle.

(4) This sub-paragraph applies to—
(a) a requirement to be of a particular sex;
(b) a requirement not to be a transsexual person;
(c) a requirement not to be married or a civil partner;
[[F255](ca) a requirement not to be married to**[**[F256], or the civil partner of,**]** a person of the same sex;**]**
[[F257](cb) a requirement not to be the civil partner of a person of the opposite sex;**]**
(d) a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner;
(e) a requirement relating to circumstances in which a marriage or civil partnership came to an end;
(f) a requirement related to sexual orientation.

(5) The application of a requirement engages the compliance principle if the requirement is applied so as to comply with the doctrines of the religion.

(6) The application of a requirement engages the non-conflict principle if, because of the nature or context of the employment, the requirement is applied so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

(7) A reference to employment includes a reference to an appointment to a personal or public office.

(8) In the case of a requirement within sub-paragraph (4)(a), sub-paragraph (1) has effect as if in paragraph (c) the words from "(or" to the end were omitted.

Textual Amendments

F255 Sch. 9 para. 2(4)(ca) inserted (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 7 para. 45**; S.I. 2014/93, art. 3(k)(iv)

F256 Words in Sch. 9 para. 2(4)(ca) inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **11(a)**

F257 Sch. 9 para. 2(4)(cb) inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **11(b)**

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Other requirements relating to religion or belief

3 A person (A) with an ethos based on religion or belief does not contravene a provision mentioned in paragraph 1(2) by applying in relation to work a requirement to be of a particular religion or belief if A shows that, having regard to that ethos and to the nature or context of the work—

(a) it is an occupational requirement,

(b) the application of the requirement is a proportionate means of achieving a legitimate aim, and

(c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

Armed forces

4 (1) A person does not contravene section 39(1)(a) or (c) or (2)(b) by applying in relation to service in the armed forces a relevant requirement if the person shows that the application is a proportionate means of ensuring the combat effectiveness of the armed forces.

(2) A relevant requirement is—

(a) a requirement to be a man;

(b) a requirement not to be a transsexual person.

(3) This Part of this Act, so far as relating to age or disability, does not apply to service in the armed forces; and section 55, so far as relating to disability, does not apply to work experience in the armed forces.

Employment services

5 (1) A person (A) does not contravene section 55(1) or (2) if A shows that A's treatment of another person relates only to work the offer of which could be refused to that other person in reliance on paragraph 1, 2, 3 or 4.

(2) A person (A) does not contravene section 55(1) or (2) if A shows that A's treatment of another person relates only to training for work of a description mentioned in sub-paragraph (1).

(3) A person (A) does not contravene section 55(1) or (2) if A shows that—

(a) A acted in reliance on a statement made to A by a person with the power to offer the work in question to the effect that, by virtue of sub-paragraph (1) or (2), A's action would be lawful, and

(b) it was reasonable for A to rely on the statement.

(4) A person commits an offence by knowingly or recklessly making a statement such as is mentioned in sub-paragraph (3)(a) which in a material respect is false or misleading.

(5) A person guilty of an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Interpretation

6 (1) This paragraph applies for the purposes of this Part of this Schedule.

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(2) A reference to contravening a provision of this Act is a reference to contravening that provision by virtue of section 13.

(3) A reference to work is a reference to employment, contract work, a position as a partner or as a member of an LLP, or an appointment to a personal or public office.

(4) A reference to a person includes a reference to an organisation.

(5) A reference to section 39(2)(b), 44(2)(b), 45(2)(b), 49(6)(b) or 50(6)(b) is to be read as a reference to that provision with the omission of the words "or for receiving any other benefit, facility or service".

(6) A reference to section 39(2)(c), 44(2)(c), 45(2)(c), 49(6)(c), 50(6)(c), 53(2)(a) or 55(2)(c) (dismissal, etc.) does not include a reference to that provision so far as relating to sex.

(7) The reference to paragraph (b) of section 41(1), so far as relating to sex, is to be read as if that paragraph read—

"(b) by not allowing the worker to do the work."

PART 2

EXCEPTIONS RELATING TO AGE

Preliminary

7 For the purposes of this Part of this Schedule, a reference to an age contravention is a reference to a contravention of this Part of this Act, so far as relating to age.

Retirement

8 F258 . . . . . .

Textual Amendments

F258 Sch. 9 para. 8 omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 2(2)** (with regs. 5, 9)

Applicants at or approaching retirement age

9 F259 . . . . . .

Textual Amendments

F259 Sch. 9 para. 9 omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 2(3)** (with regs. 5, 9)

Benefits based on length of service

10 (1) It is not an age contravention for a person (A) to put a person (B) at a disadvantage when compared with another (C), in relation to the provision of a benefit, facility

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or service in so far as the disadvantage is because B has a shorter period of service than C.

(2) If B's period of service exceeds 5 years, A may rely on sub-paragraph (1) only if A reasonably believes that doing so fulfils a business need.

(3) A person's period of service is whichever of the following A chooses—
  (a) the period for which the person has been working for A at or above a level (assessed by reference to the demands made on the person) that A reasonably regards as appropriate for the purposes of this paragraph, or
  (b) the period for which the person has been working for A at any level.

(4) The period for which a person has been working for A must be based on the number of weeks during the whole or part of which the person has worked for A.

(5) But for that purpose A may, so far as is reasonable, discount—
  (a) periods of absence;
  (b) periods that A reasonably regards as related to periods of absence.

(6) For the purposes of sub-paragraph (3)(b), a person is to be treated as having worked for A during any period in which the person worked for a person other than A if—
  (a) that period counts as a period of employment with A as a result of section 218 of the Employment Rights Act 1996, or
  (b) if sub-paragraph (a) does not apply, that period is treated as a period of employment by an enactment pursuant to which the person's employment was transferred to A.

(7) For the purposes of this paragraph, the reference to a benefit, facility or service does not include a reference to a benefit, facility or service which may be provided only by virtue of a person's ceasing to work.

The national minimum wage: young workers

11 (1) It is not an age contravention for a person to pay a young worker (A) at a lower rate than that at which the person pays an older worker (B) if—
  (a) the hourly rate for the national minimum wage for a person of A's age is lower than that for a person of B's age, and
  (b) the rate at which A is paid is below the single hourly rate.

(2) A young worker is a person who qualifies for the national minimum wage at a lower rate than the single hourly rate; and an older worker is a person who qualifies for the national minimum wage at a higher rate than that at which the young worker qualifies for it.

(3) The single hourly rate is the rate prescribed under section 1(3) of the National Minimum Wage Act 1998.

The national minimum wage: apprentices

12 (1) It is not an age contravention for a person to pay an apprentice who does not qualify for the national minimum wage at a lower rate than the person pays an apprentice who does.

(2) An apprentice is a person who—

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(a) is employed under a contract of apprenticeship, or

(b) as a result of provision made by virtue of section 3(2)(a) of the National Minimum Wage Act 1998 (persons not qualifying), is treated as employed under a contract of apprenticeship.

Redundancy

13 (1) It is not an age contravention for a person to give a qualifying employee an enhanced redundancy payment of an amount less than that of an enhanced redundancy payment which the person gives to another qualifying employee, if each amount is calculated on the same basis.

(2) It is not an age contravention to give enhanced redundancy payments only to those who are qualifying employees by virtue of sub-paragraph (3)(a) or (b).

(3) A person is a qualifying employee if the person—

(a) is entitled to a redundancy payment as a result of section 135 of the Employment Rights Act 1996,

(b) agrees to the termination of the employment in circumstances where the person would, if dismissed, have been so entitled,

(c) would have been so entitled but for section 155 of that Act (requirement for two years' continuous employment), or

(d) agrees to the termination of the employment in circumstances where the person would, if dismissed, have been so entitled but for that section.

(4) An enhanced redundancy payment is a payment the amount of which is, subject to sub-paragraphs (5) and (6), calculated in accordance with section 162(1) to (3) of the Employment Rights Act 1996.

(5) A person making a calculation for the purposes of sub-paragraph (4)—

(a) may treat a week's pay as not being subject to a maximum amount;

(b) may treat a week's pay as being subject to a maximum amount above that for the time being specified in section 227(1) of the Employment Rights Act 1996;

(c) may multiply the appropriate amount for each year of employment by a figure of more than one.

(6) Having made a calculation for the purposes of sub-paragraph (4) (whether or not in reliance on sub-paragraph (5)), a person may multiply the amount calculated by a figure of more than one.

(7) In sub-paragraph (5), “the appropriate amount” has the meaning given in section 162 of the Employment Rights Act 1996, and “a week's pay” is to be read with Chapter 2 of Part 14 of that Act.

(8) For the purposes of sub-paragraphs (4) to (6), the reference to “the relevant date” in subsection (1)(a) of section 162 of that Act is, in the case of a person who is a qualifying employee by virtue of sub-paragraph (3)(b) or (d), to be read as reference to the date of the termination of the employment.

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[F260 Insurance etc.]

Textual Amendments

F260 Sch. 9 para. 14 cross-heading substituted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 2(4)** (with regs. 5, 9)

14 **[**F261 (1) It is not an age contravention for an employer to make arrangements for, or afford access to, the provision of insurance or a related financial service to or in respect of an employee for a period ending when the employee attains whichever is the greater of—

(a) the age of 65, and

(b) the state pensionable age.

(2) It is not an age contravention for an employer to make arrangements for, or afford access to, the provision of insurance or a related financial service to or in respect of only such employees as have not attained whichever is the greater of—

(a) the age of 65, and

(b) the state pensionable age.

(3) Sub-paragraphs (1) and (2) apply only where the insurance or related financial service is, or is to be, provided to the employer's employees or a class of those employees—

(a) in pursuance of an arrangement between the employer and another person, or

(b) where the employer's business includes the provision of insurance or financial services of the description in question, by the employer.

(4) The state pensionable age is the pensionable age determined in accordance with the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.**]**

Textual Amendments

F261 Sch. 9 para. 14 substituted (6.4.2011) by The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 2(4)** (with regs. 5, 9)

Child care

15 (1) A person does not contravene a relevant provision, so far as relating to age, only by providing, or making arrangements for or facilitating the provision of, care for children of a particular age group.

(2) The relevant provisions are—

(a) section 39(2)(b);

(b) section 41(1)(c);

(c) section 44(2)(b);

(d) section 45(2)(b);

(e) section 47(2)(b);

(f) section 48(2)(b);

(g) section 49(6)(b);

(h) section 50(6)(b);

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(i) section 57(2)(a);
(j) section 58(3)(a).

(3) Facilitating the provision of care for a child includes—
(a) paying for some or all of the cost of the provision;
(b) helping a parent of the child to find a suitable person to provide care for the child;
(c) enabling a parent of the child to spend more time providing care for the child or otherwise assisting the parent with respect to the care that the parent provides for the child.

(4) A child is a person who has not attained the age of 17.

(5) A reference to care includes a reference to supervision.

Contributions to personal pension schemes

16 (1) A Minister of the Crown may by order provide that it is not an age contravention for an employer to maintain or use, with respect to contributions to personal pension schemes, practices, actions or decisions relating to age which are of a specified description.

(2) An order authorising the use of practices, actions or decisions which are not in use before the order comes into force must not be made unless the Minister consults such persons as the Minister thinks appropriate.

(3) "Personal pension scheme" has the meaning given in section 1 of the Pension Schemes Act 1993; and "employer", in relation to a personal pension scheme, has the meaning given in section 318(1) of the Pensions Act 2004.

Commencement Information

I131 Sch. 9 para. 16 wholly in force; para. 16 not in force at Royal Assent see s. 216; para. 16 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 9 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(5)(i)** (with art. 15)

PART 3

OTHER EXCEPTIONS

Non-contractual payments to women on maternity leave

17 (1) A person does not contravene section 39(1)(b) or (2), so far as relating to pregnancy and maternity, by depriving a woman who is on maternity leave of any benefit from the terms of her employment relating to pay.

(2) The reference in sub-paragraph (1) to benefit from the terms of a woman's employment relating to pay does not include a reference to—
(a) maternity-related pay (including maternity-related pay that is increase-related),
(b) pay (including increase-related pay) in respect of times when she is not on maternity leave, or

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(c) pay by way of bonus in respect of times when she is on compulsory maternity leave.

(3) For the purposes of sub-paragraph (2), pay is increase-related in so far as it is to be calculated by reference to increases in pay that the woman would have received had she not been on maternity leave.

(4) A reference to terms of her employment is a reference to terms of her employment that are not in her contract of employment, her contract of apprenticeship or her contract to do work personally.

(5) "Pay" means benefits—

(a) that consist of the payment of money to an employee by way of wages or salary, and

(b) that are not benefits whose provision is regulated by the contract referred to in sub-paragraph (4).

(6) "Maternity-related pay" means pay to which a woman is entitled—

(a) as a result of being pregnant, or

(b) in respect of times when she is on maternity leave.

Benefits dependent on marital status, etc.

18 (1) A person does not contravene this Part of this Act, so far as relating to sexual orientation, by doing anything which prevents or restricts a person who is not **[**[F262]within sub-paragraph (1A)**]** from having access to a benefit, facility or service—

(a) the right to which accrued before 5 December 2005 (the day on which section 1 of the Civil Partnership Act 2004 came into force), or

(b) which is payable in respect of periods of service before that date.

[[F263](1A) A person is within this sub-paragraph if the person is—

(a) a man who is married to a woman, or

(b) a woman who is married to a man, or

(c) married to a person of the same sex in a relevant gender change case.

(1B) The reference in sub-paragraph (1A)(c) to a relevant gender change case is a reference to a case where—

(a) the married couple were of the opposite sex at the time of their marriage, and

(b) a full gender recognition certificate has been issued to one of the couple under the Gender Recognition Act 2004.**]**

(2) A person does not contravene this Part of this Act, so far as relating to sexual orientation, by providing married persons and civil partners (to the exclusion of all other persons) with access to a benefit, facility or service.

Textual Amendments

F262 Words in Sch. 9 para. 18(1) substituted (13.3.2014 for specified purposes) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 4 para. 17(2)**; S.I. 2014/93, art. 3(j)(iii)

F263 Sch. 9 para. 18(1A)(1B) inserted (13.3.2014 for specified purposes) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 4 para. 17(3)**; S.I. 2014/93, art. 3(j)(iii)

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Provision of services etc. to the public

19 (1) A does not contravene a provision mentioned in sub-paragraph (2) in relation to the provision of a benefit, facility or service to B if A is concerned with the provision (for payment or not) of a benefit, facility or service of the same description to the public.

(2) The provisions are—
- (a) section 39(2) and (4);
- (b) section 41(1) and (3);
- (c) sections 44(2) and (6) and 45(2) and (6);
- (d) sections 49(6) and (8) and 50(6), (7), (9) and (10).

(3) Sub-paragraph (1) does not apply if—
- (a) the provision by A to the public differs in a material respect from the provision by A to comparable persons,
- (b) the provision to B is regulated by B's terms, or
- (c) the benefit, facility or service relates to training.

(4) "Comparable persons" means—
- (a) in relation to section 39(2) or (4), the other employees;
- (b) in relation to section 41(1) or (3), the other contract workers supplied to the principal;
- (c) in relation to section 44(2) or (6), the other partners of the firm;
- (d) in relation to section 45(2) or (6), the other members of the LLP;
- (e) in relation to section 49(6) or (8) or 50(6), (7), (9) or (10), persons holding offices or posts not materially different from that held by B.

(5) "B's terms" means—
- (a) the terms of B's employment,
- (b) the terms on which the principal allows B to do the contract work,
- (c) the terms on which B has the position as a partner or member, or
- (d) the terms of B's appointment to the office.

(6) A reference to the public includes a reference to a section of the public which includes B.

Insurance contracts, etc.

20 (1) It is not a contravention of this Part of this Act, so far as relating to relevant discrimination, to do anything in relation to an annuity, life insurance policy, accident insurance policy or similar matter involving the assessment of risk if—
- (a) that thing is done by reference to actuarial or other data from a source on which it is reasonable to rely, and
- (b) it is reasonable to do it.

(2) "Relevant discrimination" is—
- (a) gender reassignment discrimination;
- (b) marriage and civil partnership discrimination;
- (c) pregnancy and maternity discrimination;
- (d) sex discrimination.

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SCHEDULE 10

Section 88

ACCESSIBILITY FOR DISABLED PUPILS

Accessibility strategies

1 (1) A local authority in England and Wales must, in relation to schools for which it is the responsible body, prepare—
- (a) an accessibility strategy;
- (b) further such strategies at such times as may be prescribed.

(2) An accessibility strategy is a strategy for, over a prescribed period—
- (a) increasing the extent to which disabled pupils can participate in the schools' curriculums;
- (b) improving the physical environment of the schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and benefits, facilities or services provided or offered by the schools;
- (c) improving the delivery to disabled pupils of information which is readily accessible to pupils who are not disabled.

(3) The delivery in sub-paragraph (2)(c) must be—
- (a) within a reasonable time;
- (b) in ways which are determined after taking account of the pupils' disabilities and any preferences expressed by them or their parents.

(4) An accessibility strategy must be in writing.

(5) A local authority must keep its accessibility strategy under review during the period to which it relates and, if necessary, revise it.

(6) A local authority must implement its accessibility strategy.

2 (1) In preparing its accessibility strategy, a local authority must have regard to—
- (a) the need to allocate adequate resources for implementing the strategy;
- (b) guidance as to the matters mentioned in sub-paragraph (3).

(2) The authority must also have regard to guidance as to compliance with paragraph 1(5).

(3) The matters are—
- (a) the content of an accessibility strategy;
- (b) the form in which it is to be produced;
- (c) persons to be consulted in its preparation.

(4) Guidance may be issued—
- (a) for England, by a Minister of the Crown;
- (b) for Wales, by the Welsh Ministers.

(5) A local authority must, if asked, make a copy of its accessibility strategy available for inspection at such reasonable times as it decides.

(6) A local authority in England must, if asked by a Minister of the Crown, give the Minister a copy of its accessibility strategy.

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(7) A local authority in Wales must, if asked by the Welsh Ministers, give them a copy of its accessibility strategy.

Accessibility plans

3 (1) The responsible body of a school in England and Wales must prepare—
(a) an accessibility plan;
(b) further such plans at such times as may be prescribed.

(2) An accessibility plan is a plan for, over a prescribed period—
(a) increasing the extent to which disabled pupils can participate in the school's curriculum,
(b) improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and benefits, facilities or services provided or offered by the school, and
(c) improving the delivery to disabled pupils of information which is readily accessible to pupils who are not disabled.

(3) The delivery in sub-paragraph (2)(c) must be—
(a) within a reasonable time;
(b) in ways which are determined after taking account of the pupils' disabilities and any preferences expressed by them or their parents.

(4) An accessibility plan must be in writing.

(5) The responsible body must keep its accessibility plan under review during the period to which it relates and, if necessary, revise it.

(6) The responsible body must implement its accessibility plan.

(7) A relevant inspection may extend to the performance by the responsible body of its functions in relation to the preparation, publication, review, revision and implementation of its accessibility plan.

(8) A relevant inspection is an inspection under—
(a) Part 1 of the Education Act 2005, or
(b) Chapter 1 of Part 4 of the Education and Skills Act 2008 (regulation and inspection of independent education provision in England).

4 (1) In preparing an accessibility plan, the responsible body must have regard to the need to allocate adequate resources for implementing the plan.

(2) The proprietor of an independent educational institution (other than an Academy) must, if asked, make a copy of the school's accessibility plan available for inspection at such reasonable times as the proprietor decides.

(3) The proprietor of an independent educational institution in England (other than an Academy) must, if asked by a Minister of the Crown, give the Minister a copy of the school's accessibility plan.

(4) The proprietor of an independent school in Wales (other than an Academy) must, if asked by the Welsh Ministers, give them a copy of the school's accessibility plan.

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Power of direction

5 (1) This sub-paragraph applies if the appropriate authority is satisfied (whether or not on a complaint) that a responsible body—

(a) has acted or is proposing to act unreasonably in the discharge of a duty under this Schedule, or

(b) has failed to discharge such a duty.

(2) This sub-paragraph applies if the appropriate authority is satisfied (whether or not on a complaint) that a responsible body of a school specified in sub-paragraph (3)—

(a) has acted or is proposing to act unreasonably in the discharge of a duty the body has in relation to the provision to the authority of copies of the body's accessibility plan or the inspection of that plan, or

(b) has failed to discharge the duty.

(3) The schools are—

(a) schools approved under section 342 of the Education Act 1996 (non-maintained special schools);

[[F264](b) Academy schools;

(c) alternative provision Academies.**]**

(4) This sub-paragraph applies if a Tribunal has made an order under paragraph 5 of Schedule 17 and the appropriate authority is satisfied (whether or not on a complaint) that the responsible body concerned—

(a) has acted or is proposing to act unreasonably in complying with the order, or

(b) has failed to comply with the order.

(5) If sub-paragraph (1), (2) or (4) applies, the appropriate authority may give a responsible body such directions as the authority thinks expedient as to—

(a) the discharge by the body of the duty, or

(b) compliance by the body with the order.

(6) A direction may be given in relation to sub-paragraph (1) or (2) even if the performance of the duty is contingent on the opinion of the responsible body.

(7) A direction may not, unless sub-paragraph (8) applies, be given to the responsible body of a school in England in respect of a matter—

(a) that has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or

(b) that the appropriate authority thinks could have been so complained about.

(8) This sub-paragraph applies if—

(a) the Local Commissioner has made a recommendation to the responsible body under section 211(4) of the Apprenticeships, Skills, Children and Learning Act 2009 (statement following investigation) in respect of the matter, and

(b) the responsible body has not complied with the recommendation.

(9) A direction—

(a) may be varied or revoked by the appropriate authority;

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(b) may be enforced, on the application of the appropriate authority, by a mandatory order obtained in accordance with section 31 of the Senior Courts Act 1981.

(10) The appropriate authority is—

(a) in relation to the responsible body of a school in England, the Secretary of State;

(b) in relation to the responsible body of a school in Wales, the Welsh Ministers.

Textual Amendments

F264 Sch. 10 para. 5(3)(b)(c) substituted (1.4.2012) for para. 5(3)(b) by Education Act 2011 (c. 21), s. 54(1), **Sch. 13 para. 20(3)**; S.I. 2012/924, **art. 2**

Supplementary

6 (1) This paragraph applies for the purposes of this Schedule.

(2) Regulations may prescribe services which are, or are not, to be regarded as being—

(a) education;

(b) a benefit, facility or service.

(3) The power to make regulations is exercisable by—

(a) in relation to England, a Minister of the Crown;

(b) in relation to Wales, the Welsh Ministers.

(4) "Disabled pupil" includes a disabled person who may be admitted to the school as a pupil.

(5) "Responsible body" means—

(a) in relation to a maintained school or a maintained nursery school, the local authority or governing body;

(b) in relation to a pupil referral unit, the local authority;

(c) in relation to an independent educational institution **[**[F265]or an alternative provision Academy that is not an independent educational institution**]**, the proprietor;

(d) in relation to a special school not maintained by a local authority, the proprietor.

(6) "Governing body", in relation to a maintained school, means the body corporate (constituted in accordance with regulations under section 19 of the Education Act 2002) which the school has as a result of that section.

(7) "Maintained school" has the meaning given in section 20 of the School Standards and Framework Act 1998; and "maintained nursery school" has the meaning given in section 22 of that Act.

Textual Amendments

F265 Words in Sch. 10 para. 6(5)(c) inserted (E.W.) (1.4.2012) by The Alternative Provision Academies (Consequential Amendments to Acts) (England) Order 2012 (S.I. 2012/976), arts. 1, 2, **Sch. para. 27**

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SCHEDULE 11

Section 89

SCHOOLS: EXCEPTIONS

PART 1

SEX DISCRIMINATION

Admission to single-sex schools

1 (1) Section 85(1), so far as relating to sex, does not apply in relation to a single-sex school.

(2) A single-sex school is a school which—
- (a) admits pupils of one sex only, or
- (b) on the basis of the assumption in sub-paragraph (3), would be taken to admit pupils of one sex only.

(3) That assumption is that pupils of the opposite sex are to be disregarded if—
- (a) their admission to the school is exceptional, or
- (b) their numbers are comparatively small and their admission is confined to particular courses or classes.

(4) In the case of a school which is a single-sex school by virtue of sub-paragraph (3)(b), section 85(2)(a) to (d), so far as relating to sex, does not prohibit confining pupils of the same sex to particular courses or classes.

Single-sex boarding at schools

2 (1) Section 85(1), so far as relating to sex, does not apply in relation to admission as a boarder to a school to which this paragraph applies.

(2) Section 85(2)(a) to (d), so far as relating to sex, does not apply in relation to boarding facilities at a school to which this paragraph applies.

(3) This paragraph applies to a school (other than a single-sex school) which has some pupils as boarders and others as non-boarders and which—
- (a) admits as boarders pupils of one sex only, or
- (b) on the basis of the assumption in sub-paragraph (4), would be taken to admit as boarders pupils of one sex only.

(4) That assumption is that pupils of the opposite sex admitted as boarders are to be disregarded if their numbers are small compared to the numbers of other pupils admitted as boarders.

Single-sex schools turning co-educational

3 (1) If the responsible body of a single-sex school decides to alter its admissions arrangements so that the school will cease to be a single-sex school, the body may apply for a transitional exemption order in relation to the school.

(2) If the responsible body of a school to which paragraph 2 applies decides to alter its admissions arrangements so that the school will cease to be one to which that

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paragraph applies, the body may apply for a transitional exemption order in relation to the school.

(3) A transitional exemption order in relation to a school is an order which, during the period specified in the order as the transitional period, authorises—

(a) sex discrimination by the responsible body of the school in the arrangements it makes for deciding who is offered admission as a pupil;

(b) the responsible body, in the circumstances specified in the order, not to admit a person as a pupil because of the person's sex.

(4) Paragraph 4 applies in relation to the making of transitional exemption orders.

(5) The responsible body of a school does not contravene this Act, so far as relating to sex discrimination, if—

(a) in accordance with a transitional exemption order, or

(b) pending the determination of an application for a transitional exemption order in relation to the school,

it does not admit a person as a pupil because of the person's sex.

4 (1) In the case of a maintained school within the meaning given by section 32 of the Education and Inspections Act 2006, a transitional exemption order may be made in accordance with such provision as is made in regulations under section 21 of that Act (orders made by local authority or adjudicator in relation to schools in England).

(2) In the case of a school in Wales maintained by a local authority, a transitional exemption order may be made in accordance with **[**[F266]section 82 of, or Part 3 of Schedule 3 to, the School Standards and Organisation (Wales) Act 2013**]** (orders made by Welsh Ministers).

(3) In the case of a school in Scotland managed by an education authority or in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980—

(a) the responsible body may submit to the Scottish Ministers an application for the making of a transitional exemption order, and

(b) the Scottish Ministers may make the order.

(4) [F267]. . . . . .

(5) **[**[F268]Where proposals are made to the Welsh Ministers under section 113A of the Learning and Skills Act 2000 for an alteration in the admissions arrangements of a single-sex school or a school to which paragraph 2 applies—

(a) the making of the proposals is to be treated as an application to the Welsh Ministers for the making of a transitional exemption order, and

(b) the Welsh Ministers may make the order.**]**

(6) In the case of a school in England or Wales not coming within sub-paragraph (1), (2), (4) or (5) or an independent school in Scotland—

(a) the responsible body may submit to the Commission an application for the making of a transitional exemption order, and

(b) the Commission may make the order.

(7) An application under sub-paragraph (6) must specify—

(a) the period proposed by the responsible body as the transitional period to be specified in the order,

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(b) the stages within that period by which the body proposes to move to the position where section 85(1)(a) and (c), so far as relating to sex, is complied with, and

(c) any other matters relevant to the terms and operation of the order applied for.

(8) The Commission must not make an order on an application under sub-paragraph (6) unless satisfied that the terms of the application are reasonable, having regard to—

(a) the nature of the school's premises,

(b) the accommodation, equipment and facilities available, and

(c) the responsible body's financial resources.

Textual Amendments

F266 Words in Sch. 11 para. 4(2) substituted (E.W.) (1.10.2013) by School Standards and Organisation (Wales) Act 2013 (anaw 1), s. 100(4), **Sch. 5 para. 28(2)(a)**; S.I. 2013/1800, art. 3(j)

F267 Sch. 11 para. 4(4) omitted (1.10.2010) by virtue of The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), **art. 10**

F268 Sch. 11 para. 4(5) omitted (E.W.) (1.10.2013) by virtue of School Standards and Organisation (Wales) Act 2013 (anaw 1), s. 100(4), **Sch. 5 para. 28(2)(b)**; S.I. 2013/1800, art. 3(j)

PART 2

RELIGIOUS OR BELIEF-RELATED DISCRIMINATION

School with religious character etc.

5 Section 85(1) and (2)(a) to (d), so far as relating to religion or belief, does not apply in relation to—

(a) a school designated under section **[**[F269]68A or**]** 69(3) of the School Standards and Framework Act 1998 (foundation or voluntary school with religious character);

(b) a school **[**[F270](other than an alternative provision Academy)**]** listed in the register of independent schools for England or for Wales, if the school's entry in the register records that the school has a religious ethos;

(c) a school transferred to an education authority under section 16 of the Education (Scotland) Act 1980 (transfer of certain schools to education authorities) which is conducted in the interest of a church or denominational body;

(d) a school provided by an education authority under section 17(2) of that Act (denominational schools);

(e) a grant-aided school (within the meaning of that Act) which is conducted in the interest of a church or denominational body;

(f) a school registered in the register of independent schools for Scotland if the school admits only pupils who belong, or whose parents belong, to one or more particular denominations;

(g) a school registered in that register if the school is conducted in the interest of a church or denominational body.

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Textual Amendments

F269 Words in Sch. 5 para. 5(a) inserted (W.) (30.4.2021) by Curriculum and Assessment (Wales) Act 2021 (2021 asc 4), s. 84(1), **Sch. 2 para. 63** (with savings and transitional provisions in S.I. 2022/111, regs. 1, **3**)

F270 Words in Sch. 11 para. 5(b) inserted (E.W.) (1.4.2012) by The Alternative Provision Academies (Consequential Amendments to Acts) (England) Order 2012 (S.I. 2012/976), arts. 1, 2, **Sch. para. 28**

Curriculum, worship, etc.

6 Section 85(2)(a) to (d), so far as relating to religion or belief, does not apply in relation to anything done in connection with acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum).

Power to amend

7 (1) A Minister of the Crown may by order amend this Part of this Schedule—
- (a) so as to add, vary or omit an exception to section 85;
- (b) so as to make provision about the construction or application of section 19(2)(d) in relation to section 85.

(2) The power under sub-paragraph (1) is exercisable only in relation to religious or belief-related discrimination.

(3) Before making an order under this paragraph the Minister must consult—
- (a) the Welsh Ministers,
- (b) the Scottish Ministers, and
- (c) such other persons as the Minister thinks appropriate.

PART 3

DISABILITY DISCRIMINATION

Permitted form of selection

8 (1) A person does not contravene section 85(1), so far as relating to disability, only by applying a permitted form of selection.

(2) In relation to England and Wales, a permitted form of selection is—
- (a) in the case of a maintained school which is not designated as a grammar school under section 104 of the School Standards and Framework Act 1998, a form of selection mentioned in section 99(2) or (4) of that Act;
- (b) in the case of a maintained school which is so designated, its selective admission arrangements (within the meaning of section 104 of that Act);
- (c) in the case of an independent educational institution, arrangements which provide for some or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.

(3) In relation to Scotland, a permitted form of selection is—

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(a) in the case of a school managed by an education authority, arrangements approved by the Scottish Ministers for the selection of pupils for admission;

(b) in the case of an independent school, arrangements which provide for some or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.

(4) "Maintained school" has the meaning given in section 22 of the School Standards and Framework Act 1998.

SCHEDULE 12

Section 94

FURTHER AND HIGHER EDUCATION EXCEPTIONS

PART 1

SINGLE-SEX INSTITUTIONS, ETC.

Admission to single-sex institutions

1 (1) Section 91(1), so far as relating to sex, does not apply in relation to a single-sex institution.

(2) A single-sex institution is an institution to which section 91 applies, which—

(a) admits students of one sex only, or

(b) on the basis of the assumption in sub-paragraph (3), would be taken to admit students of one sex only.

(3) That assumption is that students of the opposite sex are to be disregarded if—

(a) their admission to the institution is exceptional, or

(b) their numbers are comparatively small and their admission is confined to particular courses or classes.

(4) In the case of an institution which is a single-sex institution by virtue of sub-paragraph (3)(b), section 91(2)(a) to (d), so far as relating to sex, does not prohibit confining students of the same sex to particular courses or classes.

Single-sex institutions turning co-educational

2 (1) If the responsible body of a single-sex institution decides to alter its admissions arrangements so that the institution will cease to be a single-sex institution, the body may apply for a transitional exemption order in relation to the institution.

(2) A transitional exemption order relating to an institution is an order which, during the period specified in the order as the transitional period, authorises—

(a) sex discrimination by the responsible body of the institution in the arrangements it makes for deciding who is offered admission as a student;

(b) the responsible body, in the circumstances specified in the order, not to admit a person as a student because of the person's sex.

(3) Paragraph 3 applies in relation to the making of a transitional exemption order.

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(4) The responsible body of an institution does not contravene this Act, so far as relating to sex discrimination, if —
  (a) in accordance with a transitional exemption order, or
  (b) pending the determination of an application for a transitional exemption order in relation to the institution,

it does not admit a person as a student because of the person's sex.

(5) The responsible body of an institution does not contravene this Act, so far as relating to sex discrimination, if —
  (a) in accordance with a transitional exemption order, or
  (b) pending the determination of an application for a transitional exemption order in relation to the institution,

it discriminates in the arrangements it makes for deciding who is offered admission as a student.

3 (1) In the case of a single-sex institution—
  (a) its responsible body may submit to the Commission an application for the making of a transitional exemption order, and
  (b) the Commission may make the order.

(2) An application under sub-paragraph (1) must specify—
  (a) the period proposed by the responsible body as the transitional period to be specified in the order,
  (b) the stages, within that period, by which the body proposes to move to the position where section 91(1)(a) and (c), so far as relating to sex, is complied with, and
  (c) any other matters relevant to the terms and operation of the order applied for.

(3) The Commission must not make an order on an application under sub-paragraph (1) unless satisfied that the terms of the application are reasonable, having regard to—
  (a) the nature of the institution's premises,
  (b) the accommodation, equipment and facilities available, and
  (c) the responsible body's financial resources.

PART 2

OTHER EXCEPTIONS

Occupational requirements

4 A person (P) does not contravene section 91(1) or (2) if P shows that P's treatment of another person relates only to training that would help fit that other person for work the offer of which the other person could be refused in reliance on Part 1 of Schedule 9.

Institutions with a religious ethos

5 (1) The responsible body of an institution which is designated for the purposes of this paragraph does not contravene section 91(1), so far as relating to religion or belief, if, in the admission of students to a course at the institution—

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(a) it gives preference to persons of a particular religion or belief,
(b) it does so to preserve the institution's religious ethos, and
(c) the course is not a course of vocational training.

(2) A Minister of the Crown may by order designate an institution if satisfied that the institution has a religious ethos.

Commencement Information

I132 Sch. 12 para. 5 wholly in force; para. 5 not in force at Royal Assent see s. 216; para. 5 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 12 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(6)(h)** (with art. 15)

Benefits dependent on marital status, etc.

6 A person does not contravene section 91, so far as relating to sexual orientation, by providing married persons and civil partners (to the exclusion of all other persons) with access to a benefit, facility or service.

Child care

7 (1) A person does not contravene section 91(2)(b) or (d), so far as relating to age, only by providing, or making arrangements for or facilitating the provision of, care for children of a particular age group.

(2) Facilitating the provision of care for a child includes—
(a) paying for some or all of the cost of the provision;
(b) helping a parent of the child to find a suitable person to provide care for the child;
(c) enabling a parent of the child to spend more time providing care for the child or otherwise assisting the parent with respect to the care that the parent provides for the child.

(3) A child is a person who has not attained the age of 17.

(4) A reference to care includes a reference to supervision.

SCHEDULE 13

Section 98

EDUCATION: REASONABLE ADJUSTMENTS

Preliminary

1 This Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part.

The duty for schools

2 (1) This paragraph applies where A is the responsible body of a school to which section 85 applies.

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(2) A must comply with the first and third requirements.

(3) For the purposes of this paragraph—
- (a) the reference in section 20(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;
- (b) the reference in section 20(3) or (5) to a disabled person is—
  - (i) in relation to a relevant matter within sub-paragraph (4)(a), a reference to disabled persons generally;
  - (ii) in relation to a relevant matter within sub-paragraph (4)(b), a reference to disabled pupils generally.

(4) In relation to each requirement, the relevant matters are—
- (a) deciding who is offered admission as a pupil;
- (b) provision of education or access to a benefit, facility or service.

Commencement Information

I133 Sch. 13 para. 2 wholly in force at 1.9.2012; para. 2 not in force at Royal Assent see s. 216; para. 2 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(6)(i)(i)**; para. 2 in force so far as not already in force at 1.9.2012 by S.I. 2012/2184, **art. 2(b)**

The duty for further or higher education institutions

3 (1) This paragraph applies where A is the responsible body of an institution to which section 91 applies.

(2) A must comply with the first, second and third requirements.

(3) For the purposes of this paragraph—
- (a) the reference in section 20(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;
- (b) the reference in section 20(4) to a physical feature is a reference to a physical feature of premises occupied by A;
- (c) the reference in section 20(3), (4) or (5) to a disabled person is—
  - (i) in relation to a relevant matter within sub-paragraph (4)(a), a reference to disabled persons generally;
  - (ii) in relation to a relevant matter within sub-paragraph (4)(b) or (c), a reference to disabled students generally;
  - (iii) in relation to a relevant matter within sub-paragraph (4)(d) or (e) below, a reference to an interested disabled person.

(4) In relation to each requirement, the relevant matters are—
- (a) deciding who is offered admission as a student;
- (b) provision of education;
- (c) access to a benefit, facility or service;
- (d) deciding on whom a qualification is conferred;
- (e) a qualification that A confers.

4 (1) An interested disabled person is a disabled person who, in relation to a relevant matter specified in the first column of the table, is of a description specified in the second column.

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Case	***Description of disabled person***
Deciding upon whom to confer a qualification.	A person who is, or has notified A that the person may be, an applicant for the conferment of the qualification.
A qualification that A confers.	An applicant for the conferment by A of the qualification. A person on whom A confers the qualification.

(2) A provision, criterion or practice does not include the application of a competence standard.

(3) A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.

The duty relating to certain other further or higher education courses

5 (1) This paragraph applies where A is the responsible body in relation to a course to which section 92 applies.

(2) A must comply with the first, second and third requirements; but if A is the governing body of a maintained school (within the meaning given by that section), A is not required to comply with the second requirement.

(3) For the purposes of this paragraph—
- (a) the reference in section 20(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;
- (b) the reference in section 20(4) to a physical feature is a reference to a physical feature of premises occupied by A;
- (c) the reference in section 20(3), (4) or (5) to a disabled person is—
  - (i) in relation to a relevant matter within sub-paragraph (4)(a), a reference to disabled persons generally;
  - (ii) in relation to a relevant matter within sub-paragraph (4)(b), a reference to disabled persons generally who are enrolled on the course.

(4) In relation to each requirement, the relevant matters are—
- (a) arrangements for enrolling persons on a course of further or higher education secured by A;
- (b) services provided by A for persons enrolled on the course.

Commencement Information

I134 Sch. 13 para. 5 wholly in force at 1.9.2012; para. 5 not in force at Royal Assent see s. 216; para. 5 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(6)(i)(ii)**; para. 5 in force so far as not already in force at 1.9.2012 by S.I. 2012/2184, **art. 2(b)**

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The duty relating to recreational or training facilities

6 (1) This paragraph applies where A is the responsible body in relation to facilities to which section 93 applies.

(2) A must comply with the first, second and third requirements.

(3) For the purposes of this paragraph—

(a) the reference in section 20(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;

(b) the reference in section 20(4) to a physical feature is a reference to a physical feature of premises occupied by A;

(c) the reference in section 20(3), (4) or (5) to a disabled person is a reference to disabled persons generally.

(4) In relation to each requirement, the relevant matter is A's arrangements for providing the recreational or training facilities.

Code of practice

7 In deciding whether it is reasonable for A to have to take a step for the purpose of complying with the first, second or third requirement, A must have regard to relevant provisions of a code of practice issued under section 14 of the Equality Act 2006.

Confidentiality requests

8 (1) This paragraph applies if a person has made a confidentiality request of which A is aware.

(2) In deciding whether it is reasonable for A to have to take a step in relation to that person so as to comply with the first, second or third requirement, A must have regard to the extent to which taking the step is consistent with the request.

(3) In a case within paragraph 2, a "confidentiality request" is a request—

(a) that the nature or existence of a disabled person's disability be treated as confidential, and

(b) which satisfies either of the following conditions.

(4) The first condition is that the request is made by the person's parent.

(5) The second condition is that—

(a) it is made by the person, and

(b) A reasonably believes that the person has sufficient understanding of the nature and effect of the request.

(6) In a case within paragraph 3, a "confidentiality request" is a request by a disabled person that the nature or existence of the person's disability be treated as confidential.

The duty for general qualifications bodies

9 (1) This paragraph applies where A is a qualifications body for the purposes of section 96.

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(2) Paragraphs 3 and 4(1), so far as relating to qualifications, apply to a qualifications body as they apply to a responsible body.

(3) This paragraph is subject to section 96(7).

SCHEDULE 14

Section 99

EDUCATIONAL CHARITIES AND ENDOWMENTS

Educational charities

1 (1) This paragraph applies to a trust deed or other instrument—

(a) which concerns property applicable for or in connection with the provision of education in an establishment in England and Wales to which section 85 or 91 applies, and

(b) which in any way restricts the benefits available under the instrument to persons of one sex.

(2) Sub-paragraph (3) applies if, on the application of the trustees or the responsible body (within the meaning of that section), a Minister of the Crown is satisfied that the removal or modification of the restriction would be conducive to the advancement of education without sex discrimination.

(3) The Minister may by order make such modifications of the instrument as appear to the Minister expedient for removing or modifying the restriction.

(4) If the trust was created by a gift or bequest, an order must not be made until the end of the period of 25 years after the date when the gift or bequest took effect.

(5) Sub-paragraph (4) does not apply if the donor or the personal representatives of the donor or testator consent in writing to making the application for the order.

(6) The Minister must require the applicant to publish a notice—

(a) containing particulars of the proposed order;

(b) stating that representations may be made to the Minister within a period specified in the notice.

(7) The period must be not less than one month beginning with the day after the date of the notice.

(8) The applicant must publish the notice in the manner specified by the Minister.

(9) The cost of publication may be paid out of the property of the trust.

(10) Before making the order, the Minister must take account of representations made in accordance with the notice.

Educational endowments

2 (1) This paragraph applies to an educational endowment—

(a) to which section 104 of the Education (Scotland) Act 1980 applies, and

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(b) which in any way restricts the benefit of the endowment to persons of one sex.

(2) Sub-paragraph (3) applies if, on the application of the governing body of an educational endowment, the Scottish Ministers are satisfied that the removal or modification of the provision which restricts the benefit of the endowment to persons of one sex would be conducive to the advancement of education without sex discrimination.

(3) The Scottish Ministers may by order make such provision as they think expedient for removing or modifying the restriction.

(4) If the Scottish Ministers propose to make such an order they must publish a notice in such manner as they think sufficient for giving information to persons they think may be interested in the endowment—

(a) containing particulars of the proposed order;

(b) stating that representations may be made with respect to the proposal within such period as is specified in the notice.

(5) The period must be not less than one month beginning with the day after the date of publication of the notice.

(6) The cost of publication is to be paid out of the funds of the endowment to which the notice relates.

(7) Before making an order, the Scottish Ministers—

(a) must consider representations made in accordance with the notice;

(b) may cause a local inquiry to be held into the representations under section 67 of the Education (Scotland) Act 1980.

(8) A reference to an educational endowment includes a reference to—

(a) a scheme made or approved for the endowment under Part 6 of the Education (Scotland) Act 1980;

(b) in the case of an endowment the governing body of which is entered in the Scottish Charity Register, a scheme approved for the endowment under section 39 or 40 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10);

(c) an endowment which is, by virtue of section 108(1) of the Education (Scotland) Act 1980, treated as if it were an educational endowment (or which would, but for the disapplication of that section by section 122(4) of that Act, be so treated);

(d) a university endowment, the Carnegie Trust, a theological endowment and a new endowment.

(9) Expressions used in this paragraph and in Part 6 of the Education (Scotland) Act 1980 have the same meaning in this paragraph as in that Part.

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SCHEDULE 15

Section 107

ASSOCIATIONS: REASONABLE ADJUSTMENTS

Preliminary

1 This Schedule applies where a duty to make reasonable adjustments is imposed on an association (A) by this Part.

The duty

2 (1) A must comply with the first, second and third requirements.

(2) For the purposes of this paragraph, the reference in section 20(3), (4) or (5) to a disabled person is a reference to disabled persons who—

(a) are, or are seeking to become or might wish to become, members,

(b) are associates, or

(c) are, or are likely to become, guests.

(3) Section 20 has effect as if, in subsection (4), for "to avoid the disadvantage" there were substituted—

"(a) to avoid the disadvantage, or

(b) to adopt a reasonable alternative method of affording access to the benefit, facility or service or of admitting persons to membership or inviting persons as guests."

(4) In relation to the first and third requirements, the relevant matters are—

(a) access to a benefit, facility or service;

(b) members' or associates' retaining their rights as such or avoiding having them varied;

(c) being admitted to membership or invited as a guest.

(5) In relation to the second requirement, the relevant matters are—

(a) access to a benefit, facility or service;

(b) being admitted to membership or invited as a guest.

(6) In relation to the second requirement, a physical feature includes a physical feature brought by or on behalf of A, in the course of or for the purpose of providing a benefit, facility or service, on to premises other than those that A occupies (as well as including a physical feature in or on premises that A occupies).

(7) Nothing in this paragraph requires A to take a step which would fundamentally alter—

(a) the nature of the benefit, facility or service concerned, or

(b) the nature of the association.

(8) Nor does anything in this paragraph require a member or associate in whose house meetings of the association take place to make adjustments to a physical feature of the house.

Status: *This version of this Act contains provisions that are prospective.*
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SCHEDULE 16

Section 107

ASSOCIATIONS: EXCEPTIONS

Single characteristic associations

1 (1) An association does not contravene section 101(1) by restricting membership to persons who share a protected characteristic.

(2) An association that restricts membership to persons who share a protected characteristic does not breach section 101(3) by restricting the access by associates to a benefit, facility or service to such persons as share the characteristic.

(3) An association that restricts membership to persons who share a protected characteristic does not breach section 102(1) by inviting as guests, or by permitting to be invited as guests, only such persons as share the characteristic.

(4) Sub-paragraphs (1) to (3), so far as relating to race, do not apply in relation to colour.

(5) This paragraph does not apply to an association that is a registered political party.

Commencement Information

I135 Sch. 16 para. 1 wholly in force at 1.10.2012; para. 1 not in force at Royal Assent see s. 216; para. 1 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(7)(d)** (with art. 15); para. 1 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(e)**

[F271 Age

Textual Amendments

F271 Sch. 16 para. 1A and cross-heading inserted (1.10.2012) by The Equality Act 2010 (Age Exceptions) Order 2012 (S.I. 2012/2466), **art. 8**

1A (1) An association does not contravene section 101(1) or (2), so far as relating to age discrimination, by giving a concession on admission to membership for—

(a) persons of a particular age group, or

(b) persons who have been members of the association for more than a number of years specified by the association for this purpose.

(2) An association does not contravene section 101(2) or (3), so far as relating to age discrimination, by giving a concession on access to a benefit, facility or service for—

(a) members of a particular age group, or

(b) persons who have been members of the association for more than a number of years specified by the association for this purpose.

(3) An association does not contravene section 102(1), so far as relating to age discrimination, by giving a concession on invitations of persons of a particular age group as guests.

(4) An association does not contravene section 102(2), so far as relating to age discrimination, by giving a concession on access to a benefit, facility or service for guests of a particular age group.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) For the purposes of this paragraph, affording only persons of a particular age group access to a benefit, facility or service for a limited time is to be regarded as a concession.

(6) The reference to a concession in respect of something done by an association is a reference to a benefit, right or privilege having the effect that the manner in which, or the terms on which, it does it are more favourable than the manner in which, or the terms on which, it usually does the thing.**]**

Health and safety

2 (1) An association (A) does not discriminate against a pregnant woman in contravention of section 101(1)(b) because she is pregnant if—

(a) the terms on which A is prepared to admit her to membership include a term intended to remove or reduce a risk to her health or safety,

(b) A reasonably believes that admitting her to membership on terms which do not include that term would create a risk to her health or safety,

(c) the terms on which A is prepared to admit persons with other physical conditions to membership include a term intended to remove or reduce a risk to their health or safety, and

(d) A reasonably believes that admitting them to membership on terms which do not include that term would create a risk to their health or safety.

(2) Sub-paragraph (1) applies to section 102(1)(b) as it applies to section 101(1)(b); and for that purpose a reference to admitting a person to membership is to be read as a reference to inviting the person as a guest or permitting the person to be invited as a guest.

(3) An association (A) does not discriminate against a pregnant woman in contravention of section 101(2)(a) or (3)(a) or 102(2)(a) because she is pregnant if—

(a) the way in which A affords her access to a benefit, facility or service is intended to remove or reduce a risk to her health or safety,

(b) A reasonably believes that affording her access to the benefit, facility or service otherwise than in that way would create a risk to her health or safety,

(c) A affords persons with other physical conditions access to the benefit, facility or service in a way that is intended to remove or reduce a risk to their health or safety, and

(d) A reasonably believes that affording them access to the benefit, facility or service otherwise than in that way would create a risk to their health or safety.

(4) An association (A) which does not afford a pregnant woman access to a benefit, facility or service does not discriminate against her in contravention of section 101(2)(a) or (3)(a) or 102(2)(a) because she is pregnant if—

(a) A reasonably believes that affording her access to the benefit, facility or service would, because she is pregnant, create a risk to her health or safety,

(b) A does not afford persons with other physical conditions access to the benefit, facility or service, and

(c) the reason for not doing so is that A reasonably believes that affording them access to the benefit, facility or service would create a risk to their health or safety.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) An association (A) does not discriminate against a pregnant woman under section 101(2)(c) or (3)(c) because she is pregnant if—

(a) the variation of A's terms of membership, or rights as an associate, is intended to remove or reduce a risk to her health or safety,

(b) A reasonably believes that not making the variation to A's terms or rights would create a risk to her health or safety,

(c) A varies the terms of membership, or rights as an associate, of persons with other physical conditions,

(d) the variation of their terms or rights is intended to remove or reduce a risk to their health or safety, and

(e) A reasonably believes that not making the variation to their terms or rights would create a risk to their health or safety.

Commencement Information

I136 Sch. 16 para. 2 wholly in force at 1.10.2012; para. 2 not in force at Royal Assent see s. 216; para. 2 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(7)(d)** (with art. 15); para. 2 in force so far as not already in force at 1.10.2012 by S.I. 2012/1569, **art. 2(e)**

SCHEDULE 17

Section 116

DISABLED PUPILS: ENFORCEMENT

Modifications etc. (not altering text)

C20 Sch. 17: power to amend or repeal conferred (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), s. 18(2)(c) (as amended by S.I. 2011/1651, **art. 12(b)**); S.I. 2012/320, **art. 2(g)**

PART 1

INTRODUCTORY

1 In this Schedule—

"the Tribunal" means—

(a) in relation to a school in England, the First-tier Tribunal;

(b) in relation to a school in Wales, the **[**[F272]Education Tribunal for Wales**]**;

(c) in relation to a school in Scotland, **[**[F273]the First-tier Tribunal for Scotland**]**;

"the English Tribunal" means the First-tier Tribunal;

"the Welsh Tribunal" means the **[**[F274]Education Tribunal for Wales**]**;

"the Scottish Tribunal" means **[**[F273]the First-tier Tribunal for Scotland**]**;

"responsible body" is to be construed in accordance with section 85.

Status: *This version of this Act contains provisions that are prospective.*
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Textual Amendments

F272 Words in Sch. 17 para. 1 substituted (E.W.) (1.9.2021) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(a)(i)**; S.I. 2021/373, art. 8(j)(xxxiii)

F273 Words in Sch. 17 para. 1 substituted (S.) (12.1.2018) by The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 4(4)(a)**

F274 Words in Sch. 17 para. 1 substituted (E.W.) (1.9.2021) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(a)(ii)**; S.I. 2021/373, art. 8(j)(xxxiii)

Commencement Information

I137 Sch. 17 para. 1 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 para. 1 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 17 Pt. 1 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(9)(k)(i)** (with art. 15, and subject to transitional provision in art. 7)

PART 2

TRIBUNALS IN ENGLAND AND WALES

Introductory

2 This Part of this Schedule applies in relation to the English Tribunal and the Welsh Tribunal.

Commencement Information

I138 Sch. 17 para. 2 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 2 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(i)** (with art. 15, and subject to transitional provision in art. 7)

Jurisdiction [F275— England F276...]

Textual Amendments

F275 Words in Sch. 17 para. 3 cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 9(2) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 3**); S.I. 2012/320, **art. 3(f)**

F276 Words in Sch. 17 para. 3 heading omitted (E.W.) (1.9.2021) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(b)**; S.I. 2021/373, art. 8(j)(xxxiii)

3 A claim that a responsible body [F277in England] has contravened Chapter 1 of Part 6 because of a person's disability may be made [F278—

(a) to the English Tribunal by the person's parent or, if the person is over compulsory school age, the person;

F279(b) . . . . . .]

Status: *This version of this Act contains provisions that are prospective.*
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Textual Amendments

F277 Words in Sch. 17 para. 3 inserted (E.W.) (1.9.2021) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(c)(i)**; S.I. 2021/373, art. 8(j)(xxxiii)

F278 Words in Sch. 17 para. 3 substituted (1.9.2014) by Children and Families Act 2014 (c. 6), **ss. 60**, 139(6); S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)

F279 Sch. 17 para. 3(b) omitted (E.W.) (1.9.2021) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(c)(ii)**; S.I. 2021/373, art. 8(j)(xxxiii)

Commencement Information

I139 Sch. 17 para. 3 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 2 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(i)** (with art. 15, and subject to transitional provision in art. 7)

[F280 Jurisdiction — Wales

Textual Amendments

F280 Sch. 17 para. 3A and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 9(3) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 3**); S.I. 2012/320, **art. 3(f)**

3A (1) A claim that a responsible body for a school in Wales has contravened Chapter 1 of Part 6 in relation to a person because of disability may be made to the Tribunal by—

[F281(a) the person (including a child not over compulsory school age), or

(b) if the person is a child not over compulsory school age, the person's parent**]**.

(2) But this paragraph does not apply to a claim to which paragraph 13 or 14 applies.

F282(3) . . . . . .

(4) The exercise of rights under this paragraph is subject to provision made by regulations under paragraphs 6 and **[F283**6A(7)**]**.**]**

Textual Amendments

F281 Sch. 17 para. 3A(1)(a)(b) substituted for words in Sch. 17 para. 3A(1) (1.9.2021) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(d)(i)**; S.I. 2021/373, art. 8(j)(xxxiii)

F282 Sch. 17 para. 3A(3) omitted (1.9.2021) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(d)(ii)**; S.I. 2021/373, art. 8(j)(xxxiii)

F283 Word in Sch. 17 para. 3A(4) substituted (1.9.2021) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(d)(iii)**; S.I. 2021/373, art. 8(j)(xxxiii)

Modifications etc. (not altering text)

C21 Sch. 17 para. 3A(1)(a) modified (W.) (1.9.2021) by The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 (S.I. 2021/403), regs. 1(2), **4**

C22 Sch. 17 para. 3A(1)(b) modified (W.) (1.9.2021) by The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 (S.I. 2021/403), regs. 1(2), **3**

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Time for bringing proceedings

4 (1) Proceedings on a claim may not be brought after the end of the period of 6 months starting with the date when the conduct complained of occurred.

[F284](2) . . . . . .

[[F285](2A) If, in relation to proceedings or prospective proceedings on a claim under paragraph 3 or 3A, the dispute is referred for resolution in pursuance of arrangements under paragraph 6C [F286]... before the end of the period of 6 months mentioned in sub-paragraph (1), that period is extended by 3 months.]

(3) The Tribunal may consider a claim which is out of time.

(4) Sub-paragraph (3) does not apply if the Tribunal has previously decided under that sub-paragraph not to consider a claim.

(5) For the purposes of sub-paragraph (1)—

(a) if the contravention is attributable to a term in a contract, the conduct is to be treated as extending throughout the duration of the contract;

(b) conduct extending over a period is to be treated as occurring at the end of the period;

(c) failure to do something is to be treated as occurring when the person in question decided on it.

(6) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P acts inconsistently with doing it, or

(b) if P does not act inconsistently, on the expiry of the period in which P might reasonably have been expected to do it.

Textual Amendments

F284 Sch. 17 para. 4(2) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 64(14)(a)**, 103(2)

F285 Sch. 17 para. 4(2A) inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 10(2) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 4**); S.I. 2012/320, **art. 3(g)**

F286 Words in Sch. 17 para. 4(2A) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 64(14)(b)**, 103(2)

Commencement Information

I140 Sch. 17 para. 4 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 2 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(i)** (with art. 15, and subject to transitional provision in art. 7)

Powers

5 (1) This paragraph applies if the Tribunal finds that the contravention has occurred.

(2) The Tribunal may make such order as it thinks fit.

(3) The power under sub-paragraph (2)—

(a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person of any matter to which the claim relates;

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(b) does not include power to order the payment of compensation.

Commencement Information

I141 Sch. 17 para. 5 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 2 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(i)** (with art. 15, and subject to transitional provision in art. 7)

Procedure

6 (1) This paragraph applies in relation to the Welsh Tribunal.

(2) The Welsh Ministers may by regulations make provision as to—

(a) the proceedings on a claim under paragraph [F287]... **[**[F288]3A**]**;

(b) the making of a claim.

(3) The regulations may, in particular, include provision—

(a) as to the manner in which a claim must be made;

(b) for enabling functions relating to preliminary or incidental matters (including in particular a decision under paragraph 4(3) to be performed by the President or by the person occupying the chair);

(c) enabling hearings to be conducted in the absence of a member other than the person occupying the chair;

[[F289](ca) for adding and substituting parties;**]**

(d) as to persons who may appear on behalf of the parties;

(e) for granting such rights to disclosure or inspection of documents or to further particulars as may be granted by the county court;

(f) requiring persons to attend to give evidence and produce documents;

(g) for authorising the administration of oaths to witnesses;

(h) for deciding claims without a hearing in prescribed circumstances;

(i) as to the withdrawal of claims;

(j) for enabling the Tribunal to stay proceedings;

(k) for the award of costs or expenses;

(l) for settling costs or expenses (and, in particular, for enabling costs to be assessed in the county court);

(m) for the registration and proof of decisions and orders;

(n) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be decided in accordance with the regulations.

(4) Proceedings must be held in private, except in prescribed circumstances.

(5) The Welsh Ministers may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as they may decide.

(6) Part 1 of the Arbitration Act 1996 does not apply to the proceedings, but regulations may make provision in relation to such proceedings that corresponds to a provision of that Part.

(7) The regulations may make provision for a claim to be heard, in prescribed circumstances, with an appeal under **[**[F290]Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018**]**.

Status: *This version of this Act contains provisions that are prospective.*
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(8) A person commits an offence by failing to comply with—

(a) a requirement in respect of the disclosure or inspection of documents imposed by virtue of sub-paragraph (3)(e), or

(b) a requirement imposed by virtue of sub-paragraph (3)(f).

(9) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Textual Amendments

F287 Words in Sch. 17 para. 6(2)(a) omitted (E.W.) (1.9.2021) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(e)(i)**; S.I. 2021/373, art. 8(j)(xxxiii)

F288 Words in Sch. 17 para. 6(2)(a) inserted (E.W.) (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), s. 11(2)(a) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 5**); S.I. 2012/320, **art. 2(d)**

F289 Sch. 17 para. 6(3)(ca) inserted (E.W.) (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), s. 11(2)(b) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 5**); S.I. 2012/320, **art. 2(d)**

F290 Words in Sch. 17 para. 6(7) substituted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(e)(ii)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3(o)(xviii); S.I. 2021/1244, art. 3(o)(xviii); S.I. 2021/1245, arts. 3(o)(xviii), 4 (with art. 1(4)); S.I. 2022/891, art. 3(o)(xix) (with arts. 1, 2, 4-25); S.I. 2022/892, art. 3(o)(xix) (with arts. 1, 2, 4-18); S.I. 2022/893, art. 4 (with art. 1(2)); S.I. 2022/894, art. 3(o)(xviii) (with arts. 1(2), art. 1, 2); S.I. 2022/895, arts. 3(o)(xix), 4; S.I. 2022/896, art. 3(o)(xix) (with arts. 1(2), art. 2, 4-22); S.I. 2022/897, art. 3(o)(xix) (with arts. 1(2), art. 1(8), 2, 4-21); S.I. 2022/898, arts. 2(o)(xix), 3

Commencement Information

I142 Sch. 17 para. 6 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 para. 6(1)-(7) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 17 Pt. 2 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(9)(k)(i)** (with art. 15, and subject to transitional provision in art. 7)

[F291 Appeals from the Welsh Tribunal

Textual Amendments

F291 Sch. 17 para. 6AA and cross-heading inserted (E.W.) (1.9.2021) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(f)**; S.I. 2021/373, art. 8(j)(xxxiii)

6AA (1) A party to any proceedings on a claim under paragraph (3A) before the Welsh Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision made by the Welsh Tribunal in those proceedings.

(2) An appeal may be brought under sub-paragraph (1) only if, on an application made by the party concerned, the Welsh Tribunal or the Upper Tribunal has given its permission.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (proceedings on appeal to the Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this paragraph as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Welsh Tribunal.**]**

[F292 Case friends — Wales

Textual Amendments

F292 Sch. 17 para. 6A and cross-heading inserted (E.W.) (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), **s. 12(2)** (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 6**); S.I. 2012/320, **art. 2(e)**

[F293 6A (1) This paragraph applies to a child not over compulsory school age who—

(a) has the right to make a claim under paragraph 3A, and

(b) lacks the capacity to understand what it means to exercise that right.

(2) The Education Tribunal for Wales may by order—

(a) appoint a person to be a case friend for a child to whom this section applies, or

(b) remove the person from being a case friend for the child,

on the application of any person or on its own initiative, subject to provision in regulations under sub-paragraph (7).

(3) A case friend appointed for a child under this paragraph may—

(a) represent and support the child, and

(b) take decisions and act on behalf of the child,

in respect of matters arising under or by virtue of this Schedule, subject to provision in regulations under sub-paragraph (7).

(4) Where a person is appointed to be a case friend by order of the Tribunal under this paragraph, the right of a child to make a claim under paragraph 3A is to be exercised by the case friend on behalf of the child.

(5) A case friend appointed under this paragraph must—

(a) act fairly and competently,

(b) not have any interest adverse to that of the child,

(c) ensure that all steps and decisions taken by the case friend are for the benefit of the child, and

(d) take account of the child's views, so far as possible.

(6) In deciding whether to appoint a person to be a case friend, or to remove a person from being a case friend, the Tribunal must have regard, in particular, to whether the person is likely to comply (in the case of appointment) or has complied (in the case of removal) with the duty in sub-paragraph (5).

(7) The Welsh Ministers may by regulations make further provision about case friends, including (among other things) provision—

(a) conferring functions on the Education Tribunal for Wales;

(b) conferring functions on case friends;

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(c) for procedures in relation to case friends;
(d) specifying the circumstances in which a person may or may not act as a case friend;
(e) specifying the circumstances in which a child must have a case friend;
(f) specifying requirements in respect of the conduct of case friends;
(g) applying any enactment with or without modifications for the purpose of enabling a case friend to make decisions or act on behalf of a child in respect of matters arising under or by virtue of this Schedule.**]]**

Textual Amendments

F293 Sch. 17 para. 6A substituted (2.11.2020 for specified purposes; 1.9.2021 in so far as not already in force) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(g)**; S.I. 2020/1182, **reg. 3(1)(n)**; S.I. 2021/373, **art. 8(j)(xxxiii)**

[F294 Advice and information — Wales

Textual Amendments

F294 Sch. 17 para. 6B and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 13(2) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 7**); S.I. 2012/320, **art. 3(h)**

6B (1) A local authority in Wales must arrange for any disabled child in its area and for the case friend of any such child to be provided with advice and information about matters relating to disability discrimination in schools.

(2) In making the arrangements, the local authority must have regard to any guidance given by the Welsh Ministers.

(3) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(4) The local authority must take such steps as it considers appropriate for making the services provided under sub-paragraph (1) known to—
(a) disabled children in its area,
(b) parents of disabled children in its area,
(c) head teachers and proprietors of schools in its area, and
(d) such other persons as it considers appropriate.**]**

[F295 Resolution of disputes — Wales

Textual Amendments

F295 Sch. 17 para. 6C and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 14(2) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 8**); S.I. 2012/320, **art. 3(i)**

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6C (1) A local authority in Wales must make arrangements with a view to avoiding or resolving disagreements between responsible bodies and disabled children in its area about contraventions of Chapter 1 of Part 6.

(2) The arrangements must provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of such disagreements.

(3) In making the arrangements, the local authority must have regard to any guidance given by the Welsh Ministers.

(4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(5) The local authority must take such steps as it considers appropriate for making the arrangements under sub-paragraph (1) known to—

(a) disabled children in its area,

(b) parents of disabled children in its area,

(c) head teachers and proprietors of schools in its area, and

(d) such other persons as it considers appropriate.

(6) The arrangements cannot affect the entitlement of any person to make a claim to the Tribunal, and the local authority must take such steps as it considers appropriate to make that fact known to disabled children, to parents of disabled children and to case friends for disabled children in its area.**]**

[F296 Independent advocacy services — Wales

Textual Amendments

F296 Sch. 17 para. 6D and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 15(2) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 9**); S.I. 2012/320, **art. 3(j)**

6D (1) Every local authority in Wales must—

(a) make arrangements for the provision of independent advocacy services in its area;

(b) refer any disabled child in its area who requests independent advocacy services to a service provider;

(c) refer any person who is a case friend for a disabled child in its area and who requests independent advocacy services to a service provider.

(2) In this paragraph "independent advocacy services" are services providing advice and assistance (by way of representation or otherwise) to a disabled child who is—

(a) making, or intending to make a claim that a responsible body has contravened Chapter 1 of Part 6 because of the child's disability; or

(b) considering whether to make such a claim; or

(c) taking part in or intending to take part in dispute resolution arrangements made under paragraph 6C.

(3) In making arrangements under this paragraph, every local authority must have regard to the principle that any services provided under the arrangements must be independent of any person who is—

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(a) the subject of a claim to the Tribunal, or
(b) involved in investigating or adjudicating on such a claim.

(4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(5) Every local authority in Wales must take such steps as it considers appropriate for making the arrangements under this paragraph known to—
(a) disabled children in its area,
(b) parents of disabled children in its area,
(c) head teachers and proprietors of schools in its area, and
(d) such other persons as it considers appropriate.

(6) The arrangements may include provision for payments to be made to, or in relation to, any person carrying out functions in accordance with the arrangements.

(7) A local authority must have regard to any guidance given from time to time by the Welsh Ministers.**]**

[F297 Power of direction — Wales

Textual Amendments

F297 Sch. 17 para. 6E and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 16(2) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), **art. 10**); S.I. 2012/320, **art. 3(k)**

6E (1) If the Welsh Ministers are satisfied (whether on a complaint or otherwise) that a local authority—
(a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under paragraph 6B, 6C or 6D, or
(b) has failed to discharge a duty imposed by or under any of those paragraphs,

they may give that local authority such directions as to the discharge of the duty as appear to them to be expedient.

(2) A direction may be given under sub-paragraph (1) even if the performance of the duty is contingent on the opinion of the local authority.

(3) A direction—
(a) may be varied or revoked by the Welsh Ministers;
(b) may be enforced, on the application of the Welsh Ministers, by a mandatory order obtained in accordance with section 31 of the Senior Courts Act 1981.**]**

[F298 Capacity of parents and persons over compulsory school age - Wales

Textual Amendments

F298 Sch. 17 para. 6F inserted (2.11.2020 for specified purposes, 1.9.2021 in so far as not already in force) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 19(5)(h)**; S.I. 2020/1182, reg. 3(1)(n); S.I. 2021/373, art. 8(j)(xxxiii)

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6F (1) The Welsh Ministers must make regulations for the purpose of a claim that a responsible body for a school in Wales has contravened Chapter 1 of Part 6 in relation to a person because of disability in a case to which sub-paragraph (2) or (3) applies.

(2) This sub-paragraph applies where the person is a child not over compulsory school age and the parent of the person lacks capacity at the relevant time.

(3) This sub-paragraph applies where the person is over compulsory school age and lacks capacity at the relevant time.

(4) Regulations under sub-paragraph (1) may include provision applying any enactment with modifications, including (for example) provision for modifications to have effect despite section 27(1)(g) of the Mental Capacity Act 2005 (c. 9) (which does not permit decisions on discharging parental responsibilities in matters not relating to a child's property to be made on a person's behalf).

(5) In this paragraph "the relevant time" means the time at which, under this Act, something is required or permitted to be done by or in relation to a parent or a person over compulsory school age.

(6) The reference in this paragraph to lacking capacity is to lacking capacity within the meaning of the Mental Capacity Act 2005.

(7) "Representative", in relation to a parent or a person over compulsory school age, means—

(a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 to make decisions on the parent's or person's behalf in relation to matters within this Schedule;

(b) the donee of a lasting power of attorney (within the meaning of section 9 of that Act) appointed by the parent or person to make decisions on his or her behalf in relation to matters within this Schedule;

(c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to that Act) created by the parent or person is vested, where the power of attorney is registered in accordance with paragraphs 4 and 13 of that Schedule or an application for registration of the power of attorney has been made.**]**

PART 3

TRIBUNALS IN SCOTLAND

Introductory

7 This Part of this Schedule applies in relation to the Scottish Tribunal.

Commencement Information

I143 Sch. 17 para. 7 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(ii)** (with art. 15, and subject to transitional provision in art. 7); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by S.I. 2010/2317, **art. 3(d)** (with art. 15, and subject to transitional provision in art. 7)

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Jurisdiction

8 A claim that a responsible body has contravened Chapter 1 of Part 6 because of a person's disability may be made to the Tribunal by—

(a) the person's parent;

(b) where the person has capacity to make the claim, the person.

Commencement Information

I144 Sch. 17 para. 8 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(ii)** (with art. 15, and subject to transitional provision in art. 7); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by S.I. 2010/2317, **art. 3(d)** (with art. 15, and subject to transitional provision in art. 7)

Powers

9 (1) This paragraph applies if the Tribunal finds the contravention has occurred.

(2) The Tribunal may make such order as it thinks fit.

(3) The power under sub-paragraph (2)—

(a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person of any matter to which the claim relates;

(b) does not include power to order the payment of compensation.

Commencement Information

I145 Sch. 17 para. 9 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(ii)** (with art. 15, and subject to transitional provision in art. 7); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by S.I. 2010/2317, **art. 3(d)** (with art. 15, and subject to transitional provision in art. 7)

Procedure etc.

10 (1) The Scottish Ministers may make rules as to—

(a) the proceedings on a claim under paragraph 8;

(b) the making of a claim.

(2) The rules may, in particular, include provision for or in connection with—

(a) the form and manner in which a claim must be made;

(b) the time within which a claim is to be made;

(c) the withdrawal of claims;

(d) the recovery and inspection of documents;

(e) the persons who may appear on behalf of the parties;

(f) the persons who may be present at proceedings alongside any party or witness to support the party or witness;

(g) enabling specified persons other than the parties to appear or be represented in specified circumstances;

(h) requiring specified persons to give notice to other specified persons of specified matters;

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(i) the time within which any such notice must be given;

(j) enabling Tribunal proceedings to be conducted in the absence of any member of a Tribunal other than the convener;

(k) enabling any matters that are preliminary or incidental to the determination of proceedings to be determined by the convenor of a Tribunal alone or with such other members of the Tribunal as may be specified;

(l) enabling Tribunals to be held in private;

(m) enabling a Tribunal to exclude any person from attending all or part of Tribunal proceedings;

(n) enabling a Tribunal to impose reporting restrictions in relation to all or part of Tribunal proceedings;

(o) enabling a Tribunal to determine specified matters without holding a hearing;

(p) the recording and publication of decisions and orders of a Tribunal;

(q) enabling a Tribunal to commission medical and other reports in specified circumstances;

(r) requiring a Tribunal to take specified actions, or to determine specified proceedings, within specified periods;

(s) enabling a Tribunal to make an award of expenses;

(t) the taxation or assessment of such expenses;

(u) enabling a Tribunal, in specified circumstances, to review, or to vary or revoke, any of its decisions, orders or awards;

(v) enabling a Tribunal, in specified circumstances, to review the decisions, orders or awards of another Tribunal and take such action (including variation and revocation) in respect of those decisions, orders or awards as it thinks fit.

Commencement Information

I146 Sch. 17 para. 10 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(ii)** (with art. 15, and subject to transitional provision in art. 7); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by S.I. 2010/2317, **art. 3(d)** (with art. 15, and subject to transitional provision in art. 7)

Appeals

F299 11 . . . . . .

Textual Amendments

F299 Sch. 17 para. 11 repealed (S.) (12.1.2018) by The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 4(4)(b)**

Amendment of Education (Additional Support for Learning) (Scotland) Act 2004

12 The Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) is amended as follows—

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(a) in section 17(1), omit "to exercise the functions which are conferred on a Tribunal by virtue of this Act";

(b) after section 17(1), insert—

"(1A) Tribunals are to exercise the functions which are conferred on them by virtue of—

(a) this Act, and

(b) the Equality Act 2010";

(c) in the definition of "Tribunal functions" in paragraph 1 of Schedule 1, after "Act" insert " or the Equality Act 2010 ".

Commencement Information

I147 Sch. 17 para. 12 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(ii)** (with art. 15, and subject to transitional provision in art. 7); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by S.I. 2010/2317, **art. 3(d)** (with art. 15, and subject to transitional provision in art. 7)

PART 4

ADMISSIONS AND EXCLUSIONS

Admissions

13 (1) This paragraph applies if appeal arrangements have been made in relation to admissions decisions.

(2) A claim that a responsible body has, because of a person's disability, contravened Chapter 1 of Part 6 in respect of an admissions decision must be made under the appeal arrangements.

(3) The body hearing the claim has the powers it has in relation to an appeal under the appeal arrangements.

(4) Appeal arrangements are arrangements under—

(a) section 94 of the School Standards and Framework Act 1998, or

[[F300](b) Academy arrangements (as defined in section 1 of the Academies Act 2010) between the responsible body for an Academy and the Secretary of State,**]**

enabling an appeal to be made by the person's parent against the decision.

(5) An admissions decision is—

(a) a decision of a kind mentioned in section 94(1) or (2) of the School Standards and Framework Act 1998;

(b) a decision as to the admission of a person to an **[**[F301]Academy school or an alternative provision Academy**]** taken by the responsible body or on its behalf.

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Textual Amendments

F300 Sch. 17 para. 13(4)(b) substituted (1.2.2012) by Education Act 2011 (c. 21), s. 65, **Sch. 15 para. 2**; S.I. 2012/84, **art. 3**

F301 Words in Sch. 17 para. 13(5)(b) substituted (1.4.2012) by Education Act 2011 (c. 21), s. 54(1), **Sch. 13 para. 20(4)**; S.I. 2012/924, **art. 2**

Commencement Information

I148 Sch. 17 para. 13 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 4 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(iii)** (with art. 15, and subject to transitional provision in art. 7)

Exclusions [F302: Wales]

Textual Amendments

F302 Word in Sch. 17 para. 14 cross-heading inserted (1.9.2012) by Education Act 2011 (c. 21), s. 4(4), **Sch. 1 para. 12**; S.I. 2012/1087, **art. 3**

14 (1) This paragraph applies if appeal arrangements have been made in relation to exclusion decisions **[**F303that are made in relation to schools in Wales**]**.

(2) A claim that a responsible body has, because of a person's disability, contravened Chapter 1 of Part 6 in respect of an exclusion decision must be made under the appeal arrangements.

(3) The body hearing the claim has the powers it has in relation to an appeal under the appeal arrangements.

[F304(4) Appeal arrangements are arrangements under section 52(3) of the Education Act 2002 enabling an appeal to be made against an exclusion decision.**]**

(5) An exclusion decision is—

(a) a decision of a kind mentioned in 52(3) of the Education Act 2002;

(b) F305 . . . . . .

(6) "Responsible body", in relation to a maintained school, includes the discipline committee of the governing body if that committee is required to be established as a result of regulations made under section 19 of the Education Act 2002.

(7) "Maintained school" has the meaning given in section 20(7) of the School Standards and Framework Act 1998.

Textual Amendments

F303 Words in Sch. 17 para. 14(1) inserted (1.9.2012) by Education Act 2011 (c. 21), s. 4(4), **Sch. 1 para. 13(a)**; S.I. 2012/1087, **art. 3**

F304 Sch. 17 para. 14(4) substituted (1.9.2012) by Education Act 2011 (c. 21), s. 4(4), **Sch. 1 para. 13(b)**; S.I. 2012/1087, **art. 3**

F305 Sch. 17 para. 14(5)(b) omitted (1.9.2012) by virtue of Education Act 2011 (c. 21), s. 4(4), **Sch. 1 para. 13(c)**; S.I. 2012/1087, **art. 3**

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Commencement Information

I149 Sch. 17 para. 14 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 4 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(k)(iii)** (with art. 15, and subject to transitional provision in art. 7)

SCHEDULE 18

Section 149

PUBLIC SECTOR EQUALITY DUTY: EXCEPTIONS

Children

1 (1) Section 149, so far as relating to age, does not apply to the exercise of a function relating to—

(a) the provision of education to pupils in schools;

(b) the provision of benefits, facilities or services to pupils in schools;

(c) the provision of accommodation, benefits, facilities or services in community homes pursuant to section 53(1) of the Children Act 1989;

(d) the provision of accommodation, benefits, facilities or services pursuant to arrangements under section 82(5) of that Act (arrangements by the Secretary of State relating to the accommodation of children);

(e) the provision of accommodation, benefits, facilities or services in residential establishments pursuant to section 26(1)(b) of the Children (Scotland) Act 1995.

(2) "Pupil" and "school" each have the same meaning as in Chapter 1 of Part 6.

Immigration

2 (1) In relation to the exercise of immigration and nationality functions, section 149 has effect as if subsection (1)(b) did not apply to the protected characteristics of age, race or religion or belief; but for that purpose "race" means race so far as relating to—

(a) nationality, or

(b) ethnic or national origins.

(2) "Immigration and nationality functions" means functions exercisable by virtue of—

(a) the Immigration Acts (excluding sections 28A to 28K of the Immigration Act 1971 so far as they relate to criminal offences),

(b) the British Nationality Act 1981,

(c) the British Nationality (Falkland Islands) Act 1983,

(d) the British Nationality (Hong Kong) Act 1990,

(e) the Hong Kong (War Wives and Widows) Act 1996,

(f) the British Nationality (Hong Kong) Act 1997,

(g) the Special Immigration Appeals Commission Act 1997, or

(h) **[**[F306]anything which forms part of retained EU law by virtue of section 2(2)(a), 3 or 4 of the European Union (Withdrawal) Act 2018 and**]** relates to the subject matter of an enactment within paragraphs (a) to (g).

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Textual Amendments

F306 Words in Sch. 18 para. 2(2)(h) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(8)**; 2020 c. 1, Sch. 5 para. 1(1)

Judicial functions, etc.

3 (1) Section 149 does not apply to the exercise of—
- (a) a judicial function;
- (b) a function exercised on behalf of, or on the instructions of, a person exercising a judicial function.

(2) The references to a judicial function include a reference to a judicial function conferred on a person other than a court or tribunal.

Exceptions that are specific to section 149(2)

4 (1) Section 149(2) (application of section 149(1) to persons who are not public authorities but by whom public functions are exercisable) does not apply to—
- (a) a person listed in sub-paragraph (2);
- (b) the exercise of a function listed in sub-paragraph (3).

(2) Those persons are—
- (a) the House of Commons;
- (b) the House of Lords;
- (c) the Scottish Parliament;
- (d) the National Assembly for Wales;
- (e) the General Synod of the Church of England;
- (f) the Security Service;
- (g) the Secret Intelligence Service;
- (h) the Government Communications Headquarters;
- (i) a part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

(3) Those functions are—
- (a) a function in connection with proceedings in the House of Commons or the House of Lords;
- (b) a function in connection with proceedings in the Scottish Parliament (other than a function of the Scottish Parliamentary Corporate Body);
- (c) a function in connection with proceedings in the National Assembly for Wales (other than a function of the Assembly Commission).

Power to amend Schedule

5 (1) A Minister of the Crown may by order amend this Schedule so as to add, vary or omit an exception to section 149.

(2) But provision by virtue of sub-paragraph (1) may not amend this Schedule—
- (a) so as to omit an exception in paragraph 3;

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(b) so as to omit an exception in paragraph 4(1) so far as applying for the purposes of paragraph 4(2)(a) to (e) or (3);

(c) so as to reduce the extent to which an exception referred to in paragraph (a) or (b) applies.

SCHEDULE 19

Section 150

PUBLIC AUTHORITIES

PART 1

PUBLIC AUTHORITIES: GENERAL

Ministers of the Crown and government departments

A Minister of the Crown.

A government department other than the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

Armed forces

Any of the armed forces other than any part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

[[F307]Service Police Complaints Commissioner.**]**

Textual Amendments

F307 Words in Sch. 19 Pt. 1 inserted (1.11.2022 for specified purposes) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 4 para. 8**; S.I. 2022/1095, reg. 3

Textual Amendments

F307 Words in Sch. 19 Pt. 1 inserted (1.11.2022 for specified purposes) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 4 para. 8**; S.I. 2022/1095, reg. 3

[[F308]***Broadcasting***

Textual Amendments

F308 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 2**

The British Broadcasting Corporation (" BBC "), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003); and the reference to the BBC includes a reference to a body corporate which—

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(a) is a wholly owned subsidiary of the BBC ,
(b) is not operated with a view to generating a profit, and
(c) undertakes activities primarily in order to promote the BBC 's public purposes.

The Channel Four Television Corporation, except in respect of—
(a) functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003), and
(b) the function of carrying on the activities referred to in section 199 of that Act.

The Welsh Authority (as defined by section 56(1) of the Broadcasting Act 1990), except in respect of functions relating to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003).**]**

[F309 Citizens' rights

Textual Amendments
F309 Words in Sch. 19 Pt. 1 inserted (19.3.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), s. 42(7), **Sch. 2 para. 21** (with Sch. 2 para. 37); S.I. 2020/317, reg. 3(b)(ii)

The Independent Monitoring Authority for the Citizens' Rights Agreements.**]**

[F310 Civil liberties

Textual Amendments
F310 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 2**

The Commission for Equality and Human Rights.
The Information Commissioner.**]**

[F311 Court services and legal services

Textual Amendments
F311 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 2**

The Children and Family Court Advisory and Support Service.
The Judicial Appointments Commission.
The Legal Services Board.
F312 …**]**

Textual Amendments
F312 Sch. 19 Pt. 1 entry omitted (1.4.2013) by virtue of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 39(1), **Sch. 5 para. 70**; S.I. 2013/453, **art. 3(h)** (with savings and transitional provisions in S.I. 2013/534, art. 6)

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Textual Amendments

F312 Sch. 19 Pt. 1 entry omitted (1.4.2013) by virtue of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 39(1), **Sch. 5 para. 70**; S.I. 2013/453, **art. 3(h)** (with savings and transitional provisions in S.I. 2013/534, art. 6)

[F313 Criminal justice

Textual Amendments

F313 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 2**

Her Majesty's Chief Inspector of Constabulary.

Her Majesty's Chief Inspector of the Crown Prosecution Service.

Her Majesty's Chief Inspector of Prisons.

Her Majesty's Chief Inspector of Probation for England and Wales.

[F314 The Forensic Science Regulator.**]**

The Parole Board for England and Wales.

A probation trust established by an order made under section 5(1) of the Offender Management Act 2007.

The Youth Justice Board for England and Wales.**]**

Textual Amendments

F314 Words in Sch. 19 Pt. 1 inserted (25.7.2022) by Forensic Science Regulator Act 2021 (c. 14), s. 13(4), **Sch. para. 11** (with s. 12); S.I. 2022/856, regs. 1(2), 2(a)

Textual Amendments

F314 Words in Sch. 19 Pt. 1 inserted (25.7.2022) by Forensic Science Regulator Act 2021 (c. 14), s. 13(4), **Sch. para. 11** (with s. 12); S.I. 2022/856, regs. 1(2), 2(a)

[F315 Environment, housing and development

Textual Amendments

F315 Sch. 19 Pt. 1: entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 2**

The Homes and Communities Agency.

Natural England.

[F316 The Office for Environmental Protection.**]**

F317 …

F318 …**]**

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Textual Amendments

F316 Sch. 19 Pt. 1: entry inserted (17.11.2021) by Environment Act 2021 (c. 30), s. 147(3), **Sch. 1 para. 23** (with s. 144); S.I. 2021/1274, **reg. 2(i)**

F317 Sch. 19 Pt. 1: entry repealed (1.4.2012) by Localism Act 2011 (c. 20), ss. 178, 237, Sch. 16 para. 62, **Sch. 25 Pt. 26**; S.I. 2012/628, **art. 6(i)(j)**

F318 Sch. 19 Pt. 1: entry omitted (2.12.2014) by virtue of The Olympic Delivery Authority (Dissolution) Order 2014 (S.I. 2014/3184), art. 1(2), **Sch. para. 15**

Textual Amendments

F316 Sch. 19 Pt. 1: entry inserted (17.11.2021) by Environment Act 2021 (c. 30), s. 147(3), **Sch. 1 para. 23** (with s. 144); S.I. 2021/1274, **reg. 2(i)**

F317 Sch. 19 Pt. 1: entry repealed (1.4.2012) by Localism Act 2011 (c. 20), ss. 178, 237, Sch. 16 para. 62, **Sch. 25 Pt. 26**; S.I. 2012/628, **art. 6(i)(j)**

F318 Sch. 19 Pt. 1: entry omitted (2.12.2014) by virtue of The Olympic Delivery Authority (Dissolution) Order 2014 (S.I. 2014/3184), art. 1(2), **Sch. para. 15**

[F319 Health, social care and social security]

Textual Amendments

F319 Sch. 19 Pt. 1 entries and related heading substituted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 3**

[F320[F321[F322NHS England**]**.

[F323 An integrated care board established under section 14Z25 of the National Health Service Act 2006.**]]**

The Care Quality Commission.

[F324 The Commissioner for Patient Safety.**]**

F325 …

[F326 Health Education England.**]**

[F327 The Health Research Authority.**]**

The Health Service Commissioner for England, in respect of—

(a) the Commissioner's functions set out in paragraph 11 of Schedule 1 to the Health Service Commissioners Act 1993; and

(b) the Commissioner's public procurement functions (as defined in section 155(3) of this Act).

F328 …

An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006.

F329 …

F330 …

A Special Health Authority established under section 28 of that Act other than NHS Blood and Transplant and the NHS Business Services Authority.

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F331 …

F332 …

[F333 The National Data Guardian for Health and Social Care.]

[F334 The National Institute for Health and Care Excellence.]]

Textual Amendments

F320 Sch. 19 Pt. 1 entries and related heading substituted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 3**

F321 Sch. 19 Pt. 1 entries inserted (27.3.2012 for specified purposes otherwise 1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. 55(2), 306(1)(d), **Sch. 5 para. 182(a)**; S.I. 2012/1831, **art. 2(2)**

F322 Words in Sch. 19 Pt. 1 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 1 para. 14**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F323 Words in Sch. 19 Pt. 1 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 173**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F324 Words in Sch. 19 Pt. 1 inserted (11.4.2021) by Medicines and Medical Devices Act 2021 (c. 3), s. 50(2)(a), **Sch. 1 para. 5(5)** (with Sch. 1 para. 3(4))

F325 Sch. 19 Pt. 1 entry omitted (1.8.2012) by virtue of The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), arts. 1(2), 3(2), **Sch. para. 109(e)**

F326 Words in Sch. 19 Pt. 1 inserted (E.W.) (1.4.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 5 para. 35**; S.I. 2014/3186, art. 2(f)

F327 Words in Sch. 19 Pt. 1 inserted (1.1.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 7 para. 27**; S.I. 2014/2473, art. 5(m)

F328 Words in Sch. 19 Pt. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 44**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F329 Sch. 19 Pt. 1 entry omitted (27.3.2012 for specified purposes otherwise prosp.) by virtue of Health and Social Care Act 2012 (c. 7), ss. 179(6), 306(1)(d)(4), **Sch. 14 para. 116** (with s. 179(5)(b))

F330 Sch. 19 Pt. 1 entry omitted (27.3.2012 for specified purposes otherwise 1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 55(2), 306(1)(d), **Sch. 5 para. 182(c)**; S.I. 2013/160, **art. 2(2)**

F331 Sch. 19 Pt. 1 entry omitted (27.3.2012 for specified purposes otherwise 1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 55(2), 306(1)(d), **Sch. 5 para. 182(d)**; S.I. 2013/160, **art. 2(2)**

F332 Words in Sch. 19 Pt. 1 omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), **Sch. para. 16** (with reg. 3)

F333 Words in Sch. 19 Pt. 1 inserted (E.W.) (1.4.2019) by Health and Social Care (National Data Guardian) Act 2018 (c. 31), s. 5(1), **Sch. 2 para. 5**; S.I. 2019/580, reg. 2

F334 Sch. 19 Pt. 1 entry added (27.3.2012 for specified purposes otherwise 1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 249(1), 306(1)(d), **Sch. 17 para. 14**; S.I. 2013/160, **art. 2(2)**

Textual Amendments

F320 Sch. 19 Pt. 1 entries and related heading substituted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 3**

F321 Sch. 19 Pt. 1 entries inserted (27.3.2012 for specified purposes otherwise 1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. 55(2), 306(1)(d), **Sch. 5 para. 182(a)**; S.I. 2012/1831, **art. 2(2)**

F322 Words in Sch. 19 Pt. 1 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 1 para. 14**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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F323 Words in Sch. 19 Pt. 1 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 173**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F324 Words in Sch. 19 Pt. 1 inserted (11.4.2021) by Medicines and Medical Devices Act 2021 (c. 3), s. 50(2)(a), **Sch. 1 para. 5(5)** (with Sch. 1 para. 3(4))

F325 Sch. 19 Pt. 1 entry omitted (1.8.2012) by virtue of The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), arts. 1(2), 3(2), **Sch. para. 109(e)**

F326 Words in Sch. 19 Pt. 1 inserted (E.W.) (1.4.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 5 para. 35**; S.I. 2014/3186, art. 2(f)

F327 Words in Sch. 19 Pt. 1 inserted (1.1.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 7 para. 27**; S.I. 2014/2473, art. 5(m)

F328 Words in Sch. 19 Pt. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 44**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F329 Sch. 19 Pt. 1 entry omitted (27.3.2012 for specified purposes otherwise prosp.) by virtue of Health and Social Care Act 2012 (c. 7), ss. 179(6), 306(1)(d)(4), **Sch. 14 para. 116** (with s. 179(5)(b))

F330 Sch. 19 Pt. 1 entry omitted (27.3.2012 for specified purposes otherwise 1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 55(2), 306(1)(d), **Sch. 5 para. 182(c)**; S.I. 2013/160, **art. 2(2)**

F331 Sch. 19 Pt. 1 entry omitted (27.3.2012 for specified purposes otherwise 1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 55(2), 306(1)(d), **Sch. 5 para. 182(d)**; S.I. 2013/160, **art. 2(2)**

F332 Words in Sch. 19 Pt. 1 omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), **Sch. para. 16** (with reg. 3)

F333 Words in Sch. 19 Pt. 1 inserted (E.W.) (1.4.2019) by Health and Social Care (National Data Guardian) Act 2018 (c. 31), s. 5(1), **Sch. 2 para. 5**; S.I. 2019/580, reg. 2

F334 Sch. 19 Pt. 1 entry added (27.3.2012 for specified purposes otherwise 1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 249(1), 306(1)(d), **Sch. 17 para. 14**; S.I. 2013/160, **art. 2(2)**

[F335 Industry, business, finance etc.

Textual Amendments

F335 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 4**

[F336 The Advanced Research and Invention Agency.**]**

The Advisory, Conciliation and Arbitration Service.

The Bank of England **[F337**(including the Bank in its capacity as the Prudential Regulation Authority)**]**, in respect of its public functions.

[F338 The Board of the Pension Protection Fund.**]**

The Civil Aviation Authority.

F339 …

[F338 The Coal Authority.**]**

F340 …

[F341 The Comptroller and Auditor General.**]**

[F338 The Construction Industry Training Board.**]**

[F338 The Engineering Construction Industry Training Board.**]**

[F342 The Financial Conduct Authority.**]**

[F343 The Financial Reporting Council Limited.**]**

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[[F344]The Money and Pensions Service.**]**

The National Audit Office.

[[F338]The Nuclear Decommissioning Authority.**]**

[[F345]The Office for Budget Responsibility.**]**

The Office of Communications.

[[F346]The Office of Tax Simplification.**]**

[[F338]The Oil and Gas Authority.**]**

[[F347]The Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.**]**

[[F348]The Trade Remedies Authority.**]**

[F349]…

[F350]…

[[F351]United Kingdom Research and Innovation.**]]**

Textual Amendments

F336 Words in Sch. 19 Pt. 1 inserted (25.1.2023) by Advanced Research and Invention Agency Act 2022 (c. 4), s. 13(1), **Sch. 3 para. 6**; S.I. 2023/58, reg. 2

F337 Words in Sch. 19 Pt. 1 inserted (1.3.2017) by The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 19(a)**

F338 Words in Sch. 19 Pt. 1 inserted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 2(b)** (with reg. 2(4)(5))

F339 Sch. 19 Pt. 1 entry omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 182** (with art. 3)

F340 Words in Sch. 19 Pt. 1 omitted (31.3.2017) by virtue of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 2(a)** (with reg. 2(4)(5))

F341 Sch. 19 Pt. 1 entry inserted (1.4.2012) by Budget Responsibility and National Audit Act 2011 (c. 4), s. 26(2), **Sch. 5 para. 34**; S.I. 2011/2576, **art. 5**

F342 Sch. 19 Pt. 1 entry substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 114(1), **Sch. 18 para. 131(a)** (with Sch. 20); S.I. 2013/423, art. 3, **Sch.**

F343 Words in Sch. 19 Pt. 1 inserted (6.4.2021) by The Financial Reporting Council (Miscellaneous Provisions) Order 2021 (S.I. 2021/408), arts. 1, **2(2)**

F344 Words in Sch. 19 Pt. 1 inserted (6.4.2019) by The Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019 (S.I. 2019/383), reg. 1(1), **Sch. para. 9(b)**

F345 Sch. 19 Pt. 1 entry inserted (4.4.2011) by Budget Responsibility and National Audit Act 2011 (c. 4), s. 3(2), **Sch. 1 para. 28**; S.I. 2011/892, art. 3, **Sch. 2**

F346 Words in Sch. 19 Pt. 1 inserted (28.11.2016) by Finance Act 2016 (c. 24), s. 189, **Sch. 25 para. 15**; S.I. 2016/1133, reg. 2

F347 Sch. 19 Pt. 1 entry inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 4 para. 16**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F348 Words in Sch. 19 Pt. 1 inserted (1.6.2021) by Trade Act 2021 (c. 10), **Sch. 4 para. 40**; S.I. 2021/550, reg. 3(c)

F349 Words in Sch. 19 Pt. 1 omitted (6.4.2019) by virtue of The Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019 (S.I. 2019/383), reg. 1(1), **Sch. para. 9(a)**

F350 Words in Sch. 19 Pt. 1 omitted (1.3.2017) by virtue of The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 19(b)**

F351 Words in Sch. 19 Pt. 1 inserted (30.3.2018) by Higher Education and Research Act 2017 (c. 29), s. 124(5), **Sch. 9 para. 23**; S.I. 2018/241, reg. 3(d)

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F336 Words in Sch. 19 Pt. 1 inserted (25.1.2023) by Advanced Research and Invention Agency Act 2022 (c. 4), s. 13(1), **Sch. 3 para. 6**; S.I. 2023/58, reg. 2

F337 Words in Sch. 19 Pt. 1 inserted (1.3.2017) by The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 19(a)**

F338 Words in Sch. 19 Pt. 1 inserted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 2(b)** (with reg. 2(4)(5))

F339 Sch. 19 Pt. 1 entry omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 182** (with art. 3)

F340 Words in Sch. 19 Pt. 1 omitted (31.3.2017) by virtue of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 2(a)** (with reg. 2(4)(5))

F341 Sch. 19 Pt. 1 entry inserted (1.4.2012) by Budget Responsibility and National Audit Act 2011 (c. 4), s. 26(2), **Sch. 5 para. 34**; S.I. 2011/2576, **art. 5**

F342 Sch. 19 Pt. 1 entry substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 114(1), **Sch. 18 para. 131(a)** (with Sch. 20); S.I. 2013/423, art. 3, **Sch.**

F343 Words in Sch. 19 Pt. 1 inserted (6.4.2021) by The Financial Reporting Council (Miscellaneous Provisions) Order 2021 (S.I. 2021/408), arts. 1, **2(2)**

F344 Words in Sch. 19 Pt. 1 inserted (6.4.2019) by The Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019 (S.I. 2019/383), reg. 1(1), **Sch. para. 9(b)**

F345 Sch. 19 Pt. 1 entry inserted (4.4.2011) by Budget Responsibility and National Audit Act 2011 (c. 4), s. 3(2), **Sch. 1 para. 28**; S.I. 2011/892, art. 3, **Sch. 2**

F346 Words in Sch. 19 Pt. 1 inserted (28.11.2016) by Finance Act 2016 (c. 24), s. 189, **Sch. 25 para. 15**; S.I. 2016/1133, reg. 2

F347 Sch. 19 Pt. 1 entry inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 4 para. 16**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F348 Words in Sch. 19 Pt. 1 inserted (1.6.2021) by Trade Act 2021 (c. 10), **Sch. 4 para. 40**; S.I. 2021/550, reg. 3(c)

F349 Words in Sch. 19 Pt. 1 omitted (6.4.2019) by virtue of The Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019 (S.I. 2019/383), reg. 1(1), **Sch. para. 9(a)**

F350 Words in Sch. 19 Pt. 1 omitted (1.3.2017) by virtue of The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 19(b)**

F351 Words in Sch. 19 Pt. 1 inserted (30.3.2018) by Higher Education and Research Act 2017 (c. 29), s. 124(5), **Sch. 9 para. 23**; S.I. 2018/241, reg. 3(d)

Local government

A county council, district council or parish council in England.

A parish meeting constituted under section 13 of the Local Government Act 1972.

Charter trustees constituted under section 246 of that Act for an area in England.

The Greater London Authority.

A London borough council.

The Common Council of the City of London in its capacity as a local authority or port health authority.

The Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in that person's capacity as a local authority.

[F352]…

[[F353]The London Fire Commissioner,**]**

Transport for London.

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[[F354]A Mayoral development corporation.**]**

The Council of the Isles of Scilly.

The Broads Authority established by section 1 of the Norfolk and Suffolk Broads Act 1988.

[F355]…

A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in England.

[[F356]A fire and rescue authority created by an order under section 4A of that Act.**]**

An internal drainage board which is continued in being by virtue of section 1 of the Land Drainage Act 1991 for an area in England.

A National Park authority established by an order under section 63 of the Environment Act 1995 for an area in England.

A Passenger Transport Executive for an integrated transport area in England (within the meaning of Part 2 of the Transport Act 1968).

A port health authority constituted by an order under section 2 of the Public Health (Control of Disease) Act 1984 for an area in England.

A waste disposal authority established by virtue of an order under section 10(1) of the Local Government Act 1985.

A joint authority established under Part 4 of that Act for an area in England (including, by virtue of section 77(9) of the Local Transport Act 2008, an Integrated Transport Authority established under Part 5 of that Act of 2008).

[[F357]A sub-national transport body established under section 102E of the Local Transport Act 2008.**]**

A body corporate established pursuant to an order under section 67 of the Local Government Act 1985.

A joint committee constituted in accordance with section 102(1)(b) of the Local Government Act 1972 for an area in England.

A joint board which is continued in being by virtue of section 263(1) of that Act for an area in England.

[F358]…

[[F359]A Local Commissioner in England as defined by section 23(3) of the Local Government Act 1974, in respect of—

(a) the Commissioner's functions under sections 29(6A) and 34G(6) of that Act, and section 210(5) of the Apprenticeships, Skills, Children and Learning Act 2009; and

(b) the Commissioner's public procurement functions (as defined in section 155(3) of this Act).

[F360]…**]**

[[F361]A combined authority established by an order made under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009.

An economic prosperity board established by an order made under section 88(1) of the Local Democracy, Economic Development and Construction Act 2009.

An urban development corporation established by an order made under section 135 of the Local Government, Planning and Land Act 1980.**]**

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Textual Amendments

F352 Sch. 19 Pt. 1 entry repealed (31.3.2012) by Localism Act 2011 (c. 20), s. 237, **Sch. 25 Pt. 32**; S.I. 2012/628, **art. 4(d)**

F353 Words in Sch. 19 Pt. 1 substituted (31.1.2017 for specified purposes, 1.4.2018 in so far as not already in force) by Policing and Crime Act 2017 (c. 3), s. 183(1)(5)(e), **Sch. 2 para. 116**; S.I. 2018/227, **reg. 4(c)**

F354 Sch. 19 Pt. 1 entry inserted (15.1.2012) by Localism Act 2011 (c. 20), ss. 222, 240(1)(l), **Sch. 22 para. 62**

F355 Sch. 19 Pt. 1 entry repealed (1.7.2012 at 00.02 a.m.) by Public Bodies Act 2011 (c. 24), s. 30(3), **Sch. 6** (with Sch. 6 Note 1); S.I. 2012/1662, **art. 2(2)(b)**

F356 Words in Sch. 19 Pt. 1 inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by Policing and Crime Act 2017 (c. 3), s. 183(1)(5)(e), **Sch. 1 para. 85**; S.I. 2017/399, reg. 2, Sch. para. 38

F357 Words in Sch. 19 Pt. 1 inserted (E.W.) (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 5 para. 31**

F358 Words in Sch. 19 Pt. 1 omitted (1.4.2015) by virtue of Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 114**; S.I. 2015/841, art. 3(x)

F359 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 5**

F360 Words in Sch. 19 Pt. 1 omitted (31.3.2017) by virtue of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 3(a)** (with reg. 2(4)(5))

F361 Words in Sch. 19 Pt. 1 inserted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 3(b)** (with reg. 2(4)(5))

Textual Amendments

F352 Sch. 19 Pt. 1 entry repealed (31.3.2012) by Localism Act 2011 (c. 20), s. 237, **Sch. 25 Pt. 32**; S.I. 2012/628, **art. 4(d)**

F353 Words in Sch. 19 Pt. 1 substituted (31.1.2017 for specified purposes, 1.4.2018 in so far as not already in force) by Policing and Crime Act 2017 (c. 3), s. 183(1)(5)(e), **Sch. 2 para. 116**; S.I. 2018/227, **reg. 4(c)**

F354 Sch. 19 Pt. 1 entry inserted (15.1.2012) by Localism Act 2011 (c. 20), ss. 222, 240(1)(l), **Sch. 22 para. 62**

F355 Sch. 19 Pt. 1 entry repealed (1.7.2012 at 00.02 a.m.) by Public Bodies Act 2011 (c. 24), s. 30(3), **Sch. 6** (with Sch. 6 Note 1); S.I. 2012/1662, **art. 2(2)(b)**

F356 Words in Sch. 19 Pt. 1 inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by Policing and Crime Act 2017 (c. 3), s. 183(1)(5)(e), **Sch. 1 para. 85**; S.I. 2017/399, reg. 2, Sch. para. 38

F357 Words in Sch. 19 Pt. 1 inserted (E.W.) (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 5 para. 31**

F358 Words in Sch. 19 Pt. 1 omitted (1.4.2015) by virtue of Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 114**; S.I. 2015/841, art. 3(x)

F359 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 5**

F360 Words in Sch. 19 Pt. 1 omitted (31.3.2017) by virtue of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 3(a)** (with reg. 2(4)(5))

F361 Words in Sch. 19 Pt. 1 inserted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 3(b)** (with reg. 2(4)(5))

Other educational bodies

The governing body of an educational establishment maintained by an English local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

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Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

The governing body of an institution in England within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992).

The governing body of an institution in England within the higher education sector (within the meaning of section 91(5) of that Act).

[F362]…

[[F363]A local authority with respect to the pupil referral units it establishes and maintains by virtue of section 19 **[**[F364]or 19A**]** of the Education Act 1996.**]**

[[F365]The National Citizen Service Trust.**]**

[[F366]The Office for Students.**]**

[[F367]The proprietor of a City Technology College, a City College for Technology of the Arts, or an Academy.**]**

Textual Amendments

F362 Words in Sch. 19 Pt. 1 omitted (1.4.2018) by virtue of Higher Education and Research Act 2017 (c. 29), s. 124(5), **Sch. 11 para. 32**; S.I. 2018/241, reg. 2(s)

F363 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 6**

F364 Words in Sch. 19 Pt. 1 inserted (W.) (30.4.2021) by Curriculum and Assessment (Wales) Act 2021 (2021 asc 4), s. 84(1), **Sch. 2 para. 65** (with savings and transitional provisions in S.I. 2022/111, regs. 1, **3**)

F365 Words in Sch. 19 Pt. 1 inserted (E.W.) (1.12.2018) by National Citizen Service Act 2017 (c. 15), s. 14(2), **Sch. 2 para. 4**; S.I. 2018/1239, reg. 2(h)

F366 Words in Sch. 19 Pt. 1 inserted (1.1.2018) by Higher Education and Research Act 2017 (c. 29), s. 124(5), **Sch. 1 para. 21**; S.I. 2017/788, reg. 2(b)

F367 Words in Sch. 19 Pt. 1 substituted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 4** (with reg. 2(4)(5))

Textual Amendments

F362 Words in Sch. 19 Pt. 1 omitted (1.4.2018) by virtue of Higher Education and Research Act 2017 (c. 29), s. 124(5), **Sch. 11 para. 32**; S.I. 2018/241, reg. 2(s)

F363 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 6**

F364 Words in Sch. 19 Pt. 1 inserted (W.) (30.4.2021) by Curriculum and Assessment (Wales) Act 2021 (2021 asc 4), s. 84(1), **Sch. 2 para. 65** (with savings and transitional provisions in S.I. 2022/111, regs. 1, **3**)

F365 Words in Sch. 19 Pt. 1 inserted (E.W.) (1.12.2018) by National Citizen Service Act 2017 (c. 15), s. 14(2), **Sch. 2 para. 4**; S.I. 2018/1239, reg. 2(h)

F366 Words in Sch. 19 Pt. 1 inserted (1.1.2018) by Higher Education and Research Act 2017 (c. 29), s. 124(5), **Sch. 1 para. 21**; S.I. 2017/788, reg. 2(b)

F367 Words in Sch. 19 Pt. 1 substituted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 4** (with reg. 2(4)(5))

[[F368]*Parliamentary and devolved bodies*

Textual Amendments

F368 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 7**

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The National Assembly for Wales Commission (Comisiwn Cynulliad Cenedlaethol Cymru).

The Parliamentary Commissioner for Administration, in respect of—

(a) the Commissioner's functions set out in section 3(1) and (1A) of the Parliamentary Commissioner Act 1967; and

(b) the Commissioner's public procurement functions (as defined in section 155(3) of this Act).

The Scottish Parliamentary Corporate Body.**]**

[F369 Police]

Textual Amendments

F369 Sch. 19 Pt. 1 entries and related heading substituted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 8**

[F370 The British Transport Police Force.

A chief constable of a police force maintained under section 2 of the Police Act 1996.

The Chief Inspector of the UK Border Agency.

The Civil Nuclear Police Authority.

[F371 The College of Policing.**]**

The Commissioner of Police for the City of London.

The Commissioner of Police of the Metropolis.

The Common Council of the City of London in its capacity as a police authority.

[F372 The Director General of the Independent Office for Police Conduct.**]**

[F372 The Independent Office for Police Conduct.**]**

F373 ...

[F374 A police and crime commissioner established under section 1 of the Police Reform and Social Responsibility Act 2011.

The Mayor's Office for Policing and Crime established under section 3 of that Act.

A Port Police Force established under an order made under section 14 of the Harbours Act 1964.

The Port Police Force established under Part 10 of the Port of London Act 1968.

A Port Police Force established under section 79 of the Harbours, Docks and Piers Clauses Act 1847.

F375 ...**]]**

Textual Amendments

F370 Sch. 19 Pt. 1 entries and related heading substituted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 8**

F371 Sch. 19 Pt. 1 entry inserted (13.5.2014) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), s. 185(1), **Sch. 11 para. 96** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/949, art. 3, Sch. para. 23(h)

F372 Sch. 19 Pt. 1 entries inserted (31.1.2017 for specified purposes; 8.1.2018 in so far as not already in force) by Policing and Crime Act 2017 (c. 3), s. 183(1)(5)(e), **Sch. 9 para. 72**; S.I. 2017/1249, reg. 2(2)(d)

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F373 Sch. 19 Pt. 1 entry omitted (31.1.2017 for specified purposes; 8.1.2018 in so far as not already in force) by virtue of Policing and Crime Act 2017 (c. 3), s. 183(1)(5)(e), **Sch. 9 para. 72**; S.I. 2017/1249, reg. 2(2)(d)

F374 Sch. 19 Pt. 1 entries substituted (16.1.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 98, **Sch. 16 para. 383**; S.I. 2011/3019, art. 3, {Sch. 1 para. (nnn)(iii)}

F375 Sch. 19 Pt. 1 entry omitted (7.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 183**; S.I. 2013/1682, art. 3(v)

Textual Amendments

F370 Sch. 19 Pt. 1 entries and related heading substituted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 8**

F371 Sch. 19 Pt. 1 entry inserted (13.5.2014) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), s. 185(1), **Sch. 11 para. 96** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/949, art. 3, Sch. para. 23(h)

F372 Sch. 19 Pt. 1 entries inserted (31.1.2017 for specified purposes; 8.1.2018 in so far as not already in force) by Policing and Crime Act 2017 (c. 3), s. 183(1)(5)(e), **Sch. 9 para. 72**; S.I. 2017/1249, reg. 2(2)(d)

F373 Sch. 19 Pt. 1 entry omitted (31.1.2017 for specified purposes; 8.1.2018 in so far as not already in force) by virtue of Policing and Crime Act 2017 (c. 3), s. 183(1)(5)(e), **Sch. 9 para. 72**; S.I. 2017/1249, reg. 2(2)(d)

F374 Sch. 19 Pt. 1 entries substituted (16.1.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 98, **Sch. 16 para. 383**; S.I. 2011/3019, art. 3, {Sch. 1 para. (nnn)(iii)}

F375 Sch. 19 Pt. 1 entry omitted (7.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 183**; S.I. 2013/1682, art. 3(v)

[F376 Regulators

Textual Amendments

F376 Sch. 19 Pt. 1 entries inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 2(1), **Sch. 1 para. 9**

F377 …

[F378 The Association of Chartered Certified Accountants, in respect of its public functions.**]**

F377 …

The Chartered Institute of Patent Attorneys, in respect of its public functions.

The Council for Licensed Conveyancers, in respect of its public functions.

[F379 The Disclosure and Barring Service.**]**

[F379 The Gambling Commission.**]**

[F379 The Gangmasters and Labour Abuse Authority.**]**

The General Chiropractic Council, in respect of its public functions.

The General Council of the Bar, in respect of its public functions.

The General Dental Council, in respect of its public functions.

The General Medical Council, in respect of its public functions.

[F379 The General Optical Council, in respect of its public functions.**]**

[F379 The General Osteopathic Council, in respect of its public functions.**]**

[F379 The General Pharmaceutical Council, in respect of its public functions.**]**

The Health and Safety Executive.

[F379 The Health and Care Professions Council, in respect of its public functions.**]**

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[[F380]The Office for Nuclear Regulation.**]**

[[F379]The Independent Monitor appointed under section 119B of the Police Act 1997.**]**

The Insolvency Practitioners Association, in respect of its public functions.

The Institute of Chartered Accountants in England and Wales, in respect of its public functions.

The Institute of Legal Executives, in respect of its public functions.

The Institute of Trade Mark Attorneys, in respect of its public functions.

The Law Society of England and Wales, in respect of its public functions.

The Nursing and Midwifery Council, in respect of its public functions.

The Office of the Immigration Services Commissioner.

[[F379]The Pensions Regulator.**]**

[[F381]The Regulator of Social Housing.**]**

[[F379]The Security Industry Authority.**]**

[[F382]Social Work England.**]]**

Textual Amendments

F377 Words in Sch. 19 Pt. 1 omitted (31.3.2017) by virtue of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 5(a)** (with reg. 2(4)(5))

F378 Words in Sch. 19 Pt. 1 substituted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 5(b)** (with reg. 2(4)(5))

F379 Words in Sch. 19 Pt. 1 inserted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 5(c)** (with reg. 2(4)(5))

F380 Sch. 19 Pt. 1 entry inserted (10.3.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 102**; S.I. 2014/251, art. 3(f)(vi)

F381 Words in Sch. 19 Pt. 1 inserted (1.10.2018) by The Legislative Reform (Regulator of Social Housing) (England) Order 2018 (S.I. 2018/1040), art. 1(2), **Sch. para. 42** (with Pt. 4)

F382 Words in Sch. 19 Pt. 1 inserted (E.) (23.7.2018) by The Social Workers Regulations 2018 (S.I. 2018/893), regs. 1(3), **40**

Textual Amendments

F377 Words in Sch. 19 Pt. 1 omitted (31.3.2017) by virtue of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 5(a)** (with reg. 2(4)(5))

F378 Words in Sch. 19 Pt. 1 substituted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 5(b)** (with reg. 2(4)(5))

F379 Words in Sch. 19 Pt. 1 inserted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 5(c)** (with reg. 2(4)(5))

F380 Sch. 19 Pt. 1 entry inserted (10.3.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 102**; S.I. 2014/251, art. 3(f)(vi)

F381 Words in Sch. 19 Pt. 1 inserted (1.10.2018) by The Legislative Reform (Regulator of Social Housing) (England) Order 2018 (S.I. 2018/1040), art. 1(2), **Sch. para. 42** (with Pt. 4)

F382 Words in Sch. 19 Pt. 1 inserted (E.) (23.7.2018) by The Social Workers Regulations 2018 (S.I. 2018/893), regs. 1(3), **40**

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[F383 Transport

Textual Amendments

F383 Words in Sch. 19 Pt. 1 inserted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 6** (with reg. 2(4)(5))

High Speed Two (HS2) Limited.

Highways England Company Limited.

Network Rail Limited.**]**

PART 2

PUBLIC AUTHORITIES: RELEVANT WELSH AUTHORITIES

Welsh Assembly Government, etc.

The Welsh Ministers.

The First Minister for Wales.

The Counsel General to the Welsh Assembly Government.

A subsidiary of the Welsh Ministers (within the meaning given by section 134(4) of the Government of Wales Act 2006).

National Health Service

A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

An NHS trust established under section 18 of that Act.

F384 . . . . . .

A Community Health Council in Wales.

[F385 The Board of Community Health Councils in Wales or Bwrdd Cynghorau Iechyd Cymuned Cymru.**]**

Textual Amendments

F384 Sch. 19 Pt. 2 entry omitted (4.4.2011) by virtue of The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(c)

F385 Sch. 19 Pt. 2 entry inserted (4.4.2011) by The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(a)

Textual Amendments

F384 Sch. 19 Pt. 2 entry omitted (4.4.2011) by virtue of The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(c)

F385 Sch. 19 Pt. 2 entry inserted (4.4.2011) by The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(a)

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Local government

[[F386]A corporate joint committee established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021.**]**

[[F387]A county council or county borough council in Wales.**]**

F388 . . . . . .

A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in Wales.

F388 . . . . . .

A National Park authority established by an order under section 63 of the Environment Act 1995 for an area in Wales.

F388 . . . . . .

F388 . . . . . .

F388 . . . . . .

F388 . . . . . .

F389 . . . . . .

Textual Amendments

F386 Words in Sch. 19 Pt. 2 inserted (E.W.) (1.4.2021) by The Equality Act 2010 (Public Authorities subject to the Public Sector Equality Duty) (Wales) Order 2021 (S.I. 2021/347), arts. 1, **2**

F387 Sch. 19 Pt. 2 entry substituted (4.4.2011) by The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(b)

F388 Sch. 19 Pt. 2 entries omitted (4.4.2011) by virtue of The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(c)

F389 Words in Sch. 19 Pt. 2 omitted (E.W.) (21.1.2021) by virtue of Local Government and Elections (Wales) Act 2021 (asc 1), s. 175(1)(e), **Sch. 9 para. 43**

Textual Amendments

F386 Words in Sch. 19 Pt. 2 inserted (E.W.) (1.4.2021) by The Equality Act 2010 (Public Authorities subject to the Public Sector Equality Duty) (Wales) Order 2021 (S.I. 2021/347), arts. 1, **2**

F387 Sch. 19 Pt. 2 entry substituted (4.4.2011) by The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(b)

F388 Sch. 19 Pt. 2 entries omitted (4.4.2011) by virtue of The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(c)

F389 Words in Sch. 19 Pt. 2 omitted (E.W.) (21.1.2021) by virtue of Local Government and Elections (Wales) Act 2021 (asc 1), s. 175(1)(e), **Sch. 9 para. 43**

Other educational bodies

The governing body of an educational establishment maintained by a Welsh local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

The governing body of an institution in Wales within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992).

The governing body of an institution in Wales within the higher education sector (within the meaning of section 91(5) of that Act).

[[F390]The Higher Education Funding Council for Wales or Cyngor Cyllido Addysg Uwch Cymru.

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The General Teaching Council for Wales or Cyngor Addysgu Cyffredinol Cymru.

Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.**]**

[[F391]Qualifications Wales.**]**

Textual Amendments

F390 Sch. 19 Pt. 2 entries inserted (4.4.2011) by The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(d)

F391 Words in Sch. 19 Pt. 2 inserted (E.W.) (21.9.2015) by Qualifications Wales Act 2015 (anaw 5), s. 60(2), **Sch. 1 para. 40**; S.I. 2015/1687, art. 2 (with arts. 3-12)

Textual Amendments

F390 Sch. 19 Pt. 2 entries inserted (4.4.2011) by The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(d)

F391 Words in Sch. 19 Pt. 2 inserted (E.W.) (21.9.2015) by Qualifications Wales Act 2015 (anaw 5), s. 60(2), **Sch. 1 para. 40**; S.I. 2015/1687, art. 2 (with arts. 3-12)

[[F392]*Other public authorities*

Textual Amendments

F392 Sch. 19 Pt. 2 entries inserted (4.4.2011) by The Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011 (S.I. 2011/1063), **arts. 1(2)**, 2(d)

[[F393]The Welsh Revenue Authority or Awdurdod Cyllid Cymru.**]**

The Auditor General for Wales or Archwilydd Cyffredinol Cymru.

The Public Services Ombudsman for Wales or Ombwdsmon Gwasanaethau Cyhoeddus Cymru.

[[F394]Social Care Wales or Gofal Cymdeithasol Cymru.**]**

The Arts Council for Wales or Cyngor Celfyddydau Cymru.

The National Museum of Wales or Amgueddfa Genedlaethol Cymru.

The National Library of Wales or Llyfrgell Genedlaethol Cymru.

The Sports Council for Wales or Cyngor Chwaraeon Cymru.

[[F395]Comisiynydd y Gymraeg (The Welsh Language Commissioner).**]**

[F396] . . . . . .

The Commissioner for Older People in Wales or Comisiynydd Pobl Hŷn Cymru.

The Children's Commissioner for Wales or Comisiynydd Plant Cymru.

[[F397]The Wales Audit Office or Swyddfa Archwilio Cymru.**]]**

Textual Amendments

F393 Words in Sch. 19 Pt. 2 inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **3**

F394 Sch. 19 Pt. 2 entry substituted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 8** (with reg. 2(4)(5), Sch. 3 para. 9)

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F395 Sch. 19 Pt. 2 entry substituted (1.4.2012) by The Welsh Language (Wales) Measure 2011 (Transfer of functions, Transitional and Consequential Provisions) Order 2012 (S.I. 2012/990), **art. 11**

F396 Words in Sch. 19 Pt. 2 omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), arts. 1(2), 4(1), **Sch. 2 para. 450(2)** (with Sch. 7)

F397 Sch. 19 Pt. 2 entry inserted (E.W.) (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 92** (with Sch. 3 para. 3); S.I. 2013/1466, art. 3(1)

Textual Amendments

F393 Words in Sch. 19 Pt. 2 inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **3**

F394 Sch. 19 Pt. 2 entry substituted (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), reg. 1(1), **Sch. 3 para. 8** (with reg. 2(4)(5), Sch. 3 para. 9)

F395 Sch. 19 Pt. 2 entry substituted (1.4.2012) by The Welsh Language (Wales) Measure 2011 (Transfer of functions, Transitional and Consequential Provisions) Order 2012 (S.I. 2012/990), **art. 11**

F396 Words in Sch. 19 Pt. 2 omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), arts. 1(2), 4(1), **Sch. 2 para. 450(2)** (with Sch. 7)

F397 Sch. 19 Pt. 2 entry inserted (E.W.) (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 92** (with Sch. 3 para. 3); S.I. 2013/1466, art. 3(1)

PART 3

PUBLIC AUTHORITIES: RELEVANT SCOTTISH AUTHORITIES

Scottish Administration

An office-holder in the Scottish Administration (within the meaning given by section 126(7)(a) of the Scotland Act 1998).

National Health Service

A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.

A Special Health Board constituted under that section.

Local government

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

A community council established under section 51 of the Local Government (Scotland) Act 1973.

A joint board within the meaning of section 235(1) of that Act.

F398

. . . . . .

A licensing board established under section 5 of the Licensing (Scotland) Act 2005, or continued in being by virtue of that section.

A National Park authority established by a designation order made under section 6 of the National Parks (Scotland) Act 2000.

Scottish Enterprise and Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F398 Words in Sch. 19 Pt. 3 omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(4)(a)**

Textual Amendments

F398 Words in Sch. 19 Pt. 3 omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(4)(a)**

Other educational bodies

An education authority in Scotland (within the meaning of section 135(1) of the Education (Scotland) Act 1980).

The managers of a grant-aided school (within the meaning of that section).

The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992).

In the case of such a college of further education not under the management of a board of management, the board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.

The governing body of an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992).

[F399 Police and Fire]

Textual Amendments

F399 Sch. 19 Pt. 3 heading substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(4)(b)**

[F400 The Scottish Police Authority.**]**

[F401 The chief constable of the Police Service of Scotland.

The Scottish Fire and Rescue Service.

The Chief Officer of the Scottish Fire and Rescue Service.**]**

Textual Amendments

F400 Words in Sch. 19 Pt. 3 substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(4)(c)**

F401 Words in Sch. 19 Pt. 3 inserted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(4)(d)**

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Textual Amendments

F400 Words in Sch. 19 Pt. 3 substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(4)(c)**

F401 Words in Sch. 19 Pt. 3 inserted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(4)(d)**

[F402 Other bodies and offices added on 6th April 2011

Textual Amendments

F402 Sch. 19 Pt. 3 entries inserted (6.4.2011) by The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2011 (S.S.I. 2011/233), **art. 2**

Accounts Commission for Scotland.
Audit Scotland.
Board of Trustees of the National Galleries of Scotland.
Board of Trustees of the National Museums of Scotland.
Board of Trustees of the Royal Botanic Garden, Edinburgh.
Bòrd na Gàidhlig.
F403 . . . . . .
A chief officer of a community justice authority.
F403 . . . . . .
Commissioner for Children and Young People in Scotland.
Commission for Ethical Standards in Public Life in Scotland.
The Common Services Agency for the Scottish Health Service.
A community justice authority.
Creative Scotland.
The Crofters Commission.
The General Teaching Council for Scotland.
Healthcare Improvement Scotland
Learning and Teaching Scotland.
The Mental Welfare Commission for Scotland.
The Police Complaints Commissioner for Scotland.
Quality Meat Scotland.
A regional Transport Partnership created by an order under section 1(1) of the Transport (Scotland) Act 2005.
Risk Management Authority.
Royal Commission on the Ancient and Historical Monuments of Scotland.
Scottish Children's Reporter Administration.
Scottish Commission for Human Rights.
The Scottish Criminal Cases Review Commission.
Scottish Environment Protection Agency.
Scottish Further and Higher Education Funding Council.

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Scottish Futures Trust Ltd.
Scottish Information Commissioner.
The Scottish Legal Aid Board.
The Scottish Legal Complaints Commission.
Scottish Natural Heritage.
F403 . . . . . .
Scottish Public Services Ombudsman.
Scottish Qualifications Authority.
The Scottish Road Works Commissioner.
The Scottish Social Services Council.
The Scottish Sports Council.
Scottish Water.
Skills Development Scotland.
Social Care and Social Work Improvement Scotland.
The Standards Commission for Scotland.
[F404The National Library of Scotland**]**.
VisitScotland.
A Water Customer Consultation Panel.
The Water Industry Commission for Scotland.**]**

Textual Amendments

F403 Words in Sch. 19 Pt. 3 omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(4)(e)**

F404 Words in Sch. 19 Pt. 3 substituted (28.6.2013) by The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2013 (S.S.I. 2013/170), arts. 1, **2**

Textual Amendments

F403 Words in Sch. 19 Pt. 3 omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), arts. 1(2), 26, **Sch. 2 para. 63(4)(e)**

F404 Words in Sch. 19 Pt. 3 substituted (28.6.2013) by The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2013 (S.S.I. 2013/170), arts. 1, **2**

*[*F405*Other bodies and offices added on 5th March 2012*

Textual Amendments

F405 Sch. 19 Pt. 3 entries inserted (5.3.2012) by The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2012 (S.S.I. 2012/55), **art. 2**

Children's Hearings Scotland.
The National Convener of Children's Hearings Scotland.**]**

Status: *This version of this Act contains provisions that are prospective.*
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[F406 Other bodies added on 1st April 2015

Textual Amendments

F406 Words in Sch. 19 Pt. 3 inserted (1.4.2015) by The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2015 (S.S.I. 2015/83), arts. 1, **2**

Historic Environment Scotland.

An integration joint board established by order under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014.

A regional board (within the meaning of section 35(1) of the Further and Higher Education (Scotland) Act 2005).**]**

[F407 Other body added on 28th June 2018

Textual Amendments

F407 Words in Sch. 19 Pt. 3 inserted (28.6.2018) by The ILF Scotland (Miscellaneous Listings) Order 2018 (S.S.I. 2018/214), arts. 1, **4(2)**

ILF Scotland.**]**

[F408 Other body added on 26th November 2020

Textual Amendments

F408 Words in Sch. 19 Pt. 3 inserted (26.11.2020) by The Scottish National Investment Bank p.l.c. (Miscellaneous Listings) Order 2020 (S.S.I. 2020/401), arts. 1, **2(2)**

The Scottish National Investment Bank p.l.c.**]**

[F409 Other office added on 1st December 2020

Textual Amendments

F409 Words in Sch. 19 Pt. 3 inserted (1.12.2020) by The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2020 (S.S.I. 2020/313), arts. 1, **2**

Scottish Biometrics Commissioner.**]**

[F410 Other body added on 23rd December 2021

Textual Amendments

F410 Words in Sch. 19 Pt. 3 inserted (23.12.2021) by The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2021 (S.S.I. 2021/471), arts. 1, **2**

South of Scotland Enterprise.**]**

Status: *This version of this Act contains provisions that are prospective.*
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[F411PART 4

PUBLIC AUTHORITIES: CROSS-BORDER AUTHORITIES

Textual Amendments

F411 Sch. 19 Pt. 4 inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), art. 2(3), **Sch. 2**

Cross-border Welsh authorities

The Environment Agency – D
[F412The Natural Resources Body for Wales – A]
NHS Blood and Transplant – D
The NHS Business Services Authority – D
The Student Loans Company Limited – D]

Textual Amendments

F412 Words in Sch. 19 Pt. 4 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), arts. 1(2), 4(1), **Sch. 2 para. 450(3)** (with Sch. 7)

Textual Amendments

F412 Words in Sch. 19 Pt. 4 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), arts. 1(2), 4(1), **Sch. 2 para. 450(3)** (with Sch. 7)

F413F413SCHEDULE 20

Textual Amendments

F413 Sch. 20 repealed (31.12.2010) by Equality Act 2010 (c. 15), **ss. 186(2)**, 216 (with ss. 6(4), 205)

F413 . . . . . .

SCHEDULE 21

Section 189

REASONABLE ADJUSTMENTS: SUPPLEMENTARY

Preliminary

1 This Schedule applies for the purposes of Schedules 2, 4, 8, 13 and 15.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Binding obligations, etc.

2 (1) This paragraph applies if—
- (a) a binding obligation requires A to obtain the consent of another person to an alteration of premises which A occupies,
- (b) where A is a controller of let premises, a binding obligation requires A to obtain the consent of another person to a variation of a term of the tenancy, or
- (c) where A is a responsible person in relation to common parts, a binding obligation requires A to obtain the consent of another person to an alteration of the common parts.

(2) For the purpose of discharging a duty to make reasonable adjustments—
- (a) it is always reasonable for A to have to take steps to obtain the consent, but
- (b) it is never reasonable for A to have to make the alteration before the consent is obtained.

(3) In this Schedule, a binding obligation is a legally binding obligation in relation to premises, however arising; but the reference to a binding obligation in sub-paragraph (1)(a) or (c) does not include a reference to an obligation imposed by a tenancy.

(4) The steps referred to in sub-paragraph (2)(a) do not include applying to a court or tribunal.

Landlord's consent

3 (1) This paragraph applies if—
- (a) A occupies premises under a tenancy,
- (b) A is proposing to make an alteration to the premises so as to comply with a duty to make reasonable adjustments, and
- (c) but for this paragraph, A would not be entitled to make the alteration.

(2) This paragraph also applies if—
- (a) A is a responsible person in relation to common parts,
- (b) A is proposing to make an alteration to the common parts so as to comply with a duty to make reasonable adjustments,
- (c) A is the tenant of property which includes the common parts, and
- (d) but for this paragraph, A would not be entitled to make the alteration.

(3) The tenancy has effect as if it provided—
- (a) for A to be entitled to make the alteration with the written consent of the landlord,
- (b) for A to have to make a written application for that consent,
- (c) for the landlord not to withhold the consent unreasonably, and
- (d) for the landlord to be able to give the consent subject to reasonable conditions.

(4) If a question arises as to whether A has made the alteration (and, accordingly, complied with a duty to make reasonable adjustments), any constraint attributable to the tenancy must be ignored unless A has applied to the landlord in writing for consent to the alteration.

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(5) For the purposes of sub-paragraph (1) or (2), A must be treated as not entitled to make the alteration if the tenancy—
  (a) imposes conditions which are to apply if A makes an alteration, or
  (b) entitles the landlord to attach conditions to a consent to the alteration.

Proceedings before county court or sheriff

4 (1) This paragraph applies if, in a case within Part 3, 4, 6 or 7 of this Act—
  (a) A has applied in writing to the landlord for consent to the alteration, and
  (b) the landlord has refused to give consent or has given consent subject to a condition.

(2) A (or a disabled person with an interest in the alteration being made) may refer the matter to **[**[F414]the county court**]** or, in Scotland, the sheriff.

(3) The county court or sheriff must determine whether the refusal or condition is unreasonable.

(4) If the county court or sheriff finds that the refusal or condition is unreasonable, the county court or sheriff—
  (a) may make such declaration as it thinks appropriate;
  (b) may make an order authorising A to make the alteration specified in the order (and requiring A to comply with such conditions as are so specified).

Textual Amendments

F414 Words in Sch. 21 para. 4(2) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Joining landlord as party to proceedings

5 (1) This paragraph applies to proceedings relating to a contravention of this Act by virtue of section 20.

(2) A party to the proceedings may request the employment tribunal, county court or sheriff ("the judicial authority") to direct that the landlord is joined or sisted as a party to the proceedings.

(3) The judicial authority—
  (a) must grant the request if it is made before the hearing of the complaint or claim begins;
  (b) may refuse the request if it is made after the hearing begins;
  (c) must refuse the request if it is made after the complaint or claim has been determined.

(4) If the landlord is joined or sisted as a party to the proceedings, the judicial authority may determine whether—
  (a) the landlord has refused to consent to the alteration;
  (b) the landlord has consented subject to a condition;
  (c) the refusal or condition was unreasonable.

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(5) If the judicial authority finds that the refusal or condition was unreasonable, it—
- (a) may make such declaration as it thinks appropriate;
- (b) may make an order authorising A to make the alteration specified in the order (and requiring A to comply with such conditions as are so specified);
- (c) may order the landlord to pay compensation to the complainant or claimant.

(6) An employment tribunal may act in reliance on sub-paragraph (5)(c) instead of, or in addition to, acting in reliance on section 124(2); but if it orders the landlord to pay compensation it must not do so in reliance on section 124(2).

(7) If **[**[F415]the county court**]** or the sheriff orders the landlord to pay compensation, it may not order A to do so.

Textual Amendments

F415 Words in Sch. 21 para. 5(7) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Regulations

6 (1) Regulations may make provision as to circumstances in which a landlord is taken for the purposes of this Schedule to have—
- (a) withheld consent;
- (b) withheld consent reasonably;
- (c) withheld consent unreasonably.

(2) Regulations may make provision as to circumstances in which a condition subject to which a landlord gives consent is taken—
- (a) to be reasonable;
- (b) to be unreasonable.

(3) Regulations may make provision supplementing or modifying the preceding paragraphs of this Schedule, or provision made under this paragraph, in relation to a case where A's tenancy is a sub-tenancy.

(4) Provision made by virtue of this paragraph may amend the preceding paragraphs of this Schedule.

Commencement Information

I150 Sch. 21 para. 6 wholly in force; para. 6 not in force at Royal Assent see s. 216; para. 6 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, **art. 2**, Sch.; Sch. 21 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, **art. 2(1)(13)(c)** (with art. 15)

Interpretation

7 An expression used in this Schedule and in Schedule 2, 4, 8, 13 or 15 has the same meaning in this Schedule as in that Schedule.

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SCHEDULE 22

Section 191

STATUTORY PROVISIONS

Statutory authority

1 (1) A person (P) does not contravene a provision specified in the first column of the table, so far as relating to the protected characteristic specified in the second column in respect of that provision, if P does anything P must do pursuant to a requirement specified in the third column.

Specified provision	***Protected characteristic***	***Requirement***
Parts 3 to 7	Age	A requirement of an enactment
Parts 3 to 7 and 12	Disability	A requirement of an enactment
		A relevant requirement or condition imposed by virtue of an enactment
Parts 3 to 7	Religion or belief	A requirement of an enactment
		A relevant requirement or condition imposed by virtue of an enactment
Section 29(6) and Parts 6 and 7	Sex	A requirement of an enactment
Parts 3, 4, 6 and 7	Sexual orientation	A requirement of an enactment
		A relevant requirement or condition imposed by virtue of an enactment

(2) A reference in the table to Part 6 does not include a reference to that Part so far as relating to vocational training.

(3) In this paragraph a reference to an enactment includes a reference to—
- (a) a Measure of the General Synod of the Church of England;
- (b) an enactment passed or made on or after the date on which this Act is passed.

(4) In the table, a relevant requirement or condition is a requirement or condition imposed (whether before or after the passing of this Act) by—
- (a) a Minister of the Crown;
- (b) a member of the Scottish Executive;
- (c) the National Assembly for Wales (constituted by the Government of Wales Act 1998);
- (d) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

Commencement Information

I151 Sch. 22 para. 1 wholly in force at 1.10.2012; Sch. 22 not in force at Royal Assent see s. 216; Sch. 22 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(14)(d)** (with art. 15); Sch. 22 in force for remaining purposes at 1.10.2012 by S.I. 2012/1569, art. 3(f)

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Protection of women

2 (1) A person (P) does not contravene a specified provision only by doing in relation to a woman (W) anything P is required to do to comply with—
- (a) a pre-1975 Act enactment concerning the protection of women;
- (b) a relevant statutory provision (within the meaning of Part 1 of the Health and Safety at Work etc. Act 1974) if it is done for the purpose of the protection of W (or a description of women which includes W);
- (c) a requirement of a provision specified in Schedule 1 to the Employment Act 1989 (provisions concerned with protection of women at work).

(2) The references to the protection of women are references to protecting women in relation to—
- (a) pregnancy or maternity, or
- (b) any other circumstances giving rise to risks specifically affecting women.

(3) It does not matter whether the protection is restricted to women.

(4) These are the specified provisions—
- (a) Part 5 (work);
- (b) Part 6 (education), so far as relating to vocational training.

(5) A pre-1975 Act enactment is an enactment contained in—
- (a) an Act passed before the Sex Discrimination Act 1975;
- (b) an instrument approved or made by or under such an Act (including one approved or made after the passing of the 1975 Act).

(6) If an Act repeals and re-enacts (with or without modification) a pre-1975 enactment then the provision re-enacted must be treated as being in a pre-1975 enactment.

(7) For the purposes of sub-paragraph (1)(c), a reference to a provision in Schedule 1 to the Employment Act 1989 includes a reference to a provision for the time being having effect in place of it.

(8) This paragraph applies only to the following protected characteristics—
- (a) pregnancy and maternity;
- (b) sex.

Commencement Information

I152 Sch. 22 para. 2 wholly in force at 1.10.2012; Sch. 22 not in force at Royal Assent see s. 216; Sch. 22 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(14)(d)** (with art. 15); Sch. 22 in force for remaining purposes at 1.10.2012 by S.I. 2012/1569, art. 3(f)

Educational appointments, etc: religious belief

3 (1) A person does not contravene Part 5 (work) only by doing a relevant act in connection with the employment of another in a relevant position.

(2) A relevant position is—
- (a) the head teacher or principal of an educational establishment;
- (b) the head, a fellow or other member of the academic staff of a college, or institution in the nature of a college, in a university;

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(c) a professorship of a university which is a canon professorship or one to which a canonry is annexed.

(3) A relevant act is anything it is necessary to do to comply with—

(a) a requirement of an instrument relating to the establishment that the head teacher or principal must be a member of a particular religious order;

(b) a requirement of an instrument relating to the college or institution that the holder of the position must be a woman;

(c) an Act or instrument in accordance with which the professorship is a canon professorship or one to which a canonry is annexed.

(4) Sub-paragraph (3)(b) does not apply to an instrument taking effect on or after 16 January 1990 (the day on which section 5(3) of the Employment Act 1989 came into force).

(5) A Minister of the Crown may by order provide that anything in sub-paragraphs (1) to (3) does not have effect in relation to—

(a) a specified educational establishment or university;

(b) a specified description of educational establishments.

(6) An educational establishment is—

(a) a school within the meaning of the Education Act 1996 or the Education (Scotland) Act 1980;

(b) a college, or institution in the nature of a college, in a university;

(c) an institution designated by order made, or having effect as if made, under section 129 of the Education Reform Act 1988;

[[F416](ca) a registered higher education provider of a description prescribed by regulations made for the purposes of section 39(1) of the Higher Education and Research Act 2017;**]**

(d) a college of further education within the meaning of section 36 of the Further and Higher Education (Scotland) Act 1992;

(e) a university in Scotland;

(f) an institution designated by order under section 28 of the Further and Higher Education Act 1992 or section 44 of the Further and Higher Education (Scotland) Act 1992.

(7) This paragraph does not affect paragraph 2 of Schedule 9.

Textual Amendments

F416 Sch. 22 para. 3(6)(ca) inserted (1.8.2019) by The Higher Education and Research Act 2017 (Further Implementation etc.) Regulations 2019 (S.I. 2019/1027), regs. 1, **12**

Commencement Information

I153 Sch. 22 para. 3 wholly in force at 1.10.2012; Sch. 22 not in force at Royal Assent see s. 216; Sch. 22 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(14)(d)** (with art. 15); Sch. 22 in force for remaining purposes at 1.10.2012 by S.I. 2012/1569, art. 3(f)

4 A person does not contravene this Act only by doing anything which is permitted for the purposes of—

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(a) section 58(6) or (7) of the School Standards and Framework Act 1998 (dismissal of teachers because of failure to give religious education efficiently);

(b) section 60(4) and (5) of that Act (religious considerations relating to certain appointments);

(c) section 124A of that Act (preference for certain teachers at independent schools of a religious character).

[[F417](d) section 124AA(5) to (7) of that Act (religious considerations relating to certain teachers at Academies with religious character).**]**

Textual Amendments

F417 Sch. 22 para. 4(d) inserted (1.2.2012) by Education Act 2011 (c. 21), **s. 62(4)(c)**; S.I. 2012/84, **art. 3**

Commencement Information

I154 Sch. 22 para. 4 wholly in force at 1.10.2012; Sch. 22 not in force at Royal Assent see s. 216; Sch. 22 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(14)(d)** (with art. 15); Sch. 22 in force for remaining purposes at 1.10.2012 by S.I. 2012/1569, art. 3(f)

Crown employment, etc.

5 (1) A person does not contravene this Act—

(a) by making or continuing in force rules mentioned in sub-paragraph (2);

(b) by publishing, displaying or implementing such rules;

(c) by publishing the gist of such rules.

(2) The rules are rules restricting to persons of particular birth, nationality, descent or residence—

(a) employment in the service of the Crown;

(b) employment by a prescribed public body;

(c) holding a public office (within the meaning of section 50).

(3) The power to make regulations for the purpose of sub-paragraph (2)(b) is exercisable by the Minister for the Civil Service.

(4) In this paragraph "public body" means a body (whether corporate or unincorporated) exercising public functions (within the meaning given by section 31(4)).

Commencement Information

I155 Sch. 22 para. 5 wholly in force at 1.10.2012; Sch. 22 not in force at Royal Assent see s. 216; Sch. 22 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(14)(d)** (with art. 15); Sch. 22 in force for remaining purposes at 1.10.2012 by S.I. 2012/1569, art. 3(f)

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SCHEDULE 23

Section 196

GENERAL EXCEPTIONS

Acts authorised by statute or the executive

1 (1) This paragraph applies to anything done—

(a) in pursuance of an enactment;

(b) in pursuance of an instrument made by a member of the executive under an enactment;

(c) to comply with a requirement imposed (whether before or after the passing of this Act) by a member of the executive by virtue of an enactment;

(d) in pursuance of arrangements made (whether before or after the passing of this Act) by or with the approval of, or for the time being approved by, a Minister of the Crown;

(e) to comply with a condition imposed (whether before or after the passing of this Act) by a Minister of the Crown.

(2) A person does not contravene Part 3, 4, 5 or 6 by doing anything to which this paragraph applies which discriminates against another because of the other's nationality.

(3) A person (A) does not contravene Part 3, 4, 5 or 6 if, by doing anything to which this paragraph applies, A discriminates against another (B) by applying to B a provision, criterion or practice which relates to—

(a) B's place of ordinary residence;

(b) the length of time B has been present or resident in or outside the United Kingdom or an area within it.

Commencement Information

I156 Sch. 23 para. 1 wholly in force at 1.10.2012; Sch. 23 not in force at Royal Assent see s. 216; Sch. 23 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(14)(e)** (with art. 15); Sch. 23 in force for remaining purposes at 1.10.2012 by S.I. 2012/1569, art. 3(g)

Organisations relating to religion or belief

2 (1) This paragraph applies to an organisation the purpose of which is—

(a) to practise a religion or belief,

(b) to advance a religion or belief,

(c) to teach the practice or principles of a religion or belief,

(d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or

(e) to foster or maintain good relations between persons of different religions or beliefs.

(2) This paragraph does not apply to an organisation whose sole or main purpose is commercial.

(3) The organisation does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—

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(a) membership of the organisation;
(b) participation in activities undertaken by the organisation or on its behalf or under its auspices;
(c) the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices;
(d) the use or disposal of premises owned or controlled by the organisation.

(4) A person does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by doing anything mentioned in sub-paragraph (3) on behalf of or under the auspices of the organisation.

(5) A minister does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—
(a) participation in activities carried on in the performance of the minister's functions in connection with or in respect of the organisation;
(b) the provision of goods, facilities or services in the course of activities carried on in the performance of the minister's functions in connection with or in respect of the organisation.

(6) Sub-paragraphs (3) to (5) permit a restriction relating to religion or belief only if it is imposed—
(a) because of the purpose of the organisation, or
(b) to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.

(7) Sub-paragraphs (3) to (5) permit a restriction relating to sexual orientation only if it is imposed—
(a) because it is necessary to comply with the doctrine of the organisation, or
(b) to avoid conflict with strongly held convictions within sub-paragraph (9).

(8) In sub-paragraph (5), the reference to a minister is a reference to a minister of religion, or other person, who—
(a) performs functions in connection with a religion or belief to which the organisation relates, and
(b) holds an office or appointment in, or is accredited, approved or recognised for the purposes of the organisation.

(9) The strongly held convictions are—
(a) in the case of a religion, the strongly held religious convictions of a significant number of the religion's followers;
(b) in the case of a belief, the strongly held convictions relating to the belief of a significant number of the belief's followers.

[F418(9A) An organisation does not contravene Part 3, 4 or 7 only by refusing to allow premises owned or controlled by the organisation to be used—
(a) to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex;
[F419(aa) [to solemnise a relevant Scottish marriage for the reason that the marriage is a marriage of two persons of the opposite sex who are in a civil partnership with each other;]

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(b) to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex **[**[F420]or that it is between two persons of the opposite sex**]**.

(9B) A person (or a group of persons) does not contravene Part 3, 4 or 7 only by refusing to allow premises owned or controlled by the person (or the group) on behalf of an organisation to be used—

(a) to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex;

[[F421](aa) to solemnise a relevant Scottish marriage for the reason that the marriage is a marriage of two persons of the opposite sex who are in a civil partnership with each other;**]**

(b) to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex **[**[F422]or that it is between two persons of the opposite sex**]**.

(9C) An organisation does not contravene section 29 only by allowing an approved celebrant of the organisation to act as set out in sub-paragraph (1)**[**[F423], (1A)**]** or (2) of paragraph 25B of Schedule 3.

(9D) In sub-paragraphs (9A) to (9C), "approved celebrant", "relevant Scottish marriage" and "relevant Scottish civil partnership" have the same meaning as in paragraph 25B of Schedule 3.**]**

(10) This paragraph does not permit anything which is prohibited by section 29, so far as relating to sexual orientation, if it is done—

(a) on behalf of a public authority, and

(b) under the terms of a contract between the organisation and the public authority.

(11) In the application of this paragraph in relation to sexual orientation, sub-paragraph (1)(e) must be ignored.

(12) In the application of this paragraph in relation to sexual orientation, in sub-paragraph (3)(d), "disposal" does not include disposal of an interest in premises by way of sale if the interest being disposed of is—

(a) the entirety of the organisation's interest in the premises, or

(b) the entirety of the interest in respect of which the organisation has power of disposal.

(13) In this paragraph—

(a) "disposal" is to be construed in accordance with section 38;

(b) "public authority" has the meaning given in section 150(1).

Textual Amendments

F418 Sch. 23 para. 2(9A)-(9D) inserted (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 5 para. 19(6)**

F419 Sch. 23 para. 2(9A)(aa) inserted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(5)(a)(i)**

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F420 Words in Sch. 23 para. 2(9A)(b) inserted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(5)(a)(ii)**

F421 Sch. 23 para. 2(9B)(aa) inserted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(5)(b)(i)**

F422 Words in Sch. 23 para. 2(9B)(b) inserted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(5)(b)(ii)**

F423 Word in Sch. 23 para. 2(9C) inserted (27.1.2022) by The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 3(5)(c)**

Commencement Information

I157 Sch. 23 para. 2 wholly in force at 1.10.2012; Sch. 23 not in force at Royal Assent see s. 216; Sch. 23 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(14)(e)** (with art. 15); Sch. 23 in force for remaining purposes at 1.10.2012 by S.I. 2012/1569, art. 3(g)

Communal accommodation

3 (1) A person does not contravene this Act, so far as relating to sex discrimination or gender reassignment discrimination, only because of anything done in relation to—
  (a) the admission of persons to communal accommodation;
  (b) the provision of a benefit, facility or service linked to the accommodation.

(2) Sub-paragraph (1)(a) does not apply unless the accommodation is managed in a way which is as fair as possible to both men and women.

(3) In applying sub-paragraph (1)(a), account must be taken of—
  (a) whether and how far it is reasonable to expect that the accommodation should be altered or extended or that further accommodation should be provided, and
  (b) the frequency of the demand or need for use of the accommodation by persons of one sex as compared with those of the other.

(4) In applying sub-paragraph (1)(a) in relation to gender reassignment, account must also be taken of whether and how far the conduct in question is a proportionate means of achieving a legitimate aim.

(5) Communal accommodation is residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy should be used only by persons of the same sex.

(6) Communal accommodation may include—
  (a) shared sleeping accommodation for men and for women;
  (b) ordinary sleeping accommodation;
  (c) residential accommodation all or part of which should be used only by persons of the same sex because of the nature of the sanitary facilities serving the accommodation.

(7) A benefit, facility or service is linked to communal accommodation if—
  (a) it cannot properly and effectively be provided except for those using the accommodation, and

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(b) a person could be refused use of the accommodation in reliance on sub-paragraph (1)(a).

(8) This paragraph does not apply for the purposes of Part 5 (work) unless such arrangements as are reasonably practicable are made to compensate for—

(a) in a case where sub-paragraph (1)(a) applies, the refusal of use of the accommodation;

(b) in a case where sub-paragraph (1)(b) applies, the refusal of provision of the benefit, facility or service.

Commencement Information

I158 Sch. 23 para. 3 wholly in force at 1.10.2012; Sch. 23 not in force at Royal Assent see s. 216; Sch. 23 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(14)(e)** (with art. 15); Sch. 23 in force for remaining purposes at 1.10.2012 by S.I. 2012/1569, art. 3(g)

Training provided to non-[F424]... residents, etc.

Textual Amendments

F424 Word in Sch. 23 para. 4 heading omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(9)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

4 (1) A person (A) does not contravene this Act, so far as relating to nationality, only by providing a non-resident (B) with training, if A thinks that B does not intend to exercise in Great Britain skills B obtains as a result.

(2) A non-resident is a person who is not ordinarily resident in **[**[F425]Great Britain**]**.

(3) The reference to providing B with training is—

(a) if A employs B in relevant employment, a reference to doing anything in or in connection with the employment;

(b) if A as a principal allows B to do relevant contract work, a reference to doing anything in or in connection with allowing B to do the work;

(c) in a case within paragraph (a) or (b) or any other case, a reference to affording B access to facilities for education or training or ancillary benefits.

(4) Employment or contract work is relevant if its sole or main purpose is the provision of training in skills.

(5) In the case of training provided by the armed forces or Secretary of State for purposes relating to defence, sub-paragraph (1) has effect as if—

[F426](a) . . . . . .

(b) in sub-paragraph (4), for "its sole or main purpose is" there were substituted " it is for purposes including ".

(6) "Contract work" and "principal" each have the meaning given in section 41.

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Textual Amendments

F425 Words in Sch. 23 para. 4(2) substituted (31.12.2020) by The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(9)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F426 Sch. 23 para. 4(5)(a) omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(9)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I159 Sch. 23 para. 4 wholly in force at 1.10.2012; Sch. 23 not in force at Royal Assent see s. 216; Sch. 23 in force for certain purposes at 1.10.2010 by S.I. 2010/2317, **art. 2(14)(e)** (with art. 15); Sch. 23 in force for remaining purposes at 1.10.2012 by S.I. 2012/1569, art. 3(g)

[F427]SCHEDULE 24

Section 203

. . . . . .

Textual Amendments

F427 Sch. 24 omitted (31.12.2020) by virtue of The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305), regs. 1, **5(4)**; 2020 c. 1, Sch. 5 para. 1(1)

SCHEDULE 25

Section 206

INFORMATION SOCIETY SERVICES

Service providers

1 (1) This paragraph applies where a person concerned with the provision of an information society service (an "information society service provider") is established in Great Britain.

(2) This Act applies to anything done by the person in an EEA state (other than the United Kingdom) in providing the service as this Act would apply if the act in question were done by the person in Great Britain.

2 (1) This paragraph applies where an information society service provider is established in an EEA state (other than the United Kingdom).

(2) This Act does not apply to anything done by the person in providing the service.

Exceptions for mere conduits

3 (1) An information society service provider does not contravene this Act only by providing so much of an information society service as consists in—

(a) the provision of access to a communication network, or

(b) the transmission in a communication network of information provided by the recipient of the service.

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(2) But sub-paragraph (1) applies only if the service provider does not—
  (a) initiate the transmission,
  (b) select the recipient of the transmission, or
  (c) select or modify the information contained in the transmission.

(3) For the purposes of sub-paragraph (1), the provision of access to a communication network, and the transmission of information in a communication network, includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

4 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.

(2) The information society service provider does not contravene this Act only by doing anything in connection with the automatic, intermediate and temporary storage of information so provided if—
  (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  (b) the condition in sub-paragraph (3) is satisfied.

(3) The condition is that the service-provider—
  (a) does not modify the information,
  (b) complies with such conditions as are attached to having access to the information, and
  (c) (where sub-paragraph (4) applies) expeditiously removes the information or disables access to it.

(4) This sub-paragraph applies if the service-provider obtains actual knowledge that—
  (a) the information at the initial source of the transmission has been removed from the network,
  (b) access to it has been disabled, or
  (c) a court or administrative authority has required the removal from the network of, or the disablement of access to, the information.

Exception for hosting

5 (1) An information society service provider does not contravene this Act only by doing anything in providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if—
  (a) the service provider had no actual knowledge when the information was provided that its provision amounted to a contravention of this Act, or
  (b) on obtaining actual knowledge that the provision of the information amounted to a contravention of that section, the service provider expeditiously removed the information or disabled access to it.

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(2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority of the control of the service provider.

Monitoring obligations

6 An injunction or interdict under Part 1 of the Equality Act 2006 may not impose on a person concerned with the provision of a service of a description given in paragraph 3(1), 4(1) or 5(1)—

(a) a liability the imposition of which would contravene Article 12, 13 or 14 of the E-Commerce Directive;

(b) a general obligation of the description given in Article 15 of that Directive.

Interpretation

7 (1) This paragraph applies for the purposes of this Schedule.

(2) "Information society service"—

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as covering "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service".

(3) "The E-Commerce Directive" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

(4) "Recipient" means a person who (whether for professional purposes or not) uses an information society service, in particular for seeking information or making it accessible.

(5) An information society service-provider is "established" in a country or territory if the service-provider—

(a) effectively pursues an economic activity using a fixed establishment in that country or territory for an indefinite period, and

(b) is a national of an EEA state or a body mentioned in **[**[F428]Article 54 of the Treaty on the Functioning of the European Union**]** .

(6) The presence or use in a particular place of equipment or other technical means of providing an information society service is not itself sufficient to constitute the establishment of a service-provider.

(7) Where it cannot be decided from which of a number of establishments an information society service is provided, the service is to be regarded as provided from the establishment at the centre of the information society service provider's activities relating to that service.

(8) Section 212(4) does not apply to references to providing a service.

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Textual Amendments

F428 Words in Sch. 25 para. 7(5)(b) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 3(1), **Sch. Pt.1** (with art. 2(2))

SCHEDULE 26

Section 211

AMENDMENTS

[F429 PART 1

ACTS OF PARLIAMENT

Textual Amendments

F429 Sch. 26: Pt. 1 heading and paras. 1-8 inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 2**

Disabled Persons (Employment) Act 1944

1 In section 15 of the Disabled Persons (Employment) Act 1944 (provision of employment for seriously disabled persons), in subsection (5A), for "the Disability Discrimination Act 1995" substitute " the Equality Act 2010 ".

Teaching Council (Scotland) Act 1965

2 In section 1(3) of the Teaching Council (Scotland) Act 1965, for "Disability Discrimination Act 1995" substitute " Equality Act 2010 ".

Employment and Training Act 1973

3 In section 12(1) of the Employment and Training Act 1973 (duty of Secretary of State to give preference to ex-service men and women when exercising power to select disabled persons for employment, training, etc.), for "has the same meaning as in the Disability Discrimination Act 1995" substitute " has the same meaning as in the Equality Act 2010 ".

Estate Agents Act 1979

4 The Estate Agents Act 1979 is amended as follows.

5 In section 5(3) (supplementary provisions about prohibition and warning orders)—

(a) for "section 62 of the Sex Discrimination Act 1975, section 53 of the Race Relations Act 1976" substitute " section 113 of the Equality Act 2010 (proceedings) "; and

(b) omit "those Acts and".

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6 (1) Schedule 1 (provisions supplementary to section 3(1)) is amended as follows.

(2) For paragraph 2 substitute—

"2 (1) A person commits discrimination for the purposes of section 3(1)(b) in the following cases only.

(2) The first case is where—

(a) the person has been found to have contravened a relevant equality provision, and

(b) no appeal against the finding is pending or can be brought.

(3) The second case is where—

(a) the person has been given an unlawful act notice under section 21 of the Equality Act 2006,

(b) the notice specifies a relevant equality provision as the provision by virtue of which the act in question is unlawful, and

(c) no appeal against the giving of the notice is pending or can be brought.

(4) The third case is where—

(a) the person is the subject of an injunction, interdict or order under section 24 of the Equality Act 2006 (unlawful acts), and

(b) the unlawful act in question is a contravention of a relevant equality provision.

(5) The relevant equality provisions are—

(a) Parts 3 and 4 of the Equality Act 2010 (services and premises) so far as relating to discrimination and victimisation, and

(b) section 112 of that Act (aiding contraventions) in relation to either of those Parts of that Act so far as relating to discrimination and victimisation."

(3) In paragraph 3 for "discrimination" substitute " a contravention of a relevant equality provision ".

(4) For paragraph 4 substitute—

"4 For the purposes of paragraphs 2 and 3 "discrimination" and "victimisation" have the same meaning as in the Equality Act 2010.".

Civic Government (Scotland) Act 1982

7 (1) Section 20 of the Civic Government (Scotland) Act 1982 (regulations relating to taxis and private hire cars and their drivers) is amended as follows.

(2) In subsection (2A) for "section 1(2) of the Disability Discrimination Act 1995" substitute " section 6 of the Equality Act 2010 ".

(3) In subsection (2AA) for "section 1(2) of the Disability Discrimination Act 1995 (c.50)" substitute " section 6 of the Equality Act 2010 ".

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Housing (Scotland) Act 1987

8 In section 338(1) of the Housing (Scotland) Act 1987 (interpretation) in the definition of "disabled person" for "Disability Discrimination Act 1995 (c.50)," substitute " Equality Act 2010, ".**]**

Local Government Act 1988

[[F430]9**]** Part 2 of the Local Government Act 1988 (public supply or works contracts) is amended as follows.

Textual Amendments

F430 Sch. 26 para. 1 renumbered (1.10.2010) as para. 9 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(a)**

[[F431]10**]** In section 17 (local and other public authority contracts: exclusion of non-commercial considerations)—

(a) omit subsection (9), and

(b) after that subsection insert—

"(10) This section does not prevent a public authority to which it applies from exercising any function regulated by this section with reference to a non-commercial matter to the extent that the authority considers it necessary or expedient to do so to enable or facilitate compliance with—

(a) the duty imposed on it by section 149 of the Equality Act 2010 (public sector equality duty), or

(b) any duty imposed on it by regulations under section 153 or 154 of that Act (powers to impose specific duties)."

Textual Amendments

F431 Sch. 26 para. 2 renumbered (1.10.2010) as para. 10 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(a)**

[[F432]11**]** Omit section 18 (exceptions to section 17 relating to race relations matters).

Textual Amendments

F432 Sch. 26 para. 3 renumbered (1.10.2010) as para. 11 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(a)**

[[F433]12**]** In section 19 (provisions supplementary to or consequential on section 17) omit subsection (10).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F433 Sch. 26 para. 4 renumbered (1.10.2010) as para. 12 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(a)**

Employment Act 1989

[F434 13 The Employment Act 1989 is amended as follows.

Textual Amendments

F434 Sch. 26 paras. 13, 14 inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 3**

14 In section 8 (exemption for discrimination in favour of lone parents in connection with training), in subsection (2), for the words from "for the purposes of the 1975 Act" to the end substitute "for the purposes of the Equality Act 2010 as giving rise to any contravention of Part 5 of that Act, so far as relating to marriage and civil partnership discrimination (within the meaning of that Act).]

Textual Amendments

F434 Sch. 26 paras. 13, 14 inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 3**

[F435 15 [(1) Section 12 F436. . . (Sikhs: requirements as to safety helmets) is amended as follows.

(2) In subsection (1), for "requirement or condition", in the first three places, substitute " provision, criterion or practice ".

(3) In that subsection, for the words from "section 1(1)(b)" to the end substitute " section 19 of the Equality Act 2010 (indirect discrimination), the provision, criterion or practice is to be taken as one in relation to which the condition in subsection (2)(d) of that section (proportionate means of achieving a legitimate aim) is satisfied ".

(4) In subsection (2), for the words from "the Race Relations Act" to the end substitute " section 13 of the Equality Act 2010 as giving rise to discrimination against any other person ".

Textual Amendments

F435 Sch. 26 para. 5 renumbered (1.10.2010) as para. 15 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(b)**

F436 Words in Sch. 26 para. 15 omittted (1.10.2010) by virtue of The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 4**

[F437 16 In section 28 (orders etc.), omit subsections (2), (3) and (4)(a).

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Textual Amendments

F437 Sch. 26 paras. 16-60 inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 5**

17 In section 29(1) (interpretation), omit the definition of "the 1975 Act".**]**

Textual Amendments

F437 Sch. 26 paras. 16-60 inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 5**

Local Government and Housing Act 1989

18 In section 7(2) of the Local Government and Housing Act 1989 (requirement for appointments to be on merit to be subject to discrimination law)—

(a) omit paragraphs (c), (d) and (f), and

(b) at the end insert—

"(g) sections 39, 40 and 49 to 51 of the Equality Act 2010 (employees and office-holders), so far as relating to disability, and Schedule 8 to that Act (reasonable adjustments for disabled persons) so far as it applies in relation to sections 39 and 49 to 51 of that Act;

(h) paragraph 1 of Schedule 9 to that Act (occupational requirements), so far as relating to sex, pregnancy and maternity, marriage and civil partnership, gender reassignment or race.".

Enterprise and New Towns (Scotland) Act 1990

19 The Enterprise and New Towns (Scotland) Act 1990 is amended as follows.

20 In section 2(4)(a) (functions in relation to training for employment etc.) for "section 3(1) of the Race Relations Act 1976" substitute " section 9 of the Equality Act 2010 ".

21 In section 16(2) (courses of training etc.: duty to give preference to certain categories) for "Disability Discrimination Act 1995" substitute " Equality Act 2010 ".

22 For section 17 (encouragement of women, members of minority racial groups and disabled persons to take advantage of opportunities for certain work etc) substitute—

"**17 Encouragement of women, members of ethnic minorities and disabled persons to take up certain employment opportunities and training**

(1) Scottish Enterprise and Highlands and Islands Enterprise shall each, in exercising its functions, promote such actings by any employer as are lawful by virtue of section 158 of the Equality Act 2010 (the "2010 Act") (positive action: general) in relation to—

(a) affording access to facilities for training, and

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(b) encouraging persons to take advantage of opportunities for taking up that employer's work.

(2) This section applies to the protected characteristics of sex, race and disability within the meaning of the 2010 Act.

(3) This section is without prejudice to paragraph (a) of section 2(4) of this Act or to any provision of the 2010 Act prohibiting discrimination within the meaning of that Act.".

Further and Higher Education Act 1992

23 In section 62(7B) of the Further and Higher Education Act 1992 (higher education funding councils) for "Disability Discrimination Act 1995" substitute " Equality Act 2010 ".

Trade Union and Labour Relations (Consolidation) Act 1992

24 (1) Schedule A2 to the Trade Union and Labour Relations (Consolidation) Act 1992 (tribunal jurisdictions where failure by employer or employee to comply with applicable code of practice may affect the level of damages) is amended as follows.

(2) Omit the entries relating to—

(a) the Equal Pay Act 1970;
(b) the Sex Discrimination Act 1975;
(c) the Race Relations Act 1976;
(d) the Disability Discrimination Act 1995;
(e) the Employment Equality (Sexual Orientation) Regulations 2003;
(f) the Employment Equality (Religion or Belief) Regulations 2003;
(g) the Employment Equality (Age) Regulations 2006.

(3) At the end of the entries relating to provisions of Acts, insert—

"Sections 120 and 127 of the Equality Act 2010 (discrimination etc in work cases)"

Trade Union Reform and Employment Rights Act 1993

25 In section 39(2) of the Trade Union Reform and Employment Rights Act 1993 (agreements not to take proceedings before employment tribunal) omit "the Sex Discrimination Act 1975, the Race Relations Act 1976, and".

26 In Schedule 6 (compromise contracts) omit paragraphs 1 and 2.

Employment Tribunals Act 1996

27 The Employment Tribunals Act 1996 is amended as follows.

28 In section 5(2)(c) (remuneration, fees and allowances) for "2A(1)(b) of the Equal Pay Act 1970" substitute " 131(2) of the Equality Act 2010 ".

29 In section 7(3)(h) (employment tribunal procedure regulations) for "2A(1)(b) of the Equal Pay Act 1970" substitute " 131(2) of the Equality Act 2010 ".

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30 In section 12(1) (restriction of publicity in disability cases) for "section 17A or 25(8) of the Disability Discrimination Act 1995" substitute " section 120 of the Equality Act 2010, where the complaint relates to disability ".

31 In section 18(1) (tribunal proceedings to which conciliation provisions apply)—

(a) for paragraph (a) substitute—

"(a) under section 120 or 127 of the Equality Act 2010,", and

(b) omit paragraphs (c), (k), (l) and (r).

32 In section 21(1) (Jurisdiction of appeal tribunal)—

(a) omit paragraphs (a), (b), (c), (e),(l), (m) and (s); and.

(b) at the end of the entries relating to provisions in Acts, insert—

"(ge) the Equality Act 2010,".

Employment Rights Act 1996

33 (1) Section 126 of the Employment Rights Act 1996 (acts which are both unfair dismissal and discrimination) is amended as follows.

(2) In subsection (1) for paragraph (b) substitute—

"(b) the Equality Act 2010.".

(3) In subsection (2)—

(a) for "any one of those Acts or Regulations" substitute " either of those Acts ", and

(b) for "any other of them" substitute " the other ".

Housing Grants, Construction and Regeneration Act 1996

34 In section 126 of the Housing Grants, Construction and Regeneration Act 1996 (Secretary of State's power to give financial assistance etc), in subsection (3), in the definition of "racial group", for "the Race Relations Act 1976" substitute " section 9 of the Equality Act 2010 ".

Education Act 1996

35 The Education Act 1996 is amended as follows.

36 (1) Section 317 of the Education Act 1996 (duties of governing bodies etc in relation to pupils with special educational needs) is amended as follows.

(2) In subsection (6)(b)(iv) for "section 28D of the Disability Discrimination Act 1995 ("the 1995 Act")" substitute " paragraph 3 of Schedule 10 to the Equality Act 2010 ("the 2010 Act") ".

(3) For subsection (6A) substitute—

"(6A) In subsection (6)(b) "disabled person" means a person who is a disabled person for the purposes of the 2010 Act; and section 89 (interpretation of Part 6) of, and paragraph 6 of Schedule 10 (supplementary provisions for Schedule 10) to, the 2010 Act apply for the purposes of subsection (6)(b) as they apply for the purposes of Part 6 of and Schedule 10 to that Act.".

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37 In section 336(4A) (tribunal procedure) for "claim under Chapter 1 of Part 4 of the Disability Discrimination Act 1995" substitute " claim in relation to a contravention of Chapter 1 of Part 6 of the Equality Act 2010 so far as relating to disability. ".

38 In section 509AC(5)(interpretation etc), in the definition of "disabled person", for "Disability Discrimination Act 1995" substitute " Equality Act 2010 ".

39 Omit section 583(5) (commencement etc: transitory provision relating to the Disability Discrimination Act 1995).

40 In Schedule 35B (meaning of eligible child etc), paragraph 15(4), for "Disability Discrimination Act 1995" substitute " Equality Act 2010 ".

41 In Schedule 35C (school travel schemes), paragraph 14, in the definition of "disabled child", for "Disability Discrimination Act 1995" substitute " Equality Act 2010 ".

42 (1) In Schedule 36A (education functions of local authorities) the table is amended as follows.

(2) Omit the entries relating to the Sex Discrimination Act 1975 and the Disability Discrimination Act 1995.

(3) Insert at the end—

"Equality Act 2010 (c. 15)	
Section 29(7) in its application to a local authority's functions under the Education Acts	Duty to make reasonable adjustments for disabled persons.
Section 85(6)	Duty (as responsible body) to make reasonable adjustments for disabled pupils.
Section 92(6)	Duty (as responsible body) to make reasonable adjustments for disabled persons in further and higher education.
Section 93(6)	Duty (as responsible body) to make reasonable adjustments for disabled persons in the provision of recreational or training facilities.
paragraph 1 of Schedule 10	Duty to prepare and implement accessibility strategy.
paragraph 3 of Schedule 10	Duty (as responsible body) to prepare and implement an accessibility plan."

Teaching and Higher Education Act 1998

43 In section 1(4) of the Teaching and Higher Education Act 1998 (the General Teaching Council for England) for "Disability Discrimination Act 1995" substitute " Equality Act 2010 ".

School Standards and Framework Act 1998

44 The School Standards and Framework Act 1998 is amended as follows.

45 In Schedule 5, in paragraph 6 (adjudicators, procedure) for subparagraphs (a) to (c) substitute—

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"(a) section 71 of the Race Relations Act 1976, or
(b) Parts 3 and 6 of the Equality Act 2010,".

46 (1) In Schedule 6, Part 5 (procedures for making transitional exemption orders in Wales) paragraph 22(4) is amended as follows.

(2) For the definition of "the 1975 Act" substitute—

""the 2010 Act" means the Equality Act 2010,".

(3) In the definition of "the responsible body" for "section 22 of the 1975 Act" substitute " section 85 of the 2010 Act ".

(4) In the definition of "transitional exemption order" for "section 27 of the 1975 Act" substitute " paragraph 3 of Schedule 11 to the 2010 Act ".

(5) For "section 27(1) of the 1975 Act" substitute " paragraph 3 of Schedule 11 to the 2010 Act ".

47 (1) In Schedule 7, in Part 6 (transitional exemption orders, interpretation) paragraph 16(6) is amended as follows.

(2) For the definition of the 1975 Act substitute—

""the 2010 Act" means the Equality Act 2010,"

(3) In the definition of "the responsible body" for "section 22 of the 1975 Act" substitute " section 85 of the 2010 Act ".

(4) In the definition of "transitional exemption order" for "section 27 of the 1975 Act" substitute " paragraph 3 of Schedule 11 to the 2010 Act ".

(5) For "section 27(1) of the 1975 Act" substitute " paragraph 3 of Schedule 11 to the 2010 Act ".

Transport Act 2000

48 In section 112(2) of the Transport Act 2000 (plans and strategies: supplementary) for "Disability Discrimination Act 1995" substitute " Equality Act 2010 ".

Employment Act 2002

49 (1) Schedule 5 to the Employment Act 2002 (tribunal jurisdiction) is amended as follows.

(2) Omit the entries relating to—

(a) the Equal Pay Act 1970;
(b) the Sex Discrimination Act 1975;
(c) the Race Relations Act 1976;
(d) the Disability Discrimination Act 1995;
(e) the Employment Equality (Sexual Orientation) Regulations 2003;
(f) the Employment Equality (Religion or Belief) Regulations 2003;
(g) the Employment Equality (Age) Regulations 2006.

(3) At the end of the entries relating to provisions of Acts, insert—

"Sections 120 and 127 of the Equality Act 2010 (discrimination etc in work cases)".

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Income Tax (Earnings and Pensions) Act 2003

50 The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.

51 In section 439(4) (chargeable events) after "within the meaning of" insert " the Equality Act 2010 in England and Wales and Scotland, or ".

52 In section 477(5) (chargeable events) after "within the meaning of" insert " the Equality Act 2010 in England and Wales and Scotland, or ".

Communications Act 2003

53 The Communications Act 2003 is amended as follows.

54 In section 27(5) (training and equality of opportunity)—

(a) in the definition of "disabled" after "meaning as in" insert " the Equality Act 2010 or, in Northern Ireland, ", and

(b) in the definition of "racial group" for "Race Relations Act 1976 (c 74)" substitute " Equality Act 2010 ".

55 In section 337(9) (promotion of equal opportunities and training)—

(a) in the definition of "disabled" after "meaning as in" insert " the Equality Act 2010 or, in Northern Ireland, ", and

(b) in the definition of "racial group" for "Race Relations Act 1976 (c 74)" substitute " Equality Act 2010 ".

56 In Schedule 12, in paragraph 23(6) (obligations of the Welsh Authority in relation to equality of opportunity)—

(a) in the definition of "disability" after "meaning as in" insert " the Equality Act 2010 or, in Northern Ireland, ", and

(b) in the definition of "racial group" for "Race Relations Act 1976 (c 74)" substitute " the Equality Act 2010 ".

Finance Act 2004

57 The Finance Act 2004 is amended as follows.

58 In section 172A(5)(db) (surrender of pension benefits etc) for—

(a) "the Employment Equality (Age) Regulations 2006 or" substitute " Part 5 of the Equality Act 2010, so far as relating to age, or the ", and

(b) for "them" substitute " those Regulations. ".

59 In paragraphs 11D(2A) and (2B)(b), 12(2C)(d) and 14(3A) and (3D)(a) of Schedule 36 (pension schemes etc: transitional provisions and savings)—

(a) for "the Employment Equality (Age) Regulations 2006, or" substitute " Part 5 of the Equality Act 2010, so far as relating to age, or the ", and

(b) for "them" substitute " those Regulations. ".

Serious Organised Crime and Police Act 2005

60 Section 56 of the Serious Organised Crime and Police Act 2005 (the title to which becomes "Application of discrimination legislation to SOCA seconded staff: Northern Ireland") is amended as follows—

(a) in subsection (2), omit paragraphs (a) and (b); and

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(b) in subsection (4), omit paragraphs (a), (b), (g) and (h) and the "and" preceding each of paragraphs (g) and (h).

Equality Act 2006

[F438 61] The Equality Act 2006 is amended as follows.

Textual Amendments

F438 Sch. 26 para. 6 renumbered (1.10.2010) as para. 61 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F439 62 (1) Section 8 (equality and diversity) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (d) for "equality enactments" substitute " Equality Act 2010 ", and

(b) in paragraph (e) for "the equality enactments" substitute " that Act ".

(3) In subsection (4) for "Disability Discrimination Act 1995 (c. 50)" substitute " Equality Act 2010 ".

Textual Amendments

F439 Sch. 26 para. 7 renumbered (1.10.2010) as para. 62 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F440 63] In section 10(2) (meaning of group) for paragraph (d) substitute—

"(d) gender reassignment (within the meaning of section 7 of the Equality Act 2010),".

Textual Amendments

F440 Sch. 26 para. 8 renumbered (1.10.2010) as para. 63 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F441 64] For section 11(3)(c) (interpretation) substitute—

"(c) a reference to the equality and human rights enactments is a reference to the Human Rights Act 1998, this Act and the Equality Act 2010."

Textual Amendments

F441 Sch. 26 para. 9 renumbered (1.10.2010) as para. 64 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F442 65 (1) Section 14 (codes of practice) is amended as follows.

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(2) For subsection (1) substitute—

"(1) The Commission may issue a code of practice in connection with any matter addressed by the Equality Act 2010."

(3) In subsection (2)(a) for "a provision or enactment listed in subsection (1)" substitute " the Equality Act 2010 or an enactment made under that Act ".

(4) In subsection (3)—

(a) in paragraph (a) for "section 49G(7) of the Disability Discrimination Act 1995 (c. 50)" substitute " section 190(7) of the Equality Act 2010 ", and

(b) for paragraph (c)(iv) substitute—

"(iv) section 190 of the Equality Act 2010."

(5) In subsection (5)(a) for "listed in subsection (1)" substitute " a matter addressed by the Equality Act 2010 ".

(6) In subsection (9) for "section 76A" to "duties)" substitute " section 149, 153 or 154 of the Equality Act 2010 (public sector equality duty) ".

Textual Amendments

F442 Sch. 26 para. 10 renumbered (1.10.2010) as para. 65 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F443 66] In section 16(4) (inquiries: matters which the Commission may consider and report on) for "equality enactments" substitute " Equality Act 2010 ".

Textual Amendments

F443 Sch. 26 para. 11 renumbered (1.10.2010) as para. 66 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F444 67] In section 21(2)(b) (unlawful act notice: specification of legislative provision) for "equality enactments" substitute " Equality Act 2010 ".

Textual Amendments

F444 Sch. 26 para. 12 renumbered (1.10.2010) as para. 67 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F445 68] After section 24 insert—

"**24A Enforcement powers: supplemental**

(1) This section has effect in relation to—

(a) an act which is unlawful because, by virtue of any of sections 13 to 18 of the Equality Act 2010, it amounts to a contravention of any of Parts 3, 4, 5, 6 or 7 of that Act,

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(b) an act which is unlawful because it amounts to a contravention of section 60(1) of that Act (or to a contravention of section 111 or 112 of that Act that relates to a contravention of section 60(1) of that Act) (enquiries about disability and health),

(c) an act which is unlawful because it amounts to a contravention of section 106 of that Act (information about diversity in range of election candidates etc.),

(d) an act which is unlawful because, by virtue of section 108(1) of that Act, it amounts to a contravention of any of Parts 3, 4, 5, 6 or 7 of that Act, or

(e) the application of a provision, criterion or practice which, by virtue of section 19 of that Act, amounts to a contravention of that Act.

(2) For the purposes of sections 20 to 24 of this Act, it is immaterial whether the Commission knows or suspects that a person has been or may be affected by the unlawful act or application.

(3) For those purposes, an unlawful act includes making arrangements to act in a particular way which would, if applied to an individual, amount to a contravention mentioned in subsection (1)(a).

(4) Nothing in this Act affects the entitlement of a person to bring proceedings under the Equality Act 2010 in respect of a contravention mentioned in subsection (1).”

Textual Amendments

F445 Sch. 26 para. 13 renumbered (1.10.2010) as para. 68 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F446 69] Omit section 25 (restraint of unlawful advertising etc.).

Textual Amendments

F446 Sch. 26 para. 14 renumbered (1.10.2010) as para. 69 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F447 70] Omit section 26 (supplemental).

Textual Amendments

F447 Sch. 26 para. 15 renumbered (1.10.2010) as para. 70 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F448 71 (1) Section 27 (conciliation) is amended as follows.

(2) For subsection (1) (disputes in relation to which the Commission may make arrangements for the provision of conciliation services) substitute—

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"(1) The Commission may make arrangements for the provision of conciliation services for disputes in respect of which proceedings have been or could be determined by virtue of section 114 of the Equality Act 2010."

Textual Amendments

F448 Sch. 26 para. 16 renumbered (1.10.2010) as para. 71 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F449 72 [(1) Section 28 (legal assistance) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a) for "equality enactments" substitute " Equality Act 2010 ", and

(b) in paragraph (b) for "the equality enactments" substitute " that Act ".

(3) In subsection (5) for "Part V of the Disability Discrimination Act 1995 (c. 50) (public" substitute " Part 12 of the Equality Act 2010 (disabled persons: ".

(4) In subsection (6)—

(a) for "the equality enactments", on the first occasion it appears, substitute " the Equality Act 2010 ", and

(b) for "the equality enactments", on each other occasion it appears, substitute " that Act ".

(5) In subsection (7)—

(a) in paragraph (a) for "equality enactments" substitute " Equality Act 2010 ", and

(b) in paragraph (b) for "the equality enactments" substitute " that Act ".

(6) In subsection (8) for "Part V of the Disability Discrimination Act 1995 (c. 50)" substitute " Part 12 of the Equality Act 2010 ".

(7) In subsection (9) for "equality enactments" substitute " Equality Act 2010 ".

(8) In subsection (12)—

(a) for "A reference in" to "includes a reference" substitute " This section applies ", and

(b) after paragraph (b) add " as it applies to the Equality Act 2010. "

Textual Amendments

F449 Sch. 26 para. 17 renumbered (1.10.2010) as para. 72 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F450 73] For section 31(1) (duties in respect of which Commission may assess compliance) substitute—

"(1) The Commission may assess the extent to which or the manner in which a person has complied with a duty under or by virtue of section 149, 153 or 154 of the Equality Act 2010 (public sector equality duty)."

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Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F450 Sch. 26 para. 18 renumbered (1.10.2010) as para. 73 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F451 74 [(1) Section 32 (public sector duties: compliance notice) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies where the Commission thinks that a person has failed to comply with a duty under or by virtue of section 149, 153 or 154 of the Equality Act 2010 (public sector equality duty)."

(3) In subsection (4) for "section 76A" to "Disability Discrimination Act 1995" substitute " section 149 of the Equality Act 2010 ".

(4) In subsection (9)(a) for "section 76A" to "Disability Discrimination Act 1995 (c. 50)" substitute " section 149 of the Equality Act 2010 ".

(5) In subsection (9)(b) for "in any other case" substitute " where the notice related to a duty by virtue of section 153 or 154 of that Act ".

(6) In subsection (11) for "section 76B" to "Disability Discrimination Act 1995" substitute " section 153 or 154 of the Equality Act 2010 ".

Textual Amendments

F451 Sch. 26 para. 19 renumbered (1.10.2010) as para. 74 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F452 75] Omit section 33 (equality and human rights enactments).

Textual Amendments

F452 Sch. 26 para. 20 renumbered (1.10.2010) as para. 75 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F453 76 [(1) Section 34 (meaning of unlawful) is amended as follows.

(2) In subsection (1) for "equality enactments" substitute " Equality Act 2010 ".

(3) In subsection (2)—

(a) after "virtue of" insert " any of the following provisions of the Equality Act 2010 ", and

(b) for paragraphs (a) to (c) substitute—

"(a) section 1 (public sector duty regarding socio-economic inequalities),

(b) section 149, 153 or 154 (public sector equality duty),

(c) Part 12 (disabled persons: transport), or

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(d) section 190 (disability: improvements to let dwelling houses).”

Textual Amendments

F453 Sch. 26 para. 21 renumbered (1.10.2010) as para. 76 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

Commencement Information

I160 Sch. 26 para. 76(3)(b) in force at 20.11.2021 for W.S. in so far as not already in force by S.I. 2021/1322, **arts. 3**, **4**

[F454 77[(1) Section 35 (general: definitions) is amended as follows.

(2) In the definition of “religion or belief”, for “Part 2 (as defined by section 44)” substitute “ section 10 of the Equality Act 2010 ”.

(3) For the definition of “sexual orientation” substitute—

““sexual orientation” has the same meaning as in section 12 of the Equality Act 2010.”

Textual Amendments

F454 Sch. 26 para. 22 renumbered (1.10.2010) as para. 77 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F455 78] In section 39(4) (orders subject to affirmative resolution procedure) for “, 27(10) or 33(3)” substitute “ or 27(10) ”.

Textual Amendments

F455 Sch. 26 para. 23 renumbered (1.10.2010) as para. 78 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F456 79] Omit section 43 (transitional: rented housing in Scotland).

Textual Amendments

F456 Sch. 26 para. 24 renumbered (1.10.2010) as para. 79 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F457 80] Omit Part 2 (discrimination on grounds of religion or belief).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F457 Sch. 26 para. 25 renumbered (1.10.2010) as para. 80 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F458 81] Omit section 81 (regulations).

Textual Amendments

F458 Sch. 26 para. 26 renumbered (1.10.2010) as para. 81 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F459 82] Omit Part 4 (public functions).

Textual Amendments

F459 Sch. 26 para. 27 renumbered (1.10.2010) as para. 82 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F460 83] In section 94(3) (extent: Northern Ireland)—

(a) omit "and 41 to 56", and

(b) omit "and the Disability Discrimination Act 1995 (c. 50)".

Textual Amendments

F460 Sch. 26 para. 28 renumbered (1.10.2010) as para. 83 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F461 84 (1) Schedule 1 (the Commission: constitution, etc.) is amended as follows.

(2) In paragraph 52(3)(a) for "Parts 1, 3, 4, 5 and 5B of the Disability Discrimination Act 1995 (c. 50)" substitute " Parts 2, 3, 4, 6, 7, 12 and 13 of the Equality Act 2010, in so far as they relate to disability ".

(3) In paragraph 53 for "Part 2 of the Disability Discrimination Act 1995 (c. 50)" substitute " Part 5 of the Equality Act 2010 ".

(4) In paragraph 54 for "Part 2 of the Disability Discrimination Act 1995" substitute " Part 5 of the Equality Act 2010 ".

Textual Amendments

F461 Sch. 26 para. 29 renumbered (1.10.2010) as para. 84 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F462 85] In Schedule 3 (consequential amendments), omit paragraphs 6 to 35 and 41 to 56.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F462 Sch. 26 para. 30 renumbered (1.10.2010) as para. 85 by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 1(c)**

[F463 Immigration, Asylum and Nationality Act 2006

Textual Amendments

F463 Sch. 26 paras. 86-100 inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 6**

86 In section 23(1)(a) of the Immigration Asylum and Nationality Act 2006 (discrimination: code of practice) for "the Race Relations Act 1976 (c. 74)" substitute " the Equality Act 2010, so far as relating to race ".

Childcare Act 2006

87 The Childcare Act 2006 is amended as follows.

88 In section 6(6) (duty to secure sufficient childcare for working parents) in the definition of "disabled child" for "Disability Discrimination Act 1995 (c.50)" substitute " Equality Act 2010 ".

89 In section 12(8) (duty to provide information, advice and assistance) for "Disability Discrimination Act 1995 (c.50)" substitute " Equality Act 2010 ".

90 In section 22(6) (duty to secure sufficient childcare for working parents (Wales)) in the definition of "disabled child" for "Disability Discrimination Act 1995 (c.50)" substitute " Equality Act 2010 ".

91 In section 27(8) (duty to provide information, advice and assistance (Wales)) for "Disability Discrimination Act 1995 (c.50)" substitute " Equality Act 2010 ".

Education and Inspections Act 2006

92 The Education and Inspections Act 2006 is amended as follows.

93 In section 21(5) (proposals under section 19: procedure) for "section 27 of the Sex Discrimination Act 1975 (c. 65) (exception for single-sex establishments turning co-educational)" substitute " paragraphs 3 and 4 of Schedule 11 to the Equality Act 2010 (single-sex schools turning co-educational) ".

94 In section 91(7) (enforcement of disciplinary penalties) for "Disability Discrimination Act 1995 (c.50)" substitute " Equality Act 2010 ".

Finance Act 2007

95 In paragraph 7(7) of Schedule 18 to the Finance Act 2007 (pension schemes: abolition of relief for life insurance premium contributions etc)—

(a) for "Employment Equality (Age) Regulations 2006 (SI 2006/1031)" substitute " Equality Act 2010, so far as relating to age, ", and

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Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) for "them" substitute " those Regulations ".

UK Borders Act 2007

96 In section 48(2)(f) of the UK Borders Act 2007 (recommendations by Chief Inspector of UK Border Agency) for "section 19D of the Race Relations Act 1976 (c.74)" substitute " paragraph 17 of Schedule 3 to the Equality Act 2010 ".

Regulatory Enforcement and Sanctions Act 2008

97 The Regulatory Enforcement and Sanctions Act 2008 is amended as follows.

98 Insert after section 38(2) (meaning of "relevant offence")—

"(3) The entry in Schedule 6 for Part 5 of the Disability Discrimination Act 1995 is, in relation to England and Wales and Scotland, to be read as a reference to Part 12 of the Equality Act 2010."

99 In Schedule 3 (enactments specified for the purposes of the Part relating to LBRO) omit "Disability Discrimination Act 1995 (c. 50)".

Apprenticeships, Skills, Children and Learning Act 2009

100 In section 218(3)(b) of the Apprenticeships, Skills, Children and Learning Act 2009 (arrangements etc to be made by Commission) for "section 1(1) of the Disability Discrimination Act 1995 (c.50)" substitute " section 6 of the Equality Act 2010 ".**]**

[[F464]PART 2

ACTS OF THE SCOTTISH PARLIAMENT

Textual Amendments

F464 Sch. 26 Pt. 2 (paras. 101-107) inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), arts. 1(2), 12, **Sch. 1 para. 6**

Education (Disability Strategies and Pupils' Educational Records)(Scotland) Act 2002

101 In section 6 of the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 (interpretation) in the definition of "pupil with a disability" for "Disability Discrimination Act 1995 (c.50)" substitute " Equality Act 2010 ".

Freedom of Information (Scotland) Act 2002

102 The Freedom of Information (Scotland) Act 2002 is amended as follows.

103 In section 11(5) (means of providing information) for "provider of services has under or by virtue of section 21 of the Disability Discrimination Act 1995 (c. 50)" substitute " person has under or by virtue of section 29 of the Equality Act 2010 (provision of services etc) ".

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

104 In section 12(6) (excessive cost of compliance) for "Disability Discrimination Act 1995 (c.50)" substitute " Equality Act 2010 ".

Dog Fouling (Scotland) Act 2003

105 In section 16 of the Dog Fouling (Scotland) Act 2003 (interpretation) in the definition of "disabled person" for "section 1 of the Disability Discrimination Act 1995 (c.50)" substitute " section 6 of the Equality Act 2010 ".

Education (Additional Support for Learning) (Scotland) Act 2004

106 Paragraph 3(1)(e) of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2004 (exclusion to duty to comply with placing requests) is amended as follows—

(a) for "section 26 of the Sex Discrimination Act 1975 (c.65))" substitute " paragraph 1(2) of Part 1 of Schedule 11 to the Equality Act 2010 ", and

(b) for "section", where it occurs for the second time, substitute, " paragraph ".

[F465 Housing (Scotland) Act 2006

Textual Amendments

F465 Sch. 26 para. 106A inserted (5.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), **arts. 1(2)**, 3(2)

106A In section 194(1) of the Housing (Scotland) Act 2006 (interpretation), in the definition of "disabled person", for "Disability Discrimination Act 1995 (c. 50)" substitute Equality Act 2010.**]**

Education (Additional Support for Learning) (Scotland) Act 2009

107 In section 9 of the Education (Additional Support for Learning) (Scotland) Act 2009 (functions of education authority in relation to certain pre-school children etc), in the amendment to section 5(3)(c) of the Education (Additional Support for Learning) (Scotland) Act 2004, for "Disability Discrimination Act 1995 (c.50)" substitute " Equality Act 2010 ".**]**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULE 27

Section 211

REPEALS AND REVOCATIONS

PART 1

REPEALS

Commencement Information

I161 Sch. 27 Pt. 1 partly in force; Sch. 27 Pt. 1 not in force at Royal assent see s. 216; Sch. 27 Pt. 1 in force at 1.10.2010 for specified purposes by S.I. 2010/2317, **art. 2(1)(15)(f)** (with art. 15); Sch. 27 Pt. 1 in force at 5.4.2011 for specified purposes by S.I. 2011/1066, art. 2(h)

[F466] Short title	***Extent of Repeal***
The Sex Disqualification Removal Act 1919	The whole Act.
Equal Pay Act 1970	The whole Act.
Sex Discrimination Act 1975	The whole Act.
Race Relations Act 1976	The whole Act.
Estate Agents Act 1979	In section 5(3) “those Acts and”.
Further Education Act 1985	Section 4.
Sex Discrimination Act 1986	The whole Act.
Local Government Act 1988	Section 17(9).
	Section 18.
	Section 19(10).
Employment Act 1989	Sections 1 to 7.
	Section 9.
	Section 28(2), (3) and (4)(a).
	In section 29(1) the definition of “the 1975 Act”.
Local Government and Housing Act 1989	Section 7(2)(c),(d) and (f).
Social Security Act 1989	In Schedule 5— (a) in paragraph 2(4) from “; but where” to the end, and (b) paragraph 5.
Enterprise and New Towns (Scotland) Act 1990	Section 18.
Contracts (Applicable Law) Act 1990	In Schedule 4 in paragraph 1 “Section 1(11) of the Equal Pay Act 1970 and” and the

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	cross-heading referring to the Equal Pay Act 1970.
Further and Higher Education Act 1992	In Schedule 8, paragraphs 75 to 88.
Trade Union and Labour Relations (Consolidation) Act 1992	In Schedule A2 the entries for— (a) the Equal Pay Act 1970; (b) the Sex Discrimination Act 1975; (c) the Race Relations Act 1976; (d) the Disability Discrimination Act 1995; (e) the Employment Equality (Sexual Orientation) Regulations 2003; (f) the Employment Equality (Religion or Belief) Regulations 2003; (g) the Employment Equality (Age) Regulations 2006.
	In Schedule 2, paragraph 3(1) to (3) and the preceding cross-heading.
Trade Union Reform and Employment Rights Act 1993	In section 39(2) “the Sex Discrimination Act 1975, the Race Relations Act 1976, and”.
	In Schedule 6, paragraphs 1 and 2.
	In Schedule 7, paragraph 8.
Race Relations (Remedies) Act 1994	The whole Act.
Disability Discrimination Act 1995	The whole Act.
Pensions Act 1995	Sections 62 to 66.
Employment Tribunals Act 1996	Section 18(1)(c), (k), (l) and (r).
	Section 21(1)(a), (b), (c), (e), (l), (m) and (s).
	In Schedule 2, paragraph 7.
Employment Rights Act 1996	In Schedule 1, paragraph 1 and the preceding cross-heading.
Armed Forces Act 1996	Sections 21, 23 and 24.
Education Act 1996	In Schedule 36A, in the table, the entries for the Sex Discrimination Act 1975 and the Disability Discrimination Act 1995.
	In Schedule 37, paragraphs 31, 32, 34 to 36, 37(b), 39, 40 and 43.
Employment Rights (Dispute Resolution) Act 1998	Section 8(1), (2) and (4).
	Section 9(2)(a), (b) and (d).
	Section 10(2)(a), (b) and (d).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

	In Schedule 1, paragraphs 2, 3 and 11.
School Standards and Framework Act 1998	In Schedule 30, paragraphs 5, 6 and 7.
Greater London Authority Act 1999	Section 404.
Learning and Skills Act 2000	Section 150(4)(d) and the "or" immediately preceding it.
	In Schedule 9, paragraphs 5, 6, 7 and 9 and the preceding cross-heading.
Race Relations (Amendment) Act 2000	Section 1.
	Sections 3 to 10.
	Schedule 2, except for paragraphs 17 and 31.
	Schedule 3.
Standards In Scotland's Schools etc. Act 2000	In schedule 2, paragraph 2.
Special Educational Needs and Disability Act 2001	Sections 11 to 33.
	Section 34(4), (5), (6) and (7).
	Sections 38 to 40.
	Schedules 2 to 6.
Sex Discrimination (Election Candidates) Act 2002	Section 1.
Employment Act 2002	Section 42 and the preceding cross-heading.
	In Schedule 5, the entries for—
	(a) the Equal Pay Act 1970;
	(b) the Sex Discrimination Act 1975;
	(c) the Race Relations Act 1976;
	(d) the Disability Discrimination Act 1995;
	(e) the Employment Equality (Sexual Orientation) Regulations 2003;
	(f) the Employment Equality (Religion or Belief) Regulations 2003;
	(g) the Employment Equality (Age) Regulations 2006.
Education Act 2002	In Schedule 7, paragraph 5 and the preceding cross-heading.
	In Schedule 18, paragraphs 7 to 12.
	In Schedule 21, paragraphs 3 and 26 to 29 and the cross-headings preceding paragraphs 3 and 26.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Private Hire Vehicles (Carriage of Guide Dogs etc) Act 2002	Sections 1 and 3 to 5.
Nationality, Immigration and Asylum Act 2002	In Schedule 7, paragraphs 11, 12 and 14 and the preceding cross-heading.
Gender Recognition Act 2004	Section 19.
	In Schedule 6, Part 1.
Civil Partnership Act 2004	Section 6(1)(b) and (2).
Higher Education Act 2004	Section 19.
Education (Additional Support for Learning) (Scotland) Act 2004	In section 17(1) "to exercise the functions which are conferred on a Tribunal by virtue of this Act".
Disability Discrimination Act 2005	The whole Act except for— (a) section 3 (b) section 9 (c) Schedule 1 paragraphs 31, 33, 34(1) and (6) and Part 2
Serious Organised Crime and Police Act 2005	Section 56(2)(a) and (b) and (4)(a), (b), (g) and (h) and the "and" preceding each of paragraphs (g) and (h).
Education Act 2005	In Schedule 9, paragraph 8 and the preceding cross-heading.
	In Schedule 14, paragraphs 5 and 7.
	In Schedule 15, paragraph 6.
Charities and Trustee Investment (Scotland) Act 2005	In schedule 4, paragraph 3.
Equality Act 2006	Section 25.
	Section 26.
	Section 33.
	Section 43.
	Part 2.
	Section 81
	Part 4.
	In Section 94(3) "and 41 to 56" and "and the Disability Discrimination Act 1995(c.50)".
	In Schedule 3, paragraphs 6 to 35 and paragraphs 40 to 56.
Education and Inspections Act 2006	In Schedule 1, paragraph 1 and the preceding cross-heading.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

	In Schedule 3, paragraph 3 and the preceding cross-heading.
Legal Services Act 2007	In Schedule 21, paragraphs 32, 36 to 38 and 118 and the cross-headings preceding paragraphs 32 and 118.
Greater London Authority Act 2007	Section 11(5).
Regulatory Enforcement and Sanctions Act 2008	In Schedule 3, "Disability Discrimination Act 1995 (c.50)".
	In Schedule 6, "Disability Discrimination Act 1995 (c.50)".
Education and Skills Act 2008	In Schedule 1, paragraphs 1 to 4 and the cross-heading preceding paragraph 1.
Local Transport Act 2008	Section 55.
	Section 56.
Apprenticeships, Skills, Children and Learning Act 2009	Section 221(3).**]**

Textual Amendments

F466 Sch. 27 Pt. 1 Table substituted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 13, **Sch. 2**

[F467PART 1A

REPEALS RELATING TO THE COMMENCEMENT OF THE PUBLIC SECTOR EQUALITY DUTY ON 5TH APRIL 2011

Textual Amendments

F467 Sch. 27 Pt. 1A inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 3(3)(a), **Sch. 3**

Short title	***Extent of repeal***
Race Relations (Amendment) Act 2000	Section 2.
	Schedule 1.
	In Schedule 2, paragraph 17.
Nationality, Immigration and Asylum Act 2002	Section 6(5).
Water Act 2003	In Schedule 7, paragraph 22.
Courts Act 2003	In Schedule 8, paragraph 187.
Health and Social Care (Community Health and Standards) Act 2003	In Schedule 4, paragraphs 21 and 22.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Health Protection Agency Act 2004	In Schedule 3, paragraph 8.
Energy Act 2004	In Schedule 14, paragraph 4.
Fire and Rescue Services Act 2004	In Schedule 1, paragraph 48.
Civil Contingencies Act 2004	In Schedule 2, paragraph 10(3)(a).
Disability Discrimination Act 2005	Section 3.
Serious Organised Crime and Police Act 2005	In Schedule 4, paragraphs 33 to 35.
Education Act 2005	In Schedule 14, paragraphs 6 and 8.
Gambling Act 2005	In Schedule 16, paragraph 9.
London Olympic Games and Paralympic Games Act 2006	In Schedule 1, paragraph 21.
Natural Environment and Rural Communities Act 2006	In Schedule 11— (a) paragraph 61, and (b) in paragraph 175(2), "in the Race Relations Act 1976 (c. 74), Part 2 of Schedule 1A;".
National Health Service (Consequential Provisions) Act 2006	In Schedule 1, paragraphs 55 and 56.
Police and Justice Act 2006	In Schedule 1, paragraph 60.
Tourist Boards (Scotland) Act 2006	In Schedule 2, paragraph 3.
Tribunals, Courts and Enforcement Act 2007	In Schedule 8, paragraph 7.
Offender Management Act 2007	In Schedule 3, paragraphs 1 and 7.
Legal Services Act 2007	In Schedule 21, paragraph 39.
Health and Social Care Act 2008	In Schedule 5, paragraph 59.
	In Schedule 10, paragraph 6.
Housing and Regeneration Act 2008	In Schedule 8, paragraph 21.
	In Schedule 9, paragraph 4.
Local Transport Act 2008	In Schedule 4, paragraph 49.
Climate Change Act 2008	In Schedule 1, paragraph 32.
Pensions Act 2008	In Schedule 1, paragraph 25.
Local Democracy, Economic Development and Construction Act 2009	In Schedule 6, paragraph 44.
Apprenticeships, Skills, Children and Learning Act 2009	In Schedule 6, paragraph 1.
	In Schedule 12, paragraph 7.
Marine and Coastal Access Act 2009	In Schedule 2, paragraph 4.
Policing and Crime Act 2009	Section 2(3).]

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 2

REVOCATIONS

Commencement Information

I162 Sch. 27 Pt. 2 wholly in force; Sch. 27 Pt. 2 not in force at Royal assent see s. 216; Sch. 27 Pt. 2 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(15)(f)** (with art. 15)

Title	*Extent of revocation*
Occupational Pension Schemes (Equal Treatment) Regulations 1995 (S.I. 1995/3183)	The whole Regulations.
Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660)	The whole Regulations.
Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661)	The whole Regulations.
Disability Discrimination Act 1995 (Pensions) Regulations 2003 (S.I. 2003/2770)	The whole Regulations.
Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005 (S.I. 2005/1923)	The whole Regulations.
Employment Equality (Age) Regulations 2006 (S.I. 2006/1031)	The whole Regulations (other than Schedules 6 and 8).
Equality Act (Sexual Orientation) Regulations 2007 (S.I. 2007/1263)	The whole Regulations.
Sex Discrimination (Amendment of Legislation) Regulations 2008 (S.I. 2008/963)	The whole Regulations.

[[F468]PART 3

REVOCATIONS RELATING TO THE COMMENCEMENT OF THE PUBLIC SECTOR EQUALITY DUTY ON 5TH APRIL 2011

Textual Amendments

F468 Sch. 27 Pt. 3 inserted (4.4.2011) by The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060), arts. 1(2), 3(3)(b), **Sch. 4**

Title	*Extent of revocation*

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002 (S.I. 2002/2469)	In Schedule 1, paragraph 9.
Health Professions Order 2001 (Consequential Amendments) Order 2003 (S.I. 2003/1590)	In the Schedule, paragraph 4.
Further and Higher Education (Scotland) Act 2005 (Consequential Modifications) Order 2005 (S.I. 2005/2077)	Article 5.
Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172)	In the Schedule, paragraph 2.
References to Health Authorities Order 2007 (S.I. 2007/961)	In the Schedule, paragraph 12.
Tourist Boards (Scotland) Act 2006 (Consequential Modifications) Order 2007 (S.I. 2007/1103)	In the Schedule, paragraph 3.
Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388)	In Schedule 1, paragraphs 10 to 16.
Agriculture and Horticulture Development Board Order 2008 (S.I. 2008/576)	In Schedule 5, paragraph 4.
Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010 (S.I. 2010/1080)	In Schedule 1, paragraphs 9 to 11.
Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158)	In Schedule 2, in Part 2, paragraph 30.**]**

SCHEDULE 28

Section 214

INDEX OF DEFINED EXPRESSIONS

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Additional maternity leave	Section 213(6) and (7)
Additional maternity leave period	Section 213(8)
Age discrimination	Section 25(1)
Age group	Section 5(2)
Armed forces	Section 212(1)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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Status: *This version of this Act contains provisions that are prospective.*
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Status:
This version of this Act contains provisions that are prospective.

Changes to legislation:
Equality Act 2010 is up to date with all changes known to be in force on or before 10 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

- s. 80(7) repealed by S.I. 2014/3229 Sch. 5 para. 19(3)
- s. 104(7) words repealed by 2010 c. 15 s. 105(1)(2) (This repeal comes into force at the end of2030 unless an order under s. 105(2) specifies a later time)
- s. 138(8) words substituted by 2013 c. 22 Sch. 9 para. 52
- s. 140AA(1)(b) words substituted by S.I. 2019/305 reg. 5(2)(b) (This amendment not applied to legislation.gov.uk. Reg. 5(2)(b) substituted immediately before IP completion day by S.I. 2020/1139, regs. 1(2), 6(2)(a))
- s. 155(2) words substituted by S.I. 2019/560 reg. 3(2)(a) (This amendment not applied to legislation.gov.uk. Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- s. 155(3) words substituted by S.I. 2019/560 reg. 3(2)(b) (This amendment not applied to legislation.gov.uk. Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- Sch. 19 Pt. 2 entry inserted by 2020 asc 1 Sch. 3 para. 10(b)
- Sch. 19 Pt. 1 words inserted by 2015 c. 2 Sch. 3 para. 17
- Sch. 19 Pt. 1 words inserted by 2021 c. 10 Sch. 6 para. 6
- Sch. 19 Pt. 1 words inserted by 2022 c. 31 Sch. 15 para. 10
- Sch. 19 Pt. 2 words omitted by 2020 asc 1 Sch. 3 para. 10(a)(i)
- Sch. 19 Pt. 2 words omitted by 2020 asc 1 Sch. 3 para. 10(a)(ii)
- Sch. 20 para. 12(5) words substituted by 2013 c. 22 Sch. 9 para. 52
- Sch. 26 para. 36 omitted by 2018 anaw 2 Sch. 1 para. 6(o)
- Sch. 26 para. 37 omitted by 2018 anaw 2 Sch. 1 para. 6(o)
- Sch. 26 para. 23 omitted by 2022 asc 1 Sch. 4 para. 26(2)

EMPLOYMENT TRIBUNALS

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Your Ref: vm/tirkey/t299/1

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Your Ref: ls45439

Date 24 January 2014

Case Number: 3400174/2013

Claimant		**Respondent**
Ms P Tirkey	**v**	**Mr & Mrs Chandok**

EMPLOYMENT TRIBUNAL JUDGMENT

A copy of the Employment Tribunal's judgment and the reasons is enclosed. There is important information in the booklet 'The Judgment' which you should read. The booklet can be found on our website at www.justice.gov.uk/tribunals/employment/claims/booklets

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

The Judgment booklet explains that you may request the employment tribunal to reconsider a judgment or a decision. It also explains the appeal process to the Employment Appeal Tribunal. These processes are quite different, and you will need to decide whether to follow either or both. **Both are subject to strict time limits**. An application for a reconsideration must be made within 14 days of the date the decision was sent to you. An application to *appeal* must generally be made within 42 days of the date the decision was sent to you; but there are exceptions: see the booklet.

The booklet also explains about asking for written reasons for the judgment (if they are not included with the judgment). These will almost always be necessary if you wish to appeal. You must apply for reasons (if not included with the judgment) within 14 days of the date on which the judgment was sent. If you do so, the 42 day time limit for appeal runs from when these reasons were sent to you. Otherwise time runs from the date the judgment was sent to you or your representative.

EMPLOYMENT TRIBUNALS

Claimant: Ms P Tirkey

Respondent: Mr & Mrs Chandok

HEARD AT: HUNTINGDON **ON:** 18th December 2013

BEFORE: Employment Judge Sigsworth

REPRESENTATION

For the Claimant: Mr C Milsom, Counsel

For the Respondents: Mrs P Hall, Consultant

RESERVED JUDGMENT

1. The Judgment of the Tribunal is that the claim of caste discrimination as set out in the amended statement of claim is not struck out, and the claim will proceed to a merits hearing.

Employment Judge Sigsworth, Huntingdon

JUDGMENT SENT TO THE PARTIES ON
24/1/2014.

FOR THE SECRETARY TO THE TRIBUNALS

EMPLOYMENT TRIBUNALS

Claimant: Ms P Tirkey

Respondent: Mr & Mrs Chandok

HEARD AT: HUNTINGDON **ON:** 18th December 2013

BEFORE: Employment Judge Sigsworth

REPRESENTATION

For the Claimant: Mr C Milsom, Counsel

For the Respondents: Mrs P Hall, Consultant

RESERVED REASONS

1. The Claimant was in domestic service with the Respondents, and in particular looked after their children and carrying out such domestic chores as cooking, cleaning, laundry and ironing, between May 2008 and November 2012. Her claims are for unfair dismissal, race discrimination, religion and belief discrimination, unpaid wages and holiday pay, etc.

2. At a case management discussion on 30th May 2013, the Claimant was permitted by the Employment Judge to amend her claim to add a complaint of caste discrimination as part of her race discrimination complaint or, alternatively, as part of her religious discrimination complaint. Paragraph 54 of the amended Statement of Claim reads as follows:

   "For the avoidance of doubt the Claimant avers that her ethnic and/or national origins includes but is not limited to her status in the caste system as perceived by the Respondents. The International Convention on the Elimination of all Forms of Racial Discrimination ("ICERD") prohibits discrimination on the grounds of "descent": its principles are adopted by the Race and Framework Directives and, it follows, the Equality Act. Thus Section 13 EA 2010 must be taken to prohibit caste discrimination. The Claimant avers that the and/or a reason why she was recruited and treated in the manner alleged was that the Respondents concluded she was of a lower status to them: this view was tainted by caste considerations."

Then, at a telephone case management discussion on 26th September 2013, the Regional Employment Judge listed a preliminary hearing for today. The issue for the hearing is to consider striking out the claim as set out at paragraph 54 (and also, by implication, paragraph 59, and other parts of the amended claim), on the basis that the claim of caste discrimination has no reasonable prospect of success, as the Tribunal has no jurisdiction to consider it.

3. At this preliminary hearing I heard no evidence, although I read the Claimant's witness statement and also the statement of the first Respondent. I also read the amended statement of claim and the amended particulars of response, and I looked at documents provided by the Respondents. I read and heard the submissions of the representatives and read the authorities that were produced. As far as the facts are concerned, I proceed on the basis that I must take the facts as alleged by the Claimant at their highest for the purposes of this jurisdiction argument.

4. The Claimant's case is that she is of the Adivasi people, who can be either Christian or Hindu. The Claimant and her family are Christian. The Claimant asserts that Adivasi people are known to be dark skinned and poor (she came from a poor rural village in Bihar), and are regarded as a servant caste. During festivals and other occasions they wear a traditional sari, which is white with a red border. That is how members of society can recognise the caste that the Claimant and her family are from. She has grown up knowing that this sari shows others what caste and background she comes from. In India lighter skinned people are usually of a higher caste. The Claimant began her employment for the Respondents in India, and when she was introduced to Mrs Chandok she was not invited into the Respondents' house, which is because she is of a lower caste. She lived in the Respondents' house as a servant but in separate living quarters. She was not allowed to sit on the same furniture as her employer, and she used separate plates and cups as higher caste people would not touch plates and cups that she had used. When interviewed, Mrs Chandok asked her what caste she was from, but would have known it was a poorer caste as she has dark skin and was wearing poorer clothes. She also speaks with a Bihari dialect, and that is why her Hindi sounds different to that of Mr and Mrs Chandok.

5. The Claimant's case is that she was overworked and underpaid when working for the Respondents in the UK. She slept on a piece of foam on the floor by the side of the babies' cots, and later on the floor of one of the children's rooms. She would usually start work at about 6am and finish at 12.30am, working seven days a week. She was paid approximately 323,000 rupees throughout her employment with the Respondents (about £3,140). Her schedule of loss is for underpaid wages in the sum of some £175,000. She was only given one day of annual leave throughout her employment with the Respondents. Her movements were restricted and she did not have an opportunity to make friends or meet people in the UK. She was not given a set of keys to the house and was not permitted to go in and out when she chose. She was not allowed to speak to people outside the family, except to say hello and ask them how they were. The Claimant is a practising German Catholic, but was not allowed to attend church.

6. Her race discrimination complaint is based on Indian nationality, ethnicity and national origin, and her less favourable treatment is said to be by reason of her non-British or non-EU nationality and/or national or ethnic origin. It is said that the Respondents were able to exploit her immigration status and/or her limited means and ability to enforce basic employment standards. She asserts that a comparable worker of British nationality and/or national origin would not have been subjected to the treatment alleged, including withholding her passport, shouting at her, failing to pay her the national minimum wage, failing to provide her with wage slips, requiring her to work onerous hours, breaching the Working Time Regulations, failing to provide a contract of employment, restricting her movements, and preventing her from practising her religion. The thrust of the Claimant's case is direct race discrimination, but she also alleges, in the alternative, indirect race discrimination. She also alleges discrimination on the grounds of religion or belief, in that a comparable worker of the Hindu religion would not have been subjected to the treatment that she was, which included preventing her from attending church on Sundays and religious holidays, and preventing her from bringing her bible to the UK. Again, the Claimant alleges indirect discrimination on the grounds of religion and belief, in the alternative to her direct claim.

7. Mrs Chandok was born in New Delhi to an Afghan Hindu family, and is a practicing Buddhist. Mr Chandok also originates from Afghanistan, where there is no caste issue. He is a practising Hindu. The Respondents' case is that they knew nothing of the Adivasi people, although they knew that the Claimant was Christian. They are slightly fairer in skin tone to her, but they also come from a poor background. Mrs Chandok has never seen the Claimant wearing a sari, and she always wore Western clothes. On special occasions, such as weddings and visiting a Sikh temple, the Claimant would wear a traditional outfit, but not a sari. They refute any allegation of caste discrimination (as well, of course, as denying the Claimant's original allegations).

8. According to the definition in Wikipedia, caste is a formal social stratification characterised by endogamy, hereditary transmission of a lifestyle which often includes an occupation, ritual status in a hierarchy and customary social interaction and exclusion based on cultural notions of purity and pollution. Endogamy is the practice of marrying within a specific ethnic group, class or social group. In the explanatory notes to section 9(5) of the Equality Act 2010 (see below) the definition of caste is made in the following terms:

> The term "caste" denotes a hereditary, endogamous (marrying within the group) community, associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity. It is generally (but not exclusively) associated with South Asia, particularly India, and its diaspora. It can encompass the four classes (varnas) of Hindu tradition (Brahman, Kshatriya, Vaishya and Shudra communities); the thousands of regional Hindu, Sikh, Christian, Muslim or other religious groups known as jatis; and groups among South Asian Muslims called biradaris. Some jatis regarded as below the varna hierarchy (once termed "untouchable") are known as Dalit.

9. The Claimant considers herself to be an Adivasi German Catholic. The term "Adivasi" is of Sanskrit origin whose literal translation is "first dwellers". It is an umbrella term for a heterogeneous set of ethnic and tribal groups claiming to be the indigenous or aboriginal population living in India before the arrival of the Vedic Aryans. The Adivasis were historically outside the caste system entirely, but their treatment has been frequently equated by not only policymakers but also the Indian government itself with that of the Dalits. Thus, under the 1950 Constitution, Indian Adivasis, like Dalits, became subject to special protected provisions and affirmative action by way of the prescribed lists of "scheduled castes, scheduled tribes and other backward classes" in an attempt to redress much treatment of those groups. Pursuant to the accompanying Presidential Order, however, those who convert from Hinduism to an alternative faith lose their "protected status". The World Directory of Minorities and Indigenous Peoples, compiled by Minority Rights International, records that the Adivasis are at the lowest point of almost every socio-economic indicator. The majority of the population regards them as primitive, and government programmes aim at integrating them with the majority of society, rather than allowing them to maintain their distinctive way of life. The quotas within higher education and jobs which require technical knowledge seem to have not worked in improving access so far. Quotas for Adivasis, for example, in higher education levels remain unfilled. About 68% of Dalit and Adviasi children drop out before high school.

10. Mr Milsom, on behalf of the Claimant, summarised the caste position as follows:

    10.1 The Vedic caste system is a South Asian concept which, in so far as it has spread beyond the region, has been transplanted by the diaspora community.
    10.2 Caste status is immutable and hereditary. It is often linked to matters such as geographic origin and language. Therefore, it determines occupation, education and marital opportunities.
    10.3 Since Dalits and Adivasi are provided with similar levels of protection due to their perceived status in the caste system the phrase adopted by the NIESR report of "low caste status" is to be preferred.
    10.4 Whilst caste status emanates from the Vedic Hindu tradition, those of low caste cannot "escape" their status by converting to an alternative faith. Indeed, under the terms of the Indian Constitution and as recognised by the NIESR report, non-Hindus fare worse in the caste system.
    10.5 Those few of low caste status who obtain employment beyond domestic work would nonetheless continue to be regarded as having low caste status.
    10.6 There are prescribed practices as to how those of low caste status should be treated by others in matters varying from crockery to clothing.

The law

11. So far as the domestic law is concerned, then the relevant provisions of the Equality Act 2010 are Sections 9, 10, 13 and 19. By Section 9(1), race

includes colour, nationality, ethnic or national origin. By Section 9(5) (as amended) a Minister of the Crown – (a) must by order amend this section so as to provide for caste to be an aspect of race; (b) may by order 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.

Section 10 defines religion or belief. Section 13(1) provides that 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.

Section 19 sets out the meaning of indirect discrimination.

Thus, Her Majesty's Government recognises that caste discrimination exists, but their current position is also that it is not yet a protected characteristic, and legislation is required to make it such. The Government Equalities Office document of July 2013 sets out the timetable and process for the introduction of caste legislation through the duty contained in Section 9(5) of the Act. It envisages a full public consultation in order to make sure that the legislation is appropriate and fit for purpose, and for the preparation and introduction of legislation on caste, including any necessary exceptions to the caste provisions, within the framework of domestic discrimination law. Allowing for all of this, it is not anticipated that there will be a final draft Order introduced into Parliament until the summer of 2015.

12. The Claimant cites the Race Directive (Counsel Directive 2000/43/EC of 29th June 2000) in support of her case. Articles 2, 3, 6, 9, 13, 19 and 26 are relied upon. It is also pointed out that the Race Directive is intended to give effect to the International Convention for the Elimination of all forms of Racial Discrimination 1965 (ICERD), to which, with effect from 1969, the UK has been a signatory. This is made clear by the recitals in the Race Directive. Article 1(1) of ICERD defines racial discrimination as: "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural and any other field of public life". India has not recognised caste as a form of descent-based discrimination, although apparently Nepal has. These are the two principle nations, of course, where historically caste has been of importance in the social fabric of the country. The Claimant's argument is that descent, according to ICERD, is part of the definition of race discrimination, or should be, per the Directive, and caste discrimination is a form of descent-based discrimination.

The Framework Directive (Council Directive Number 2000/78/EC of 27th November 2000), inter alia, makes similar provisions in respect of religion and belief.

13. The Claimant also relies on the Charter of Fundamental Rights of the European Union (2007) in support of her case. The note in Harvey on Employment Law states that the Charter forms part of the package of provisions adopted under the Treaty of Lisbon and came into force on the

same date as the Treaty, 1st December 2009. By Article 6(1) of the Treaty of Lisbon, the Union recognised the rights, freedoms and principles set out in the Charter, which shall have the same legal value as the Treaties. However, protocol 30 to the Treaty, by Article 1, states that the Charter does not extend the ability of the Court of Justice, or any court or tribunal of Poland or the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms. Article 1(2), in particular, for the avoidance of doubt states that nothing in (Title IV) of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national laws.

Notwithstanding these restrictions, the Claimant points to Article 21(1) of the Charter which provides: "Any discrimination based on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited".

In further support of her case, the Claimant refers to the Supreme Court decision of *Rugby Football Union v Consolidated Information Limited [2012] 1WLR, 3333,* and the Judgement of Lord Kerr. Lord Kerr points out that the Charter has direct effect in national law, but only by its member states when they are implementing EU law – Article 51(1). However, the rubric "implementing EU law" is to be interpreted broadly and, in effect, means whenever a member state is acting "within the material scope of EU law". Moreover, Article 6(1) of the EU Treaty requires that the Charter must be interpreted with "due regard" to the explanations that it referred to in the Charter.

14. Turning to the domestic law, the Human Rights Act 1998 incorporates certain articles of the European Convention, and some of these are relied upon by the Claimant. Article 4 provides that no-one shall be held in slavery or servitude, and no-one shall be required to perform forced or compulsory labour. Article 8 provides that everyone has the right to respect for his private and family life, his home and his correspondence. Article 9 provides that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in a community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance. The Claimant's case is that if no means of "escaping" the strictures of the Hindu caste system are provided for those of non-Hindu faith, Article 9 is contravened.

Article 14 is a "parasitic" right to freedom from discrimination, in respect of the Convention rights identified above, couched in broad and non-exhaustive terms:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

Pursuant to Section 3(1) of the Human Rights Act, so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

The House of Lords in *Ghaidan v Godin-Mendoza [2004] 2AC 557* said that particular legislation must be given a Convention-compliant meaning wherever possible, subject only to the modified meaning remaining consistent with the fundamental features of the legislative scheme.

15. The Claimant relies also on the Equality and Human Rights Commission Code of Practice on Employment 2011. The Code provides the following assistance when interpreting "race". Paragraph 2.39 states that everyone has an ethnic origin, but the provisions of the Act only apply where a person belongs to an "ethnic group" as defined by the courts. This means that the person must belong to an ethnic group which regards itself and is regarded by others as a distinct and separate community because of certain characteristics. These characteristics usually distinguish the group from the surrounding community.

    Paragraph 2.40 states that there are two essential characteristics which an ethnic group must have – a long shared history and a cultural tradition of its own. In addition, an ethnic group may have one or more of the following characteristics: a common language; a common literature; a common religion; a common geographical origin; or being a minority; or an oppressed group.

    Paragraph 2.42 states that the courts have confirmed that the following are protected ethnic groups: Sikhs, Jews, Romany Gypsies, Irish Travellers, Scottish Gypsies and Scottish Travellers.

    Paragraph 2.48 states that a racial group can be made up of two or more distinct racial groups. A racial group could be "South Asian" which may include Indians, Pakistanis, Bangladeshis and Sri Lankans.

    The Code also provides assistance as to the meaning of religion at paragraphs 2.50 to 2.54.

    It was pointed out by the Claimant that, at paragraph 3.10, the Code confirms that direct discrimination can take place even though the employer and worker share the same protected characteristic giving rise to the less favourable treatment. Further, a worker experiencing less favourable treatment because of a protected characteristic does not have to possess the characteristic themselves; paragraph 3.17.

16. The editors of Harvey, when considering the proper interpretation of the discrimination legislation, or its indirect effect, state that such is not to be decided solely by reference to domestic considerations. As with equal pay, the court/tribunal should look at the Act in the context of Community legislation on the same subject, and strive to interpret the Act so as to give effect, so far as is reasonably possible, to what is required by Community law, having regard to the interpretations given to Article 141 and the relevant Directives by the CJEU/ECJ – see *Garland v British Rail Engineering Limited [1982] IRLR 257, HL*; *Pickstone v Freemans Plc [1988] IRLR 357, HL*; *Marleasing SA v La Comercial Internationial de Alimentacion SA [1990] ECR*

1-4135, ECJ. That principle is, however, subject to an important qualification: the desirability of arriving at harmony in the construction of domestic and Community law does not warrant interpretations of UK Statutes which lead to a distortion of the words (*Duke v GEC Reliance Limited [1988] IRLR 118, HL; Webb v Emo Air Cargo (UK) Limited [1993] IRLR 27, HL*).

Interpretation, however, is not the only option. Where the provisions of the discrimination legislation do not adequately give effect to the requirements of Community law, then it may be possible to do more than appeal to a principle of interpretation, and go beyond a domestic statute to rely directly on the Community measures. This is known as direct effect. However, a provision of EC law is capable of having direct effect only where it is clear and precise, is unconditional and unqualified, and is not subject to the need for further implementing measures by member states – see *Van Gend en Loos v Nederlandse Administratie der Belastingen [1963] ECR 1, ECJ.* Further, European law imposes important limitations on the categories of Respondents against whom individuals may seek directly to enforce EU provisions. It is generally only possible to use a Treaty Article or Directive against an employer or prospective employer who is situated within the public (and not the private) sector, because of the rules surrounding the doctrine of direct effect – ie direct effect is "vertical".

As to how such direct effect is to be achieved, a "conservative" interpretation has been adopted by the Court of Appeal in a number of cases. Where European law can be relied upon by an individual, then it operates through the medium of the relevant UK domestic legislation. Contrary to the analysis in a number of earlier decisions, the direct effect of Community law does not produce anything that can be identified as a "freestanding" right – rather it operates to overrule barriers and inconsistencies found in domestic statutes. See *Biggs v Somerset County Council [1996] IRLR 203, CA; Barlow v Staffordshire County Council [1996] IRLR 209, CA; Potter v Secretary of State for Employment [1997] IRLR 21, CA.*

A provision of European law is said to have "horizontal direct effect" if it can be relied upon by an individual in proceedings against another individual. This is to be contrasted with provisions which have "vertical direct effect" which can only be invoked against the State or an emanation of the State. A classic example of a provision which has been found to have horizontal direct effect is Article 157 of the Treaty (formerly Article 141 and before that Article 119), dealing with equal pay between men and women. Generally, an Article in a Treaty can have a horizontal direct effect, whereas a provision in a Directive will only have vertical direct effect.

Domestic case law

17. In *Mandla v Dowell Lee [1983] 2AC 548,* the House of Lords considered whether Sikhs were a racial group. It was held that they were as they were members of a racial group defined by reference to "ethnic origins" in the context of the relevant provision of the Race Relations Act 1976, which meant a group which was a segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, provisions and characteristics derived from a common or presumed common past, even if not

drawn from what in biological terms was a common racial stock, in that it was the combination which gave them a historically determined social identity in their own eyes and in those outside the group; that Sikhs were in that sense a racial group defined by reference to ethnic origins for the purpose of the Act, although they were not biologically distinguishable from the other peoples of the Punjab. Lord Fraser set out characteristics, some essential, which would commonly be found and would help to distinguish an ethnic group from the surrounding community. The essential conditions were a long shared history and a cultural tradition of its own. There were a number of other relevant characteristics, such as common geographical origin or descent from a small number of common ancestors, common language, common literature, a common religion different from that of neighbouring groups, and being a minority or being an oppressed or dominant group within a larger community; for example, a conquered people and their conquerors might both be ethnic groups. Lord Fraser pointed out that the word "ethnic" is of Greek origin, being derived from the Greek word "ethnos", the basic meaning of which appears to have been simply "a group", not limited by reference to racial or any other distinguishing characteristics. Lord Fraser believed that the word "ethnic" in the Act of 1976 shall be construed relatively widely in a broad, cultural/historic sense. Lord Fraser endorsed the observations of Richardson J in the New Zealand Court of Appeal in *King-Ansell v Police [1979] 2NZLR 531*: "A group is identifiable in terms of its ethnic origins if it is a segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past even if not drawn from what in biological terms is a common racial stock. It is that combination which gives them a historically determined social identity in their own eyes and in the eyes of those outside the group. They have a distinct social identity based not simply on group cohesion and solidarity but also on their belief as to their historical antecedents.".

18. The House of Lords decision in *Mandla* was both reaffirmed and extended by the Supreme Court's decision in *R(E) v Governing Body of JFS and another [2010] 2AC 728*. "M" was a masorti Jew, and the matrilineal rule imposed by JFS was an aspect of orthodox Judaism. Because of the fact that M's mother was not orthodox Jewish, whether by matrilineal descent or by conversion, at the time of M's birth, under the OCR (Office of the Chief Rabbi) doctrine he was refused admission to the Jewish Free School. The High Court rejected the discrimination claim, on the basis that there was no evidence to suggest that, for example, either orthodox Jews or masorti Jews (as opposed to Jews generally) had distinct ethnic origins. However, the Supreme Court determined otherwise. In applying a test of matrilineal descent whereby a child was only recognised as Jewish if his mother was Jewish (either by birth or conversion) the JFS had applied a racial rule which amounted to direct discrimination. That the rule was applied with a "religious" or "benevolent" motive was immaterial where the criterion applied is inherently discriminatory: see *James v Eastleigh Borough Council [1990] 2AC 751*. The Supreme Court held that direct discrimination on the grounds of ethnic origins is not limited to discrimination based on membership of an ethnic group as defined in *Mandla*. It also embraces discrimination on the grounds of ethnic origin in the narrower sense, ie discrimination on the grounds of someone's descent or lineage. So, a test of a religion that focuses on descent from a particular people is a test

based on ethnic origin (per Lord Mance). Baroness Hale said that it was because M's mother was not descended in the matrilineal line from the original Jewish people that he was rejected by the school, and this was because of his lack of descent from a particular ethnic group.

19. In the context of the Human Rights Convention Articles in Schedule 1 of the Human Rights Act 1988, the Claimant relies upon Lord Hoffman's judgment in *Carson v Secretary of State for Work and Pensions [2006] 1AC, HL.* Lord Hoffman said that discrimination means a failure to treat like cases alike. There is obviously no discrimination when the cases are relevantly different. He went on: "Whether cases are sufficiently different is partly a matter of values and partly a question of rationality. Article 14 expresses the Enlightenment value that every human being is entitled to equal respect and to be treated as an end and not a means. Characteristics such as race, caste, noble birth, membership of a political party and gender, are seldom, if ever, acceptable grounds for differences in treatment.".

    I was also referred to a first instance Tribunal decision of *Naveed v Aslam*, a judgment of the Employment Tribunal in Denbigh in September 2012. The Tribunal concluded that the Claimant's complaint of discrimination based on his caste failed for two reasons. First, that there had been no Order yet made extending Section 9 of the Equality Act 2010 so as to provide for caste to amount of itself to an aspect of race. Second, and unlike the case that I have to deal with, the Claimant's caste was the same as the caste of the Respondent, and his claim was essentially based on status within the caste, rather than the fact of his caste, which he claimed led to his treatment.

    The Claimant's Counsel referred to a number of other cases. In *EDR Attridge Law LLP v Coleman [2010] ICR 242, EAT,* it was held that pursuant to the principle of Community law whereby courts and tribunals of member states were required so far as possible to interpret domestic legislation in order to give effect to the state's obligations under Community law, a court or tribunal could in some circumstances go beyond the strict limits of statutory construction and read words into a statute to give effect to Community legislation the statute was intended to implement.

The Respondents' submissions

20. The Respondents seek to strike out the amendment at paragraph 54 (and paragraph 59,etc) on the basis that the Claimant's case on caste discrimination has no reasonable prospect of success, and they ask the Tribunal to exercise its power under Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013. They also rely on an argument that it would be an abuse of process to allow the claim of caste discrimination to continue. The Respondents also submit that the Claimant's right to have her claim litigated would not be in the interests of justice, given that there is no legislation in place to give the Tribunal jurisdiction. Further, there is no definition of caste and it is not known whether the Claimant's situation could fall within one of the exceptions proposed by the Government. The complexity of the matter of caste discrimination is well recognised and it is for that very reason that the Government has set out the timetable and process for the introduction of caste legislation through the method set out in Section

9(5) of the Act. It is disputed that there is any incompatibility between European and UK law on the issue. The Respondents assert that would be unjust to allow a specific claim in respect of caste discrimination, particularly when the Claimant already has claims for race and religious discrimination, relying on the same set of facts. The Act is currently ambiguous and the Government proposes changes to make it clear. It is inappropriate for the Claimant to benefit from that situation to the disadvantage of the Respondents. It is entirely appropriate that the Government is seeking to reduce the risk of unintended legislative consequences, by extensive public consultation ahead of any introduction of legislation.

The Claimant's submissions

21. The Claimant argues that the Equality Act was intended to give effect to the Race Directive, which in turn was intended to give effect to ICERD. ICERD prohibits discrimination on the grounds of descent and thus caste. In so far as it needed to, the JFS case has explicitly incorporated that approach into domestic law, recognising as it does "descent" as a form of race discrimination. It follows therefore, on the ICERD analysis, that caste is covered already by the domestic law.

    Further, as far as European law is concerned, the Claimant's complaints include those of discrimination and breaches of the Working Time Directive. Not only are the Directives engaged but so too, says the Claimant, the European Convention on Human Rights and the EU Charter. Article 2 of the Race Directive, Article 14 of the Convention on Human Rights and Article 21 of the EU Charter are couched in the widest possible terms. Articles 14 and 21, ECHR and Charter respectively, are expressly non-exhaustive, providing no more than illustrative examples of discrimination "on any grounds such as ....". The Claimant also relies on the obiter comments of Lord Hoffman on caste (see above).

22. The Claimant argues that domestic authority has recognised Sikhism and Judaism as amounting to "ethnic origins", and therefore it is difficult to see how Hinduism can be differentiated. Hindus have a long shared history and a well established cultural tradition, common literature, and a common religion, and also a common geographical origin and language.

    The Claimant argues that the Adivasi and/or Dalit group is an ethnic group in and of itself which is discretely recognised both from within and by others. The Adivasi have a distinctive language, proscribed occupations, a history spanning several thousand years and discrete geographic origins. They also have experienced minority status for generations. It is argued that by reason of the JFS case, however, it is not necessary for each caste to establish that it constitutes its own ethnic group. Hindus, like Jews, can be taken as a composite group of different strands. Nor is it relevant that the alleged discriminator (as with JFS itself) is of the same ethnic origin. The test, which ascribes certain roles or levels of purity based upon parental descent, is an ethnic or racial rule.

23. The Claimant avers that there are essentially only two differences between the JFS case and the case before this Tribunal. First, the complexity of the racial rule here, as compared with the rule in the JFS case. In the JFS case, either M was, in the eyes of JFS, an orthodox Jew or he was not. On the facts of this case, there are various strands of the hierarchy depending on one's birth, each connoting different levels of "purity". The fact that there is a "spectrum" of ill treatment, however, in no way justifies differential treatment between Hinduism and Judaism. The second difference the Claimant points to is the impossibility of conversion within the ethnic group in the present case, whereas in the JFS case M's mother could have converted to orthodox judaism. Within the caste system, however, there is no possibility of conversion to a higher caste.

24. The wording of Section 9(1) is broad, and race "includes" colour, national origin etc. The term race is not therefore comprehensively defined, and Section 9(1) would allow for caste to be incorporated within the definition of racial or ethnic origin.

    Section 9(5) is an enabling provision which envisages the discrete coverage of caste at a later stage. However, an enabling provision for specific legislation does not provide assistance on the question of whether coverage can be implied, based on the content of the Act at the current time. If anything, says the Claimant, it points towards a recognition that caste is likely to constitute an aspect of race, albeit a particularly complex one. It is said that the UK Government position at the time of the Equality Act's enactment was clear, and it concluded that the present legislation was sufficient to prohibit caste discrimination and there was little evidence to suggest discrete legislation was required. The NIESR report was then commissioned, which identified caste based discrimination as being a wider problem than first thought.

    Further, it is said that Section 9 has to be construed purposefully, having regard to Section 3 of the Human Rights Act, the applicable Directives and the Charter, so as to give effect to those provisions in so far as is possible. On such a reading, it must be interpreted so as not to preclude caste based protection. The Claimant then goes on to argue that if Section 9 does prohibit caste-based discrimination, it must be disapplied following European case law.

25. The Claimant, in the alternative, argues that in so far as Hinduism is not found to be an ethnic group and as such the JFS case cannot apply by way of analogy, it is nevertheless plainly a religion. There is nothing to prevent, therefore, a complaint of religious discrimination where less favourable treatment is based upon the employer's belief as to a proscribed group. As such, caste based discrimination will become actionable as a facet of religious discrimination. However, it is noted that Mrs Chandok is a Buddhist (by conversion) and therefore not a Hindu. Further, or alternatively, the Claimant says that those who are not Hindu fare worse in the caste system. The Claimant is a Christian, and therefore that factor is relevant in the alleged ill treatment of her on that account.

The Claimant then makes submissions on indirect discrimination, although this part of the case is not pursued with any enthusiasm.

Conclusions

26. Having regard to the facts for the purposes of this hearing, the law as cited by the parties' representatives, and taking into account the submissions of the representatives, I have come to the following conclusions:

26.1 The Claimant's case on discrimination in the round is that it was because of the overlapping features of race, religion and caste that she was treated in the way that she has described by the Respondents. Her Adivasi status is inextricably linked with her case on race and religious discrimination. It is an integral part of the picture.

26.2 There is no comprehensive and exhaustive definition of race in Section 9(1) of the Equality Act. It "includes" ethnic origin. This in itself is a wide concept, as is clear from the authorities. It can therefore be argued that "caste" is already part of the protected characteristic of race, purely by reference to Section 9(1). Further, the domestic case law – in particular the cases of *Mandla* and the *Jewish Free School* case – provide authority for the proposition that discrimination by descent is unlawful as it is direct race discrimination. The Claimant's case is that she is lower caste by birth and therefore descent – a position in society that she cannot change.

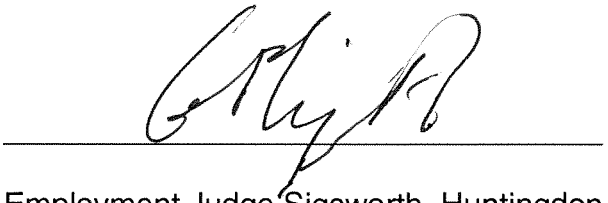
26.3 I also have regard to the Human Rights Act 1998, and the Articles of the Human Rights Convention set out in Schedule 1. The primary legislation (in this case Section 9(1) of the Equality Act) must be read and given effect in a way that is compatible with Convention rights – see Section 3(1) of the Act. The Claimant cites potential breaches of Articles 4(1), 8(1) and 9(1). Article 14 prohibits discrimination in relation to the enjoyment of the rights and freedoms set out in those Articles, and a broad definition of discrimination follows: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.". This definition is certainly wide enough to include the caste discrimination complained of by the Claimant. I conclude that Section 9(1) can be and should be construed in such a way as to provide for caste discrimination in the context of this case to be part of the protected characteristic of race discrimination.

26.4 If caste is based on ethnic origin – and discrimination on grounds of ethnic origin is not proscribed by the Equality Act - then arguably the Equality Act does not fully implement the provisions of the EU Race Directive. The Race Directive is itself intended to give effect to the ICERD (to which the UK is a signatory), and racial discrimination defined therein includes discrimination on the basis of, inter alia, descent. This is another factor in my thinking. Also a factor in that

thinking is the EHRC Code of Practice on Employment – which gives guidance on the definition of "ethnic origins" and "ethnic group" – the breadth of which assists the Claimant's case. However, I am not persuaded that the EU Charter is relevant, as the UK has opted out of its provisions.

26.5 The fact that the Government has decided to legislate to make it clear that caste is a protected characteristic, or an aspect of the protected characteristic of race, is not determinative of the issue. I have to decide whether – on the current state of the law – and in the particular circumstances of this case – the Claimant can bring a claim of caste discrimination, standing alone or as an adjunct to her claims of race and/or religious discrimination. If she can do so, then it is not appropriate to strike out those parts of the amended statement of claim challenged by the Respondents, either on the basis that they are vexatious/have no reasonable prospect of success, or that they are an abuse of process.

26.6 For the purposes of this preliminary hearing, I take the Claimant's case as she puts it and at its highest. On the basis of that case – and on my interpretation of the law as has been cited to me – I conclude that the Claimant's claim of caste discrimination as set out in the amended statement of claim should proceed to a merits hearing, and I decline to strike it out.



Employment Judge Sigsworth, Huntingdon

JUDGMENT SENT TO THE PARTIES ON

24/1/2014

FOR THE SECRETARY TO THE TRIBUNALS

EMPLOYMENT TRIBUNALS

Claimant: Ms P Tirkey

Respondent: Mr and Mrs Chandok

HEARD AT: CAMBRIDGE **ON:** 13th – 17th July 2015
20th – 22nd July 2015

BEFORE: Employment Judge Ord

MEMBERS: Mr J Ruddick
Mr M Reuby

REPRESENTATION

For the Claimant: Mr C Milsom, Counsel

For the Respondent: Mr J Frederick, Solicitor

JUDGMENT

It is the unanimous decision of the Employment Tribunal that:

1. The Respondents failed to pay the Claimant the National Minimum Wage throughout the period of her employment. The shortfall in the National Minimum Wage was £183,773.53 which sum the Respondent is ordered to pay to the Claimant as an unlawful deduction from her wages.

2. The Claimant was unfairly dismissed.

3. The Claimant was the victim of unlawful harassment on the ground of her race.

4. The Claimant was the victim of indirect religious discrimination.

5. No statement of terms and conditions of employment as required by Section 1 of the Employment Rights Act 1996 was provided.

6. The Claimant was not provided with itemised pay statements as required by Section 8 of the Employment Rights Act.

7. The Respondents were in breach of the Working Time Regulations by failing to give the Claimant daily rest of 11 continuous hours in every 24 hour period, and failing to give her weekly rest of 24 hours in every seven day period.

8. The Respondents were in breach of the Working Time Regulations when the Claimant was not awarded 5.6 weeks of paid annual leave.

REASONS

Background

1. The Claimant worked for the Respondents in India (at the home of the first Respondent's father) and then in the United Kingdom as a domestic worker and nanny. She complains that throughout that period she was not paid in accordance with the National Minimum Wage Regulations, was not afforded daily or weekly rest, nor paid annual leave. She was not given itemised pay slips or a statement of her terms and conditions of employment which met the requirements of Section 1 of the Employment Rights Act 1996. The Claimant further says that during her employment she was subject to harassment or direct discrimination on the ground of her race and direct or indirect discrimination on the ground of her religion or belief contrary to the Equality Act 2010.

2. The Claimant claimed that her ethnic origins, including her nationality and her hereditary position in society (in whole or in part on the basis of her caste) was the reason why she was treated the way that she was by the Respondents. She also claimed that she was unable to practice her religion. The Claimant is a Christian. The first Respondent was born in India to Afghan Hindu parents. She says that she is now a practicing Buddhist. The second Respondent is a Hindu and was born in Afghanistan. He and his parents sought refuge in Germany during the Afghan war in 1985 and he has lived in the UK since 1999. The first Respondent has been a British citizen since 2005. The second Respondent is a German national.

The Hearing

3. The Claimant gave evidence and on her behalf evidence was also heard from Gertrude Tough and Kate Roberts. Witness statements were produced from Karan Singh, Harjeet Kaur and both Sandeep Tirkey and Pradeep Tirkey (the Claimant's brothers) but none of those individuals were called to give evidence.

4. Each of the Respondents gave evidence as did, on their behalf, Mr Radhy Sham Chandok (the second Respondent's father), Rubina Chandok (the second Respondent's sister) and Daisy Johar (a friend of the Respondents).

5. Reference was made to a bundle of documents to which further documents were added during the course of the proceedings.

The issues

6. A list of issues to be determined by the Tribunal was provided by the parties and considered by the Tribunal. The issues to be determined were as follows:

   6.1 What were the dates of the Claimant's employment.

   6.2 Was she employed by the first or the first and second Respondents.

   6.3 Was the Claimant provided with a statement of terms and conditions as required by Section 1 of the Employment Rights Act 1996.

   6.4 Was the Claimant provided with itemised pay statements as required by Section 8 of the Employment Rights Act 1996.

   6.5 Was the Claimant dismissed or did she resign.

   6.6 If the Claimant did resign, did she do in circumstances where she was entitled to terminate her contract without notice by reason of the employer's conduct so that that resignation was a dismissal and if so what was the fundamental breach (or what were the fundamental breaches) of contract upon which the Claimant relies and/or what was the "final straw" event.

   6.7 Can the Respondents show any potentially fair reason for dismissal.

   6.8 If so, can the Respondents show they acted reasonably in treating any potentially fair reason as sufficient reason for dismissing the Claimant.

   6.9 What were the hours of work carried out by the Claimant during her employment.

   6.10 What salary was the Claimant entitled to receive pursuant to any contract of employment and/or the National Minimum Wage Act 1998 and the 1999 Regulations made under the Act.

   6.11 What payments were actually made to the Claimant during her employment.

   6.12 Is the first (or first and second) Respondent entitled to rely on Regulation 2(ii) of the National Minimum Wage Regulations 1999.

   6.13 If so, is the exemption itself lawful.

   6.14 If so, did it apply in the present circumstances.

6.15 Was the Claimant provided with paid annual leave and/or pay in respect of the same as required by the Working Time Regulations 1998 and/or her contract of employment.

6.16 Having regard to the previous issues, what is the difference between the amount "properly payable" to the Claimant and the amount actually paid to her.

6.17 Did the Claimant receive daily rest of 11 continuous hours in every 24 hour period as required by the Working Time Regulations 1998.

6.18 Was the Claimant give weekly rest of 24 hours in every seven day period as required by those Regulations.

6.19 If the Claimant was given rest periods, did the first and/or the first and second Respondents allow her to make full use of these rest periods.

6.20 Did the first and/or second Respondents treatment of the Claimant during her employment amount to an unwanted course of conduct.

6.21 If so, did it have the purpose of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, and/or

6.22 Should it be reasonably considered as having the effect of violating the Claimant's dignity or creating that environment for her having regard to all the circumstances including in particular the perception of the Claimant.

6.23 If so, was such treatment related to race, or religion or belief.

6.24 Alternatively, did that treatment amount to less favourable treatment than the Respondents would have afforded others because of her race.

6.25 In that regard, has the Claimant proved sufficient facts from which the Tribunal could conclude in the absence of an adequate explanation that the first and/or second Respondents treated the Claimant in the manner alleged on the grounds of race?

6.26 If so, can the first and/or second Respondents show that the acts committed were in no sense whatsoever because of the Claimant's race.

6.27 Was the Claimant treated less favourably by the Respondents then they would treat others because of her religion or belief.

6.28 In that regard, has the Claimant proved sufficient facts from which the Tribunal could conclude in the absence of an adequate explanation that the first and/or second Respondent has committed an act of unlawful discrimination against the Claimant.

6.29 If so, can the first and/or second Respondent show that the acts committed were in no sense whatsoever because of the Claimant's religion or belief.

6.30 Insofar as that treatment amounts to less favourable treatment on the grounds of caste, should that treatment be regarded as less favourable treatment on the grounds of religion.

6.31 Did the first and/or second Respondents apply to the Claimant a provision, criterion or practice which is discriminatory in relation to the Claimant's religion.

6.32 If so, would the first and/or second Respondent have applied that practice to persons not of the same race, nationality and/or ethnic or national origin as the Claimant.

6.33 If so, does that provision, criterion or practice put persons of the Claimant's race, nationality and/or ethnic or national origins at a particular disadvantage when compared with other persons.

6.34 If so, did that provision, criterion or practice put the Claimant at that disadvantage.

6.35 If so, can the first and/or second Respondent show that the provision, criterion or practices applied to be objectively justified. In particular,

6.35.1 What is the aim relied upon.

6.35.2 Where the means adopted proportionate to that aim.

6.36 Did the first and/or second Respondents apply to the Claimant a provision, criterion or practice (namely restricting the movement of workers they employed).

6.37 If so, would the first and/or second Respondent ever apply that equally to persons not of the same religion.

6.38 If so, does it put persons of the Claimant's religion at a particular disadvantage when compared with other persons (the Claimant relying on the inability to attend religious services as the particular disadvantage).

6.39 If so, did that practice put the Claimant at that disadvantage.

6.40 If so, can the first and/or second Respondent show that practice to be objectively justified. In particular,

6.40.1 What is the aim relied upon.

6.40.2 Where the means adopted proportionate to that aim.

6.41 In relation to those claims brought by the Claimant which are well founded what is the appropriate remedy to be awarded to her.

6.42 Should any reduction be made to any award made in favour of the Claimant to take account of the fact that she did not raise a grievance before instituting proceedings.

6.43 In the event that the Claimant was unfairly dismissed, what was the likelihood of her being fairly dismissed and in what timescale.

The facts

7. Based on the evidence present to us at the hearing, we have made the following findings of fact.

8. The Claimant was born on 5th August 1976 in Bihar, Eastern India. She describes herself as being of the "servant class" and has come from a small rural village (Hethmatetartuli). She describes those from her village as being servant class and "low caste". She says that she received only basic education as the expectation for her and others would be to become servants and domestic workers in wealthier parts of India. The Claimant's family has always carried out domestic work of one kind or another.

9. The Claimant's family are "Adivasi" people who are dark skinned and poor. They can be either Christian or Hindu and are recognised by the sari they wear at festivals or on special occasions (a white sari with a red border). In the "caste pyramid" the Adivasi are the lowest class.

10. This evidence from the Claimant was entirely unchallenged and we accept it.

11. According to the Claimant she first met the first Respondent in early 2008 when the Claimant says that a friend was working for a lady known to the Claimant as "Auntyji" which is a respectful form of address to an older lady. There was an opportunity to work in the United Kingdom for Auntiji's niece as a children's nanny and the Claimant said that she would be interested in that work. The Claimant says that she met the first Respondent outside Auntiji's house (she was not invited in which she says is normal for a lower caste person when meeting a person of higher caste at their home) and was told that the work would be to do housekeeping at the Respondent's home in the UK and to look after their baby twins. The Claimant was asked to undertake a two week trial period in India in March of that year.

12. The Respondents' version of events is wholly different. The first Respondent says that she first met the Claimant in 2006. She was looking for domestic help through "Isha Placement", an agency in Lajpat Nagar. She said that at that time she was looking for someone who could, amongst other things, "measure formula milk for the children" and "read which medicines to give".

13. At this time the Respondents were trying to have a family. Both the first and second Respondents had had tests and the first Respondent was undergoing IVF treatment in India. The family's twins were born on 9th October 2007 after further IVF treatment in the UK. The twins were born in the UK.

14. The Respondents say that between 2006 and 2008 the Claimant worked in India whilst they were resident in the United Kingdom. The Respondents had been in India from 24th September to 16th October 2006. They claimed that they had made payment to Isha Placement Agency in cash for them finding the Claimant, and that they paid the Claimant the sum of 5,000 rupees per month for her work in India. They could not say what work she did during that period other than that the Claimant was working for the first Respondent's father.

15. It was also not said why the first Respondent would pay for the Claimant to do work for her father and when this was put to the first Respondent she then said that her father had paid the Claimant during that period.

16. No documentary evidence has been produced as regards Isha Placement, nor confirming any payments made to the Claimant between 2006 and April 2008.

17. In relation to this matter we unanimously find the Respondents' evidence to lack credibility and prefer the evidence of the Claimant. The suggestion that the Respondents recruited the Claimant to deal with medication the first Respondent might require as a result of her IVF treatment in India (when the Claimant was to leave India in October 2006) for two years and that she was recruited to deal with children as yet unconceived, let alone born, lacks any credibility. The absence of any evidence to support the Respondents' contention that they recruited the Claimant through an agency or that payment was made to the Claimant during the period up to 2008 further causes us to reject this evidence. We find as a fact that the Claimant was recruited, subject to a trial period, in March 2008.

18. That finding is corroborated by the only receipt or document showing payment to the Claimant in India which was for the sum of 25,000 rupees dated 4th April 2008. The Claimant says this was for five months work (March to July 2008) and was paid partially in advance so that she could give money to her family before she left for the UK. That sum was paid after the trial period to which she refers.

19. In April 2008 the Claimant was taken by the first Respondent to the High Commission Visa Centre in Delhi. The visa forms were completed by the first Respondent.

20. It is clear to us that at all times the Claimant was not interviewed alone as part of the visa process. On 11th April 2008 the application record shows that there was concern that the Claimant was said to have been working as a domestic help since 2006 and that she was looking after babies (but that the babies were born in October 2007 and that the sponsor/employer was still

living and working in the UK at the relevant time). A further interview was held on 8th April 2008 and the note records:

> "Credible applicant and sponsor who attended the interview convinced that the applicant has worked for the sponsor for more than one year. She will be going to the UK to look after the children. Evidence of accommodation submitted, along with evidence of funds. On balance issue".

21. The first Respondent maintained that she was not present when that interview took place but she is recorded as being present. It is clear to us and we find as a fact that the relevant official needed to be persuaded to issue a visa in favour of the Claimant and we find as a fact that that persuasion came from the first Respondent. When questioned before us the Claimant could not explain why it was important that she had worked for the Respondents for more than one year before applying for her visa. This was well known, however, to the first Respondent as being a condition of the Claimant obtaining a visa.

22. According to the contract of employment provided to the High Commission in Delhi and signed by the Claimant (written in English which she did not understand), the Claimant was to work 56 hours per week and receive a salary of £400 per month and would be paid by cheque. She was to receive one month's paid holiday each year and would have her own room with attached bathroom whilst living with the Respondents. That document refers to the first Respondent as the employer but the undertaking to be responsible for the maintenance and accommodation of the Claimant was signed by the first Respondent not under her address but as "w/o [wife of] Ajay Chandok".

23. Whilst working in India until 17th May 2008 when the Claimant travelled to the United Kingdom with the first Respondent and the children (the second Respondent being already in the UK), the Claimant says she slept in a room with the children which she described as a "normal" thing to do. The Respondent claimed that the Claimant slept with the first Respondent's father's servants. The Claimant's evidence on this matter was clear and consistent. Whilst there was some agreement regarding the arrangements in India, where there was dispute – particularly with regard to sleeping arrangements – we accept the evidence of the Claimant. In this as in other areas the evidence of the Respondents was unclear, often hesitant and at times inconsistent. The first Respondent claimed that the Claimant slept with her father's servants, then in another building, not with the other servants, and then changed her mind again. The Claimant's evidence was consistent, that she slept with the children, and we accept it.

24. When the Claimant was packing her belongings to travel to the UK with the first Respondent and the Respondent's children, the first Respondent oversaw her packing. The Claimant is a Christian and wished to bring with her her copy of the bible. She described it as being a small book, approximately the size of a pocket diary. The Claimant says she was told that she could not bring her bible because it would be too heavy and that she would have no time to read whilst she was working for the Respondent. The Claimant says

that the first Respondent packed some of her clothes or belongings in the bag which contained the Claimant's belongings.

25. We accept the Claimant's evidence on this point. The first Respondent did not allow the Claimant to bring her bible with her. The Claimant, prior to her travelling to the UK, was a practicing Christian. The second Respondent is a Hindu, the first Respondent is by upbringing Hindu but says that she is now a practicing Buddhist. We find as a fact that the first Respondent told the Claimant that she could not bring her bible with her.

26. The Claimant travelled to the United Kingdom with the first Respondent and the Respondents' children, arriving in the United Kingdom on 17th or 18th May 2008. On arrival she was taken to the Respondents' house at 5 Evesham Way, Oakhill, Milton Keynes. Thereafter she worked for the family (and the extended family) of the Respondents under the direction of, and in the employment of both Respondents until her employment ended.

27. We find as a fact that the Claimant was employed by both Respondents, and not as the Respondents said in evidence by the first Respondent only. We say that for the following reasons. First, throughout the response to the Tribunal claim the Respondents answer in the plural to the claim. Examples are (from both the original response and the amended response):

From the original response:

1. "The Claimant was employed by us from 17th May 2008 to 21st November 2013 in the UK, prior to that she was employed by us from 5th October 2006 in India...."

2. "The Claimant was employed by us in India from October 2006 to May 2008..."

It was not until the re-amended grounds of resistance on 4th February 2014 (almost exactly one year after the Claimant's claim had been originally lodged) that the Respondents together denied that the second Respondent had ever employed the Claimant.

28. The Claimant carried out work for the benefit of both the first and second Respondent. The tasks which she carried out (cooking, cleaning, childcare) were for the benefit of both the first and second Respondent. She took instruction from the second Respondent as and when required. There is no suggestion that the second Respondent would defer to the first Respondent in relation to the tasks given to, treatment afforded to or management of the Claimant. We have already observed that when on 10th April 2008 the first Respondent completed undertaking as the maintenance and accommodation of a domestic worker to ensure that the Claimant had leave to enter or remain in the United Kingdom, she described her address as "w/o of Ajay Chandok" rather than give her own address.

29. The payments that were made into the bank account in the Claimant's name were made from the Respondents' joint account.

30. We are satisfied that the Respondents jointly employed the Claimant. There was no distinguishing feature as between the first and second Respondent so far as the Claimant was concerned. She took instructions from and worked for both of them. We gain no guidance from the main terms and conditions of employment completed by the first Respondent on 10th April 2008 or subsequent versions of it. They do not reflect the true terms and conditions of employment under which the Claimant was employed and they were written, we find, simply for the purpose of ensuring that the Claimant obtained a visa to travel to and work in the United Kingdom and to remain in the United Kingdom.

Accommodation arrangements at 5 Evesham Way, Oakhill

31. There was much evidence, some of it contradictory, regarding the accommodation arrangements at the Respondents' house. At no stage, notwithstanding the fact that the Respondents had purchased the property, extended it by converting the loft space and subsequently let the property out to tenants, were the Respondents able to produce a plan of the property. We have therefore made the following findings of fact based on the oral evidence presented to us.

32. The house was originally built as a two storey property and is now effectively a three storey property following the conversion of the loft space.

33. On the first floor there is a bedroom with an en-suite bathroom, and a second bedroom. Access to the top floor is gained through a landing space which has been partitioned off so that there is an enclosed space with two separate doors. One door leads to the first floor and the other door leads upstairs into the loft conversion. That is the only access to the loft conversion and thus anyone going to or from that room needs to go through the first floor space. We will refer to that space as a converted landing. On the top floor there is a large master bedroom and en-suite facilities.

34. Throughout the period of the Claimant's employment the Respondents slept in the top floor master bedroom.

35. Initially the two bedrooms on the first floor were occupied by the second Respondent's parents (one of the rooms) and his sister and grandmother (the second room). No one slept in the converted landing.

36. On a date which no witness could state with any certainty, but which was in or around February 2009, the second Respondent's parents, sister and grandmother moved into other accommodation. This coincided with the twins leaving the parents' room. They occupied the two bedrooms on the first floor of the property.

37. Whilst the twins were in the same master bedroom suite as their parents the Claimant slept with them. When the twins moved to the ground floor she slept initially in the landing space and then in the same room as the male twin (Kabir). If the female twin (Anjalee) woke during the night the Claimant would move into her room. There was a baby monitor so she could hear if Anjalee woke.

38. At all times the Claimant did not have a bed. The Claimant was given a foam mattress on which she slept and she slept on that mattress on the floor in each of the locations referred to.

39. The Respondents describe the converted landing space as "bedroom 4" and say that the Claimant had a single bed, a chest of drawers and two wardrobes. They say that she also had space to keep her "extra storage" in the garage and loft conversion side storage.

40. The Claimant said that she did, for a period, sleep in what the Respondents call bedroom 4 but she moved out of it because she had no privacy whatsoever. We accept that evidence. Anyone moving to or from the master bedroom in the loft conversion would have to pass through "bedroom 4". No privacy was afforded. In the absence of a plan the dimensions of this area are unclear but from the description given by the Claimant we do not accept that that space was large enough to hold a bed, a chest of drawers and two wardrobes. The Claimant describes that she had one cupboard in which she could store her things and we accept that. The Claimant had little by way of possessions and the volume of storage space which the Respondents say she had available to her was quite disproportionate to her belongings.

41. In this area the Respondents, we find, have sought to elaborate and overstate the facilities afforded to the Claimant. We note that when a visa was being sought for the Claimant to allow her to travel to the UK and when terms and conditions of employment were completed by the Respondents, the Claimant was said to have a separate room with an attached bathroom. On their own evidence before us no such arrangement ever existed. We find as a fact that the Claimant initially slept on the floor in the master bedroom when the twins were in that room with their parents, then from February 2009, slept for a short period in the converted landing space before moving into Kabir's room. At all times she slept on a mattress on the floor and was not given a bed.

The Claimant's documents

42. The Claimant's passport was, all parties agree, kept by the Respondents in a cupboard. The Respondents say that this was to keep the document safe. The Claimant says it was so that it was kept from her, and that it was locked.

43. Shortly after her arrival in the UK (towards the end of June 2008) the first Respondent and the Claimant went together to a local branch of Barclays bank. A bank account was opened in the Claimant's name. The Claimant says that she had no control over this bank account whatsoever. The Respondents say that she had a bank card, that she made cash withdrawals

from the bank and sometimes asked one or the other of them to take out cash for her. She preferred to use cash rather than a card when making purchases.

44. The Claimant says that when she travelled to the UK the first Respondent held her passport at all times except when she was required to travel through immigration control and once that process was completed she took the passport back from the Claimant.

45. We find as facts that;

46. The Claimant was not allowed the control of her own passport. This was held at all times by the Respondents.

47. The Claimant had no control over the bank account opened in her name, at all times this was controlled by the Respondents.

48. The Claimant did not have either control of or the ability to use the bank card associated with the account open in her name.

49. We reach these conclusions for the following reasons;

50. First it was clear from the evidence of the only truly independent witness in this matter, Mrs Tough, that when she met the Claimant (immediately after the Claimant's employment had ended) she did not know the pin number for her bank card, did not know how to use a cash machine to withdraw money, did not know how much money was in her bank account, and was described by Mrs Tough as "an innocent".

51. Secondly, during the initial period of her employment, the Claimant clearly accepted and trusted the Respondents to look after her.

52. The first Respondent's evidence in this area is contradictory. She relies upon the initial report from the charity KALAYAAN when the Claimant attended on 23rd November 2012 where it is recorded that the Claimant "has always held on to her passport and biometric card" but accepts that the Claimant's passport was "kept in the same place as all our passports". The first Respondent says that the Claimant had access to her passport and biometric card but the Claimant says that she did not know where the passport was kept but she assumed that it was in a locked wardrobe in the Respondent's room.

53. We are satisfied that the Claimant's passport and biometric card were held by the Respondents at all times and that the Claimant did not know their whereabouts. If she is correct and the documents were kept in a locked cupboard, then she did not have access to them, but equally if she did not know where they were she did not have access to them. Based on the evidence of Mrs Tough, the Claimant clearly did not know how to use a bank card. We are satisfied that the Respondents kept control of that bank card throughout the relevant period.

Duties and responsibilities

54. The Claimant's principal duties, initially, were the care of the second Respondents' children. She was also required to carry out domestic chores for all of the family (including, when they were resident, the extended family) such as washing, ironing, cleaning and food preparation. The second Respondent's mother, in the period up to February 2009, was in charge of cooking but otherwise the Claimant had a substantial responsibility throughout the period of her employment to prepare and cook food for the family at large. She did not eat with the family.

55. In a lengthy section of her witness statement the first Respondent endeavoured to establish by virtue of a daily breakdown of duties that the Claimant worked, initially, for 6 hours per day (with one day per week off), thereafter from November 2008 onwards on slightly different duties but for the same length of time per day until February 2009 when her duties altered slightly but she still worked 6 hours per day, 6 days per week. It was then suggested that between April and October 2010 the Claimant worked 5 hours 30 minutes per day, 5 days per week, which remained her working hours with a slightly different working pattern in November and December 2010 and then again from January to May 2011. The first Respondent says that the Claimant then worked another different working pattern from May 2011 to November 2012 but again was working 5 hour and 30 minutes per day, 5 days per week.

56. The Claimant's evidence was materially different. The Claimant says that her duties changed depending on the needs of the family and instructions she was given but that she was essentially on duty throughout the day. Her day began at approximately 7am, her first duties were to look after the waking children, she had responsibilities in respect of their being dressed and breakfasted, would carry out chores such as washing and cleaning, where required would make lunch for such members of the family as were present, and carried out general household chores.

57. There was no period of the day when the Claimant had an organised break (ie when she was off duty and not on call). The Respondents sought to establish that during the course of an afternoon there would be a period of approximately three hours when the children were asleep and the Claimant was "free". However, the Claimant could not leave the house (unless another member of the family was present) as the children could not be left alone, and if the children woke it was her responsibility to deal with them. She was still "on call". Her working day ended with the children going to sleep at approximately 9pm, after which she would make her own food which she would eat in the kitchen, then do the final cleaning, tidying and laundry tasks of the day which might take her until approximately midnight. The Claimant says that she would check on the children at least once during the night.

58. The Claimant says that this was the regime seven days per week. She was, on her evidence which we accept, not given any day off. She was still responsible for preparing packed lunches and food for the children at

weekends and had cleaning and similar domestic responsibilities, including laundry, throughout the weekend.

59. The Claimant says that she worked 18 hours per day in that, for that length of time, each day, she was either working or on call in the Respondents' premises. We accept that evidence. Indeed the Claimant's evidence might well have pointed to a longer working day (with no guaranteed breaks, no organised rest periods, no weekly time off and with her being "on call" and on the Respondents' premises throughout the whole of each day). The Claimant limits her evidence, however, to the statement that she was at work or on call 18 hours per day and we accept that evidence.

60. The Respondents endeavoured to say that from February 2009 onwards they were each in full time work and the children were in nursery followed by full time education so that the Claimant had "very little to do during the day" and that as time progressed her workload decreased significantly. That is not accepted by us. There will have been some change in the nature of the care which the Claimant was required to give to the Respondents' children but we accept the Claimant's evidence that when the children started to go to nursery school the second Respondent's father would drive them there (but with the Claimant in attendance) which was the same position when they were returning from school.

61. The Claimant also assisted when the Respondents' started a wedding clothing business. The first Respondent's evidence was that it was (in her words) "an untruth to suggest that the Claimant worked extra hours" when that business was being carried out, but does admit that on occasions the Claimant "assisted in unveiling the collection and provided coffee and biscuits to the guests (customers)". We find that that was work. The first Respondent said that the Claimant "took pride in being part of the venture" but it is not suggested that she had any "part in the venture" other than as to serve the first Respondent and her potential customers.

62. In her evidence the first Respondent accepted that the Claimant did not have time during the day which was a guaranteed period of rest when she would not be disturbed or have to carry out any tasks. Throughout the time that the children or a member of the family was in the house she was "on call" to respond to any instructions she was given.

63. In summary:

64. The Claimant had the primary responsibility for the Respondents' two children. They were washed, clothed, fed and looked after by her throughout the day. She was responsible for their laundry and cleaning their rooms. She prepared their meals.

65. The Claimant prepared food for the family. She would from time to time have the assistance or guidance of the Respondents or members of the wider family but the primary responsibility for food preparation and cleaning up after meals was the Claimants.

66. The Claimant was responsible for cleaning, laundry, tidying, vacuuming and other household duties in the Respondents' house.

67. The Claimant was "on duty" throughout the period. She was not provided with rest breaks. She worked seven days per week with no designated rest day.

68. On occasion when the Respondents and the children went on holiday without the Claimant, other members of the family came to live in the house. The Claimant was not left alone for any significant period of time. When those family members came to stay the Claimant was required to continue her household duties and look after the visitors. On the occasions when the Claimant accompanied the Respondents on "holiday" (in particular on visits to India) the Claimant was, save for very limited periods, looking after the children and assisting the Respondents. On one visit to India she had a period of two days (one night) when she was allowed to visit family but otherwise she was with the Respondents and at their beck and call.

69. When the Respondents visited friends or held parties at their own house, the Claimant would accompany them. She was on duty at that time with the responsibility of looking after the Respondents children. She was not invited as a fellow guest. She was there as the Respondents' domestic servant.

70. The Claimant says that during the time she was in the United Kingdom and working for the Respondents she was unable to attend church as she wished because she was working seven days per week and because of the restrictions on her movement out of the house when she was not allowed out alone.

71. We have found that the Claimant was working and "on call" to carry out such tasks as the Respondents demanded of her seven days per week. The Claimant was therefore denied the opportunity to attend church as she says she would wish to do. This lasted throughout the period of the Claimant's employment.

72. The Respondent, by production of daily schedules of tasks, sought to claim that the Claimant knew, at the time shortly before her employment ended, that the amount of work she was being required to do was reducing and that the Respondents would no longer have a need for her services so that she was anxious to obtain other work and would in due course have been made redundant in any event.

73. We have already found that the nature of the Claimant's work was such that she was "on call" at all times. She was at the beck and call of the Respondents whenever they required her to carry out tasks for them, their children, or their extended family. We have already found that the minute by minute analysis of the Claimant's duties does not help us because there was no time when the Claimant was on a designated "break", no time when she could engage in whatever activity she chose and no time when she could rely on an uninterrupted period of rest.

74. Further, the concept of "redundancy" was not put to the Claimant at any stage. She was challenged as regards her intention to work elsewhere (or at one stage it was suggested to her that she would be setting up her own business) which the Claimant flatly rejected. We accept her evidence. There was no time when the Claimant found her periods of duty reducing and there was no time when she was concerned or advised that the Respondents may no longer require her services. We find as a fact that had the events of November 2012 not occurred, the Claimant would have continued to work as she had for the Respondents for the foreseeable future.

Use of the bank account in the Claimant's name

75. The bank account in the Claimant's name was opened on or about 1st July 2008. It was opened by the first Respondent and the Claimant together attending Barclays Bank. The Claimant says that the arrangements were made and the discussions with the bank staff were conducted by the first Respondent and we accept that. The Claimant's english is, even now, extremely limited. She was reliant upon the Respondents for many things and she did not have the capacity to open a bank account in the United Kingdom on her own.

76. The Claimant says that until she left the Respondents' employment she had no control over or access to the relevant account. The first Respondent says that the Claimant's monthly pay was paid into the account and that she had full use of the account throughout the period. She would withdraw cash (as she preferred to use cash rather than card for payments) herself and/or would ask the Respondents or one of them to take cash on her behalf and bring it to her. The Respondent says that all of the withdrawals from the account were made either by or for the Claimant.

77. It has been necessary for us to consider the evidence regarding the use of the bank account and withdrawals from it. There are payments into the account of £400 per month from the Respondents' joint account beginning on 2nd July 2008 and continuing monthly until 2nd March 2009. Thereafter the payments (all from the Respondents' joint account) were as follows:

1/4/09 – 1/4/10	£500 per month
4/5/10 – 1/7/11	£530 per month
1/6/11 – 8/5/12	£550 per month
8/6/12 – 15/10/12	£570 per month

78. On 22nd November 2012 when the Claimant's employment ended the balance in the account was £1,496.99.

79. The total paid into the account was in excess of £27,000. The Claimant says that none of the withdrawals made prior to the termination of her employment

were made by or for her. She says she had no access to the account and did not know how to operate it. She says that she did not know how to use a bank card. The Respondents say that all of the withdrawals were either by or for the benefit of the Claimant.

80. For the majority of the period of time when the account was open the transactions are withdrawals of almost exclusively round sums of cash, varying between £50 and £300 on each occasion. There are however the following card transactions:

81. 23rd June 2009, £13.37 at Morrisons Supermarket

82. 20th October 2009, £6.97 "instore" and £25.50 "bewise"

83. 19th August 2010, £40.01 for the purchase of petrol at Asda Supermarket

84. 25th January 2012, £71.50 at Asda Stores

85. 29th February 2012, £71.16 at Morrisons Supermarket

86. 21st September 2012, £17.99 at Ekohkar Foods

87. 24th September 2012, £36.99, Asian African Foods

88. 24th September 2012, £39.13, Asian African Foods

89. 25th September 2012, £52, the Clarks Shop

90. 25th September 2012, £68.19, Amir Halal Food Limited

91. 28th September 2012, £70.18, Morrisons Supermarket

92. On the Claimant's own evidence the food which she ate was provided by the Respondents. There is no explanation whatsoever for the Claimant spending in a short period of time in September 2012 £230 at supermarkets and food stores within a week. There is no explanation as to why the Claimant would be buying petrol.

93. The cash withdrawals were made at a series of ATM machines in and around the area where the Respondents lived. They were machines also used by, in particular, the second Respondent when withdrawing cash from his own account. Three of the cash withdrawals are highly notable.

94. The first was on 21st October 2009. The Claimant's evidence, which we accept, was that she and the second Respondent's father went to the bank and she was required to sign a form at the bank. £900 was withdrawn from the account that day. Shortly thereafter the Respondents and the Claimant travelled to India. The Claimant was given, as one of her "salary payments" 90,000 rupees (almost exactly £900). We find as a fact that the £900

withdrawn from the account was used to pay the Claimant her "salary payment" of 90,000 rupees when she was in India at that time.

95. The other transaction of note is a withdrawal of £100 (which attracted a cash withdrawal fee of £1.50) from Aspers Casino at 20 minutes past midnight on 27th August 2012. The second Respondent admitted that he had undertaken that withdrawal. He claimed that this withdrawal was at the Claimant's request and for her benefit. We find the suggestion that the second Respondent was asked to withdraw cash for the Claimant but chose to do so at a casino where he was incurring a fee (which was added to the deduction from the relevant account) to lack any credibility.

96. A further withdrawal of note took place on 16th October 2012 when £160 was withdrawn at Heathrow Terminal 4 (departures). The first Respondent's passport shows her arrival at New Delhi on 16th October 2012 and her departure from the same city on 25th October 2012. If as is suggested the cash was withdrawn for the benefit of the Claimant it was (with her bank card) taken to India and returned 9 days later.

97. In addition, there is a remarkable coincidence of locations from which withdrawals were made from the bank account in the Claimant's name and the Respondents' own bank accounts. Many of the withdrawals were made during the course of the afternoon or evening period when, as the Respondents set out in their case, the Claimant was at home and working. The locations from which cash was withdrawn (Nationwide Dunstable Way, Tesco Oxley Park, Bletchley, Stoney Stratford, BP Conniburrow, and others) were locations from which the Respondents habitually withdrew cash. They are some distance from the Respondents' home and we reject the suggestion that it was the Claimant herself who made these withdrawals. Leaving aside our finding as regards the Claimant's ability to use a bank ATM machine at the time, there were, it was accepted by the Respondents, closer machines which could have been used and bearing in mind the Claimant's inability to drive and her reliance on either walking or the use of public transport, no explanation was forthcoming as to why the Claimant would take an unnecessary and lengthy trip to withdraw cash when other cash machines were more easily accessible and closer at hand.

98. Further, if as the Respondents suggested they regularly withdrew cash for the Claimant and at her request they could not explain nor did they ever raise with her, the volume of spending which took place from time to time. For example, from 5th to 8th July 2015 **??**, four days, there were six cash withdrawals from Nationwide Building Society in Dunstable way (6.02pm 5th July) of £300; from the same location the following day, 6th July, at 10.59pm also in the sum of £300; on the following day, 7th July, from Snax 24, Portway, at 1.57am in the sum of £250; on the following day (8th July) at 3.41pm and then at 3.42pm from Eagle Walk withdrawals in the sum of £250 and £50; and then on 9th July at 5.58pm from Rafaels Bank, Terminal 4 Heathrow (Land side) in the sum of £300. This amounts to £1,450 withdrawn in five days. The Respondents could offer no explanation as to why – if this money was withdrawn by them on her behalf (as they accepted some or all of these withdrawals were) – they

did not raise with the Claimant the question why she needed so much money. Nor could they explain why, if the Claimant had access to such substantial sums, she was concerned about the small amounts of money due to be paid in relation to her life insurance policies.

99. We are satisfied that all of the withdrawals from the bank account were made by and for the benefit of the Respondents. The one exception is the £900 withdrawal which was made under the direction of the second Respondent's father and was used to fund the "salary payment" of 90,000 Rupees given to the Claimant shortly afterwards when she and the Respondents were in India and which she gave her family.

100. This finding is further reinforced by the fact that at the time the Claimant's employment came to an end she was anxious regarding regular payments which she had to make to protect a life insurance policy which she had. The payments to be made were small (in the order of £30 per annum) and yet on the Respondents' evidence the Claimant was spending hundreds of pounds at a time which she was withdrawing from her bank account. We have no hesitation at all in rejecting that evidence out of hand. We find as a fact that the Respondents had complete control over the bank account in the Claimant's name up until the time her employment ended. She was unable to use a bank card, did not know how much money was in her bank account and the suggestion that she spent many hundreds of pounds on clothes and other personal items does not tally with the ease and rapidity with which she was able to pack her belongings into one suitcase at the time her employment ended.

101. Money was paid to the Claimant's family as payments of the Claimant's "salary". The Claimant was anxious to send money home (this was one of the main purposes of her taking paid employment overseas). As well as the 90,000 rupees in October 2009 and the initial 30,000 rupees she was paid in April 2008, the Claimant made notes of monies that were received by her family as follows:

102. In late 2008, 15,000 rupees

103. In March 2009, 19,000 rupees

104. In December 2009, 44,000 rupees

105. In July 2010, 125,000 rupees

The total is 323,000 rupees (approximately £3,230).

106. This information came from the Claimant who made records of these payments in her own notebook. She was not challenged or cross examined on this in any way. Had the Claimant been paid her appropriate salary and had had she had use of her bank account, there would have been no reason for the Respondents to make these payments to the Claimant's family. These

sums were, however, the totality of the payments made to then Claimant during her employment by the Respondents.

107. The Respondents produced a bundle of handwritten pay slips which were signed by the Claimant. The Claimant says that she was required to sign blank documents from time to time and on those occasions she would sign a number of the "pay slips". She denied receiving these documents on a monthly basis.

108. We accept the Claimant's evidence. It is telling that there are no pay slips for the months June, July, August, September or October 2012. The bank account in the Claimant's name was credited with monthly payments for those months. Had, as the Respondent's maintained, the Claimant been in receipt of monthly payment and a monthly pay slip then pay slips for those months would be available. We find their absence to corroborate the Claimant's evidence that she did not receive any of these pay slips but that she was required to sign them, in batches, from time to time.

109. We further note as corroboration of the Claimant's case that she received no money whilst employed by the Respondents other than the payments that were sent to her family for which she gives credit, from the HM Revenue and Customs information submitted by the Respondents from time to time. For the tax year 2008-2009 information was provided to HMRC suggesting that the Claimant had earned a total of £530 in that tax year. P14 details for the tax year 2009-2010 suggested total earnings of £498 (with employee and employer's contributions for National Insurance due of £6.19), no evidence of such contributions having been paid was ever produced.

110. The same information for tax year 2010-2011 shows total earnings declared for the Claimant of £529 and for 2011-2012 of £550. For 2012-2013 the declared figure was £570, which figure is also shown on the P60 certificate for the tax year ending April 2013.

The Claimant's freedoms and restrictions during her employment

111. The Claimant made the following allegations which were not challenged in cross examination and which we therefore accept:

112. That she was told not to speak to people outside of the family except to say "hello" and not to discuss her wages with anyone if she was asked.

113. That she was not to go outside of the house except with the family and not on her own.

114. That she was not allowed to come and go from the house as she pleased. She was not given a set of keys for personal use but took keys from a hook in the kitchen when she went out of the house with the children so that she could let herself back in.

115. That in or about mid 2009 she asked Mrs Chandok if she could go to buy some toiletries which was refused because the first Respondent said that the Claimant didn't know how to use a bath and that she would not be able to buy the things that she was asking for in the UK. Instead the first Respondent bought some other products for her.

116. From time to time the first Respondent (who is younger than the Claimant) would refer to the Claimant as "girl". She did so when the Claimant had the tenacity to ask for an increase in pay (early in the period of employment), and again when the police were present at the end of her employment. This term of address was, the Claimant says, demeaning.

117. That the Claimant was not allowed to use the house phone to call her family in India as it was too expensive.

118. That the Claimant was provided with a mobile telephone so that the Respondents could contact her with instructions or to check on the children and that they would provide occasional top up to the credit on the phone but that it was not to be used to call her family other than to register "a missed call" so that the Claimant's family would call her back.

119. That the Claimant's brother was told not to call the Chandok's home telephone.

120. That towards the end of the Claimant's employment (for approximately the last four months) she had no credit on the telephone and therefore could not communicate at all with her family.

121. This evidence was unchallenged and we accept it.

122. The Claimant also gave evidence, unchallenged, that on the occasions when the Respondents were not at home for any period of time, members of the extended family would come and live in the house. She was not left alone for any significant period of time.

Clothing

123. The Claimant was, on her evidence, provided with clothes second hand from family members. The Respondents say that the Claimant bought her own clothes. In the absence of access to funds to do so we reject that the Claimant was able to buy and therefore choose her own clothes.

124. One by-product of this was that the Claimant wore clothes she would not have chosen. She was photographed wearing a T shift from French Connection UK bearing the "Playboy" bunny symbol and the words "FCUK like a bunny". The Claimant says, and we accept, that when the meaning or implication of this slogan was explained to her she found it distressing.

Learning english

125. The Claimant wished to learn english and in March 2009 an appointment was made for her to be assessed to join an english course at Milton Keynes College. Subsequently, on 31st March 2009 she was offered a place on a part time course (each Wednesday 6-9pm) beginning on 20th April. She was obliged to enrol before 9th April. A note on a letter from Milton Keynes College dated 3rd March 2009 confirms that the Claimant would have to pay £276 per term as she was an overseas student.

126. The Respondent produced a handwritten letter addressed to "Miss Martin" alleging that the Claimant could not start her course because her visa required an extension and her passport had been sent to the Home Office so that she was unable to enrol on the class.

127. On 13th October 2009 Milton Keynes College wrote again to the Claimant saying that the application had been transferred to January 2010, but there was no guarantee that there would be classes at her level and a letter would be sent regarding the enrolment session. No further correspondence from the college was produced.

128. The Claimant says, and we accept, that she had no access to this correspondence. As she was unable to read any or only little English at the time the contents of the letters would not have meant anything to her. The Claimant says that she wanted to enrol on a course to learn english. She said that she went to one class and "absoloutely loved it". On the evening she was due to attend the second class she was told by the first Respondent that she had to look after the children so she could not go. The Claimant says that thereafter she was not allowed to go to the college by the Respondents. She was told that her passport was with the Home Office so she could not go and that after a while she stopped asking.

129. We find as a fact that the Claimant was denied access to this education by the Respondents. Had the Claimant (as the Respondent alleges) had time off in the evenings or during the day, or been to some degree the mistress of her own destiny, with access to her bank account into which significant sums were being paid, she would have been able to attend the classes without difficulty. In fact, because the Respondents controlled both her passport and the bank account in her name she was unable to access this education opportunity, or the Respondents denied it to her.

Termination of the Claimant's employment

130. During the final months of the Claimant's employment she had no credit on her telephone and was unable to communicate with her family. She was concerned, had not been paid by the Respondents for a substantial period of time (the last payment had been made in July 2010), she was concerned about her life insurance policy.

131. The Claimant says, and we accept, that she asked regularly to have her telephone credit topped up so that she could contact her family but the Respondents neglected to do this.

132. The Claimant described her feelings as "desperate".

133. The festival of Diwali ran from 13th to 17th November 2012 and as part of that festival the Claimant was given £10 in cash as it is traditional to give servants money during the festival.

134. The Claimant decided that as she was now in possession of money she determined that she would try to put some credit on her phone herself. She says that on 21st November at about 11.30am she told the first Respondent (who was lying on her bed) that she was leaving the house to go to Morrisons to top up the credit on her phone and would ask someone for help. She said that she did not know how to top up her phone credit as she had not done it before but she was determined to do this and left the house quickly.

135. The first Respondent's evidence was that she advised the Claimant that she would take her to top up her phone when she went to collect the children from school at around 2pm. The Claimant, however, closed her bedroom door and hurried down the stairs, banging the front door as she left the house. The first Respondent says she found the Claimant's behaviour "extremely strange and worrying" and that as she was "dazzled by her conduct" she "went after her to find out what was wrong".

136. We reject that part of the Respondent's evidence when she says that she offered to take the Claimant to top up her phone. The Respondent's evidence lacks credibility because if, as she had said in other parts of her evidence, the Claimant was free to top up her telephone, was free to come and go from the house and was in control of her own bank account, we do not understand why she would have been "dazzled" by the Claimant telling her that she was leaving to carry out this common task or why she would have thought that there was anything wrong.

137. The Claimant says that because she was not used to being out of the house on her own she began to feel anxious and scared. It began raining heavily and she became disorientated, grew cold and started to panic. She said she was aware that if something was wrong help could be obtained by obtaining "999" on her phone so she made a call to the emergency services. She says that she spoke to a Punjabi speaking police officer, and they were able to converse (with some difficulty, the Claimant being a Hindi speaker).

138. The Claimant then says that she was confronted by both by the first Respondent and by Mr Chandok (the second Respondents' father). The first Respondent admits that she had contacted her husband and then (because he was unavailable) his father to help her "find" the Claimant.

139. The first Respondent then said that she called the police for help because the Claimant had left the house "in a strange and unusual way" and was

threatening to jump in front of a car. She says she then abandoned the call because police officers were passing in a car and she stopped the car and asked them for help.

140. There is no record of the first Respondent making any call to the police. There is, however, a record of a call from the Claimant. That confirms that at 12.13pm a call was received and that there was a language barrier and a colleague tried to speak to the caller (who spoke Hindi). The Claimant said that she was opposite Oxley Park roundabout and is described as "very distressed female". The notes say that she was "difficult to understand....possibly in pain". At 12.16pm it is said that the caller "is being followed by a male" which we find to be Mr Chandok Senior (the second Respondents' father). At 12.19pm she was "unsure if she is still being followed" and the Claimant was asked to keep on the phone and asked to stay on the main road. By 12.20pm "another female is now on scene with caller, possibly arguing with each other". We find that to be the first Respondent. At 12.22pm a police car was heard and the male had left. The officers from the car were then attending on the scene.

141. The police report concludes as follows:

"Update: there are no offences at all. After a lengthy chat through language line to caller, Permilla Tirkey, 05/08/1976 works for an Indian family as a live in carer for the children. The family are called Mr and Mrs Chandok. Pooja (the mother of the children) has had an argument with Permilla about some life insurance in India which Permilla thinks they aren't doing enough. Permilla ran out of the house and they have followed her as she was very upset and was supposed to look after the children later. Police have been called at this time. After making sure there were no offences and speaking with the Immigration Services it became apparent that Permilla wanted to leave her current employers to work for their neighbours. Words of advice given to all parties that this is not a police matter and Permilla was dropped at Central Milton Keynes Travelodge until her new employers pick her up tomorrow. No offences, all parties separated. Please close".

142. The information regarding the Claimant working for the neighbours must have – and we find did - come from the Respondents. We accept the Claimant's evidence that she had no such intention and could not have communicated with the police in any meaningful way.

143. The Claimant says that the police were initially taking her to hospital because of her level of distress and the fact that her feet were swollen. However in the car she started to feel better and the police then took her back to the Respondents' house where she stayed in the car with one officer. She said that after a while the second officer came back from the house and took her into the house, but most of the conversation was taking place in English. The police were in possession of the Claimant's passport.

144. The Claimant says that she was then confronted by Mrs Chandok with a demand that she say whether she wished to continue working for the

Respondents, "yes or no". She said that she heard Mrs Chandok say "I don't like this girl". The Claimant was told to go and pack her things.

145. The Claimant says that she went upstairs to collect her belongings and that her bank card was "thrown at her" by the first Respondent. The Claimant says that she was now in possession of her passport and her bank card and put all her belongings in one small case. She left with the police who took her to the Travelodge.

146. The first Respondents' description of events is different in that she claims that she tried to book an appointment at the GP for the Claimant, that she had to collect the children from school at 2pm so asked the police to take the Claimant home when she was ready and had found out what was bothering her, but that Mr Chandok Senior then went to pick the twins up and take them to his house so the first Respondent went home. The first Respondent then says that the police told her that the Claimant wished to go into rented accommodation and that they felt she was behaving this way to leave her employment with the Respondents. The Claimant then said, according to the first Respondent, that she did not want to work for the Respondents any longer because she was going to start her own business.

147. We accept the Claimant's version of these events, corroborated as they are by the report from the police. The first Respondent's description of events is wholly different and is not corroborated in any way by what is set out in the police report. On the balance of the evidence before us we find the following to be the case:

148. The Claimant had, for the first time, access to a small amount of money (£10 given as a Diwali gift).

149. She was anxious to contact her family and wished to top up her mobile phone.

150. In her desperation to contact her family she advised the first Respondent that she was going to top up her phone and left the house.

151. The first Respondent was concerned that the Claimant was out of the house on her own. She called her husband and then her father in law and they pursued the Claimant.

152. The Claimant called the police because she was distressed, concerned and was being confronted by first Mr Chandok Senior and then the first Respondent.

153. The Claimant was taken back to the Respondents' home by the police to endeavour to bring matters to a conclusion.

154. As part of their routine enquiry the police asked to see the Claimant's passport.

155. That the Claimant was confronted by the Respondents with the demand that she stay or go and the Claimant chose to go.

156. That information regarding the Claimant doing another job and being collected the next day from the Travelodge hotel was something of the Respondents' invention.

157. That the Claimant was taken to the Travelodge hotel in Milton Keynes.

158. That the Claimant was able to have possession of her passport and her bank card only because the police were there. We find that the police will have asked the Respondents about the Claimant's financial position in some way or another, as a result of which they gave the Claimant, for the first time, her bank card.

Subsequent events

159. When the Claimant attended the Travelodge the person on duty was Mrs Tough. This was fortunate for the Claimant. Mrs Tough was the one wholly independent witness in this case. She gave her evidence straight forwardly, without hesitation and related a consistent version of events. We have accepted her evidence fully, and do so without hesitation.

160. Mrs Tough gave her evidence before us clearly and carefully. She struck us as a clearly honest witness and a very caring woman. She described the Claimant as "an innocent" and someone who did not appear to have been living in the UK for a number of years as she had. Her english was very limited.

161. Mrs Tough assisted the Claimant greatly. She asked about her bank details and found out that the Claimant could not use a bank card. The Claimant said that she had written down a number which was the number the second Respondent had told his father to use to take money out of the account. Mrs Tough showed the Claimant how to use a bank machine and told her that she had to keep the number secret. She saw the Claimant clearly did not know how to use a bank machine to withdraw money.

162. Mrs Tough said that the Claimant was distressed at the small amount of money in the bank account because she thought she should have had several thousand pounds.

163. Mrs Tough contacted Milton Keynes Council to explain the position and was then put in contact with the charity Kalayaan. She contacted that charity on 22nd November and assisted the Claimant to travel to London and then by taxi to the Kalayaan offices.

164. Thereafter the charity found the Claimant emergency accommodation and took her case history.

165. We have noted that the case history given by the Claimant to the worker at Kalayaan has remained, consistently, her story and version of events throughout the whole process. It is reflected in her application to the Tribunal, her witness statement, and the answers she gave under cross examination. She has presented to us as an honest and straightforward witness and we have accepted her evidence where it has been in conflict with that of the Respondents or their witnesses. The evidence of Mrs Tough is entirely independent, we also accept it fully.

166. Against that factual background the Claimant makes her claims.

The Law

167. Under Section 8 of the Employment Rights Act 1996 an employee has a right to be given by his employer before the time at which any payment of wages or salary is made to him a written itemised pay statement containing particulars of the gross amount of the wages or salary, the amounts of any variable and any fixed deductions from that gross amount and the purposes for which they are made, and the net amount of wages and salary payable.

168. Under Section 1 of the Employment Rights Act 1996 an employer shall give to every employee not later than two months after the beginning of the employment containing particulars of the names of the employer and employee, the date when the employment began, the date on which the employee's period of continuous employment began, the scale or rate or remuneration or the method of calculating remuneration, the intervals at which remuneration is to be paid, any terms and conditions relating to hours of work, any terms and conditions relating to entitlement to holidays including public holidays, holiday pay, incapacity for work due to sickness or injury including sick pay, pensions and pension schemes, the length of notice required to terminate the contract of employment from either side, the job title, whether or not the employment is intended to be permanent or if for a fixed period the date when it is to end, the place of work, whether any collective agreements affect the terms and conditions of the Claimant's employment.

169. Under Section 38 of the Employment Act 2002 in the case of relevant proceedings before an Employment Tribunal, if the Employment Tribunal finds in favour of the employee and when the proceedings were begun the employer was in breach of his duty to provide a written statement of terms (or of amended terms), the Tribunal must increase the award by the minimum amount (an amount equal to two weeks pay as calculated in accordance with Chapter 2 Part XIV of the Employment Rights Act 1996 or a higher amount equal to four weeks pay calculated the same way). For the purpose of that Section relevant claims include claims under Sections 120 and 127 of the Equality Act 2010, Regulation 30 of the Working Time Regulations 1998, Section 111 of the Employment Rights Act 1996 (unfair dismissal) and others.

170. Under Section 94 of the Employment Rights Act 1996 every employee has the right not to be unfairly dismissed.

171. Under Section 95(1)(c) of the Employment Rights Act 1996 an employee is dismissed if they terminate the contract under which they are employed with or without notice in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct.

172. Under Section 98(1) in determining whether a dismissal is fair or unfair it is for the employer to show the reason (or if more than one the principal reason) for the dismissal.

173. Under Section 98(2)(c) a potentially fair reason for dismissal is that the employee was redundant.

174. Under Section 98(4) where the employer has shown that the reason or if more than one the principal reason for the dismissal is a potentially fair reason then the question of whether the dismissal is fair or unfair having regard to the reasons shown by the employer depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably as treating it as sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

175. Under Section 1 of the National Minimum Wage Act 1998 a person who qualifies for the National Minimum Wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the National Minimum Wage.

176. Under the National Minimum Wage Regulations 1999 (subsequently repealed and replaced by the National Minimum Wage Regulations 2015 but the relevant law prevailing at the time of the matters which these proceedings are concerned), Regulation 11, the rate of the National Minimum Wage is set annually. In the relevant periods of employment the appropriate rate of the National Minimum Wage to be paid to the Claimant was:

Up to 30.9.08	-	£5.52 per hour
1.10.08 to 30.9.09	-	£5.73 per hour
1.10.09 – 30.9.10	-	£5.80 per hour
1.10.10 – 30.9.11	-	£5.93 per hour
1.10.11 – 30.9.12	-	£6.08 per hour
1.10.12 – 21.11.12	-	£6.19 per hour

177. Under Regulation 4 a contract to do salaried hours work is a contract under which a worker is entitled to be paid for an ascertainable basic number of hours in a year and is entitled in the respect of hours which consist of or include the basic hours to be paid an annual salary by equal weekly or monthly instalments regardless of the number of hours in respect of which the

worker is entitled for the annual salary that are actually worked by him, if any, in any particular week or month.

178. Under Regulation 30(d) of the National Minimum Wage Regulations 1999 where the employer has provided the worker with living accommodation during the pay reference period but in respect of that provision is neither entitled to make any deduction from the wages of the worker nor to receive any payment from him, the amount determined in accordance with Regulation 36 may be taken into account as counting towards the National Minimum Wage.

179. Under Regulation 36 the amount referred to for the relevant periods of the Claimant's employment where living accommodation is provided were:

Up to 30.9.08	-	£30.10 per week
1.10.08 – 30.9.09	-	£31.22 per week
1.10-.09 – 30.9.10	-	£31.57 per week
1.10.10 – 30.9.11	-	£32.27 per week
1.10.11 – 30.9.12	-	£33.11 per week
1.10.12 – 21.11.12	-	£33.74 per week

180. Under Regulation 2(2)(a) of the National Minimum Wage Regulations 1999 work does not include work relating to an employer's family household done by a worker where the worker resides in the family home of the employer, where the worker is not a member of that family but is treated as such, in particular as regards the provision of accommodation and meals and the sharing of tasks and leisure activities, where the worker is neither liable to any deduction nor to make any payment to the employer or any other person in respect of the provision of living accommodation or meals and where, had the work been done by a member of the employer's family it would not be treated as being performed under a worker's contract or as being work because of the conditions in sub paragraph (b) would be satisfied (ie that the worker is a member of the employer's family, the worker resides in the family home with the employer, the worker shares in the tasks and activities of the family and the work is done in that context).

181. Under the Working Time Regulations 1998:

182. Under Regulation 4 unless an employer has first obtained the worker's agreement in writing to perform such work a worker's working time, including overtime, in any reference period which is applicable in this case shall not exceed an average of 48 hours for each seven days.

183. Under Regulation 10 a worker is entitled to a rest period of not less than 11 consecutive hours in each 24 hour period during which he works for his employer.

184. Under Regulation 11 a worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven day period during which he works for his employer.

185. Under Regulation 12 where a worker's daily working time is more than six hours he is entitled to a rest break, being an uninterrupted period of not less than 20 minutes.

186. Under Regulation 13 a worker is entitled to four weeks annual leave in each year.

187. Under Regulation 13A a period of additional leave (for each year beginning after 1st April 2008) 0.8 weeks and a proportion of another 0.8 weeks equivalent to the proportion of the year beginning on 1st April 2009 which would have elapsed at that leave year, and in any leave year beginning after 1st April 2009, 1.6 weeks.

188. Under the Equality Act 2010:

189. Under Section 4 race and religion or belief are protected characteristics.

190. Under Section 9 race includes colour, nationality, ethnic or national origins.

191. Under Section 13 a person discriminates against another if because of a protected characteristic they treat that person less favourably than they treat or would treat others.

192. Under Section 26 a person harasses another if they engaged in unwanted conduct related to a relevant protected characteristic and that conduct has the purpose or effect of violating the persons dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

193. Under Section 26(4) in deciding whether the conduct has the effect referred to each of the following must be taken into account; the perception of the person allegedly harassed, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

194. Under Section 19 a person discriminates against another if they apply to that person a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of theirs. That provision, criterion or practice is discriminatory in relation to a relevant characteristic of the complainants if the person applies or would apply to persons with whom the Claimant does not share the characteristic; it puts or would put persons with whom the Claimant shares the characteristic at a potential disadvantage when compared with persons with whom they do not share it; it puts or would put

the Claimant at that disadvantage and the provision, criterion or practice cannot be shown to be a proportionate means of achieving a legitimate aim.

195. In *Nambalat v Tahaer & Another* [2013] ICR 1024, it was confirmed that it is for the employer to establish the condition in Regulation 2(2) ("the domestic worker exception") are satisfied and that onerous duties may be inconsistent with treatment as a member of the family. Tribunals will need to be astute when assessing whether an exemption is designed for the mutual benefit of employer and worker is, or is not, being used as a device for obtaining cheap domestic labour.

196. In *East Sussex County Council v Walker* [1972] 7 ITR 280, it was established that if an employer says to the employee "your job is finished, I will give you the opportunity to resign. If you don't you will be sacked" an appropriate conclusion to reach was that the employment is being terminated by the employer.

197. *Birch & Humber v University of Liverpool* [1985] ICR 470 confirmed that where pressure is placed upon an employee to resign, if the degree of pressure was such, it can amount in reality to a dismissal.

198. In *R(E) the Governing Body of Jewish Free Schools* [2010] 2 AC 728, Lord Mance defined the question of "race" as follows:

> "The policies that individuals should be treated as individuals and not assumed to be like other members of the group...to treat individual applicants to a school less favourably than others, because of the happenstance of their respective ancestries, is not to treat them as individuals but as members of a group defined in a manner unrelated to their respective ancestries.... That does not seem to be either consistent with the scheme or appropriate in the context of the legislation designed to protect individuals from discrimination."

199. When this case was considered by the Employment Appeal Tribunal over the question of whether or not part of the Claimant's case should be struck out on the basis that a claim was made that she was treated badly and in a demeaning manner in part because of her low status which was infected with considerations of caste, Mr Justice Langstaff said this:

> "...nor do I accept that the answer to the question whether "caste" as a distinct concept exists as a separate strand in the definition of race as determinative. If the answer is it does not, this still does not exclude the words otherwise appearing in Section 9(1) [of the Equality Act] from bearing their usual interpretation... Since "ethnic origins" is a wide and flexible phrase (Mandla) and covers questions of descent (JFS), at least some of those situations which would fall within an acceptable definition of caste would fall within it.".
>
> Further

"the fact that there is no single definition of caste, as the parties before me were agreed, does not mean that a situation to which that label can, in one of its manifestations, be attached cannot and does not fall within the scope of "ethnic origins""

And

"an allegation that a Claimant was treated disadvantageously because of her having a status which was heavily related to an inherited position in society cannot be ruled out as being established on the evidence. The Tribunal hearing such a claim will need to establish what it accepts of the treatment alleged and, in relation to the acts which it accepts, why the Respondent did them in respect of the Claimant. If the reason or reasons established factually that the Respondent treated the Claimant as they did for reasons which more than minimally included their view of her status or origins, and if that status, or that view is bound up with her ethnic origins as understood in domestic case law, the Claimant will succeed in a claim for discrimination".

200. Under Section 136 of the Equality 2010 if there are facts from which a Court could decide in the absence of any other explanation that a person has contravened the provisions of the Act, the Court must hold that the contravention has occurred unless the alleged discriminator shows that they did not contravene the provision.

Conclusions

201. The Claimant was recruited to work for the Respondents jointly in March 2008. We accept the Claimant's version of how that recruitment took place. We also accept that it occurred when she said it occurred, and not two years earlier as the Respondents had maintained. There was no evidence of employment, no evidence of payment, nor any other supporting document which indicates any form of recruitment or employment during that period. The Claimant was recruited by the Respondents at a time when their children were born and not before. They wanted someone to act as a domestic servant to look after them, their extended family, their children and their home. The first Respondent's father had servants in India and the Respondents wished to have a servant in their home in the UK.

202. It is, notably, unexplained (save for the reasons which we find) and inexplicable that the Respondents made no effort to recruit an appropriate person who was already living in the United Kingdom. We find that the reason why this was done was because the Respondents wanted a servant in the Indian style. They wanted someone who would be not merely of service but servile, who would not be aware of United Kingdom employment rights, and whom they could treat in the United Kingdom as the first Respondent's father treated his servants in India.

203. We firmly reject any suggestion that the Claimant was recruited through an employment or recruitment agency. There is not one shred of evidence by

way of paperwork, proof of payment of agency fees or anything else which has been produced in support of this contention. We accept as the Claimant says that this was a word of mouth recruitment which the Claimant found attractive because she found the opportunity to travel to the United Kingdom and work in the UK attractive to her. The suggestion that two years before the birth of any children the Respondents would seek to recruit someone who could look after as yet unconceived offspring, assist with as yet unknown and possibly unrequired medication, and prepare and dispense formula milk for children as yet not conceived and that further that person would work for the benefit of the first Respondent's father for two years with no guarantee of travel to the UK (no children being at that stage born) and with no record of any payment or any other document to support this alleged period of engagement, is risible. We reject it without hesitation. It was a story concocted to enable the Respondents to bring the Claimant to the UK as she required at least one year's service in their employment before they could do so.

204. In fact the Claimant was given a short trial period in India when the first Respondent assessed her suitability for the work. This was, we find, to ensure that the Claimant was willing to be sufficiently servile as the Respondents wished. It was not, in any meaningful way, designed to assess the Claimant's suitability to look after the Respondents' children in the United Kingdom.

205. The Claimant was ideal for the Respondents' purpose because she was from a background, both in terms of the village where she had grown up (where, on her own evidence, people expected to become domestic servants for richer people in India) and her position in society or caste. The Claimant is of the Adivasi caste. The first Respondent said "We all know who the Adivasi are", despite her earlier protestations of being ignorant of the caste system. The Claimant's position was an inherited one. She was born into a section of Indian society who were preordained to work in a servile capacity for wealthier Indians who were not of that inherited position but were of a wealthier and higher caste background.

206. It is clear to us and we find that the Claimant was acceptable to the Respondents as their domestic servant not because of her skills but because she was by birth, by virtue of her inherited position in society, and by virtue of her upbringing – ie because of her ethnic origins – a person whose expectations in life were no higher than to be a domestic servant.

207. The Respondents wanted someone of Indian descent, and someone whose inherited position was as the Claimants. They wanted to take a person of that background back to the United Kingdom to act as their servant and the servant of their family. The Respondent offered no explanation as to why they did not seek to recruit someone already resident in the UK to work for them. This would of course have avoided the need for visa applications and renewals and other aspects of employing a non-UK or non-EU citizen which could create difficulty.

208. We conclude on the evidence presented to us, that the answer why no such UK-based employee was sought was because no such person would have accepted the intended conditions of work, either as to physical conditions, workload or payment/non-payment. A low caste, servile, Indian person who could not speak english and who the Respondents would consider expected no more than that which was in fact was on offer was required to meet their needs.

209. We find that the information which was in many areas false which was provided to the High Commission to obtain the Claimant's visa came from the Respondents, either by the first Respondent directly giving the information in question or by prompting the Claimant to do so (without any explanation to her or understanding by her of why she would be required to give the relevant answers).

210. That the Respondents were willing to deceive the High Commission to enable the Claimant to travel to the United Kingdom, both as to the length of time which the Claimant had been employed, the conditions in which the Claimant would be working and living, the salary which she was to be paid and her hours of work (all of which we find were falsely represented to the High Commission), demonstrates to us and leads us to the conclusion that the Respondents were anxious that no one (whether in authority or the Claimant herself) should be aware of the true nature of the life which awaited the Claimant. The treatment afforded to the Claimant during her employment was for this reason. It was because she was a low caste, Indian national, who could not speak english and by upbringing and by her inherited position in Indian society expected and was expected by others to do nothing more than serve others. She was the ideal recruit for the Respondents and it was for those reasons they treated her as they did.

211. The conditions and environment into which the Claimant was put was a clear violation of her dignity; it created an atmosphere of degradation and which was offensive. The Claimant was treated as a servant, not in the sense of providing "domestic service" as one understands the phrase today but in the sense of servitude. In all the circumstances of the case, including the Claimant's perception (albeit with such low expectation of her life chances due to her hereditary position), that was the reasonable effect the conduct of the Respondents had on the Claimant throughout her employment.

212. We find as a fact that the Claimant was employed by the Respondents together and not as the Respondents sought to claim somewhat late in the day by the first Respondent alone. At all times the Claimant was under the instruction of and answerable to the second Respondent as much as the first Respondent and the second Respondent was able to instruct the Claimant and require her to carry out tasks without any need to seek authorisation from the first Respondent.

213. Indeed at one stage in her evidence (although she later sought to resile from the admission) the first Respondent accepted and admitted that both Respondents employed the Claimant.

214. The first Respondent provided the High Commission with a copy of a signed contract of employment for the Claimant which indicated that she would be paid £400 per month. However, when she was recruited by the Respondents the Claimant was told that she would be paid 5,000 rupees (approximately £50 per month). The Claimant could not read english, she was totally unaware of the terms of the document and even on the Respondents own evidence the terms were not complied with because the Claimant at no stage, on their own evidence, had a "separate room with attached bathroom" as part of her accommodation.

215. We note the Respondents' evidence that the first Respondent is CIPD trained (in whole or in part) and a civil servant. She said that she was willing to be judged against the standards of a responsible UK employer. We contrast that with the significantly false information provided to the High Commission by the first Respondent who was clearly present during the Claimant's interviews and is noted as having been present. Where we have been in any doubt about the findings to be made in situations of conflict of evidence, the consistency of the Claimant's case and its corroboration by the documents provided to us, is contrasted with the changing nature of the Respondents' case and the clear willingness to mislead, as demonstrated by the information given to the High Commission, if it is thought that that would assist the Respondents' own position.

216. The Claimant was, when coming to the United Kingdom, denied the chance to bring her bible. There are two possible explanations put forward for this, the Respondents denying that the Claimant was told she was not to bring her bible but being unable to offer any cogent explanation as to why in that case (and when on their evidence the Claimant had access to substantial funds and the freedom to shop) she did not either bring her holy book with her or buy one whilst in the United Kingdom.

217. The first possibility is that the Respondents wished to deny the Claimant the opportunity to practice her religion as it was not theirs. The second is that they were exercising control over the Claimant and they knew that the Claimant would have neither the time nor the opportunity to read that book or do anything else to practice her religion whilst under their control.

218. The Respondents were clearly aware of the Claimant's religion (she wore a Christian cross on her neck on a chain at all times and by simple virtue of her carrying a bible she was expressing that she held religious belief) and by not permitting her to bring her holy book the Respondents were exercising control over her. This control lasted throughout the Claimant's employment when, because of her working seven days a week and because of the restriction on her movements, she was unable to attend church as she said and we accept she would have wished to do.

219. However, this was also an expression of the Respondents' need to control the Claimant's actions and activities. Allowing the Claimant to attend church would have given her exposure to the outside world which the Respondents

could not control. We therefore find that the refusal to allow the Claimant to carry her holy book with her to the United Kingdom and the maintenance of a seven day per week regime of control, as a result of which the Claimant was unable to attend church to express her religious belief and join in religious celebration, was a result of the provision, criterion or practice exercised by the Respondents as the Claimant's employers to control her movements and her behaviours. This practice would place anyone who wished to celebrate and exercise their religious beliefs by reading a holy book and/or by attending religious services at a disadvantage by not allowing them the free practice of their religion. The Claimant suffered that disadvantage as she was denied access to her holy book and was denied the opportunity to attend services or otherwise practice her faith.

220. Accordingly the Claimant was the victim of indirect discrimination on the ground of her religion or belief when as a result of the Respondents' desire to control her freedoms, movements and time, she was denied the opportunity to possess a holy book and denied the opportunity to practice her religion.

221. During the Claimant's employment with the Respondents the Claimant did not receive a written statement of terms and conditions of employment as required by Section 1 of the Employment Rights Act 1996. The documents which have been produced as "contracts" (aside from the fact that, as we have said, contain misleading or false information and were written only in english so that the Claimant could not understand them) did not state the true amount of pay which the Claimant would receive, wrongly stated only the first Respondent as an employer, the mistake of the date when the Claimant's employment began, misdescribe the Claimant's duties (stating that she was to be a nanny/babysitter with main duties being taking care of twin babies when she was in fact a full time domestic servant carrying out much wider and more onerous duties), wrongly stated that she would be paid £400 per month, wrongly stated that she would be paid by cheque, wrongly stated that she would work for 56 hours per week, wrongly stated that she would be living in the Respondents' house in a separate room with attached bathroom for her use, wrongly stated that she would have one months' paid holiday per year (when in fact she had none) and gave no information regarding how to deal with any disciplinary or grievance processes. At no stage did the Claimant receive a written statement of her genuine terms and conditions of employment and even if she had her use of english was such (and maintained by the Respondents through their denial to her of the opportunity to learn english) that she could not have understood it.

222. Equally the Claimant was not given proper itemised pay slips by the Respondents contrary to Section 8 of the Employment Rights Act. The documents produced by the Respondents stop in May 2012. On her own case, therefore, no pay slips were provided for June to October 2012 inclusive and no cogent explanation was offered for this failure. However, we have found that those pay slips were signed by the Claimant in bulk and were not given to her monthly or at all. They were purely designed to create a false paper trail. Had the Claimant been aware through receipt of a pay slip that she was apparently being paid several hundred pounds per month she would

doubtless have sought to make good her payment to cover her life insurance policies and her promise to her family to send money to them. No such slips were however given to her. Indeed, in the Respondents' own submissions they accept that the slips provided do not themselves meet the requirements of Section 8 as they do not specify either gross or net sums, the deductions made for tax and/or national insurance, and the sums allegedly deducted under the accommodation offset under Regulation 30(d) of the then in force National Minimum Wage Regulations 1999.

223. The amounts paid to the Claimant during her employment amount in total to the payments remitted to her family in India (totalling 323,000 rupees) and the amount which stood in the bank account in the Claimant's name when she finally gained access to it after the termination of her employment (£1,469.99).

224. The Respondents' seek (for the period since May 2010 until the termination of the Claimant's employment) to say that the Claimant was a salaried employee. In the first Respondent's words "she was not to be paid for every hour she was in the house". They say that during this period they were entitled to set off accommodation costs under Regulation 37 of the National Minimum Wage Regulations. Prior to that period they say that the Claimant was not entitled to the National Minimum Wage because she was a domestic worker and that the provisions of Regulation 2(2)(a) applied.

225. In relation to the period up to May 2010 when the Respondents say the Claimant was exempt from the National Minimum Wage requirements we do not agree. Regulation 2(2)(a) requires the relevant worker to be treated as a member of the family as regards the provision of accommodation and meals, as well as in the sharing of tasks and leisure activities. It is obvious from our findings of fact with regards the Claimant eating alone, not having any privacy as regards her sleeping accommodation, being required to sleep on the floor not in a bed, having no leisure or free time, and being required to do the vast bulk of the domestic chores at the Respondents' home that she was in no way treated as a member of the family. The obligation during this period was to pay the National Minimum Wage.

226. The shift in May 2010 is not explained by the Respondent in any way save that by their careful "calculation" of the hours they say the Claimant worked (including the falsehood of her having one day off per week) and by offsetting the accommodation costs from that calculated hours of work, they can show that the money paid into the bank account in the Claimant's name was equal to the National Minimum Wage.

227. We reject that approach, for the following reasons.

228. First, the Respondents cannot say how or why there was a shift in the status of the Claimant from someone being treated as a member of the family to someone being treated as a worker. What, if anything, changed? We were not told. We conclude that that is because nothing changed and that this calculation is a mere device to seek to establish compliance with the National Minimum Wage Regulations.

229. Secondly, the calculations of time spent on duties by the Claimant prepared by the Respondents is of no assistance to us. There was no designated rest period, the Claimant was not at liberty to use any free time as she wished, she was not able to leave the place of work unaccompanied. She had no specified daily or weekly rest and no annual leave. Such "leave" as she had was spent with the Respondents save for two days in India when she was able to visit her family, and in that time she was still "on duty" looking after the children, if not also the Respondents themselves and whichever members of the extended family happened to be present.

230. We have accepted therefore that the Claimant was working seven days per week, throughout her period of employment with the Respondents. During that time she was entitled to be paid the National Minimum Wage at the then prevailing rate and the Respondents were entitled to offset against the National Minimum Wage payable the appropriate accommodation costs as prevailing from time to time.

231. The Claimant has limited her claim to a working day of 18 hours per day. Mr Milsom in submissions suggested that this "undersold" her position as she was in fact "on call" 24 hours per day as she was required to be present and available for the needs of the family (and in particular, the children) throughout the day. We agree that the Claimant having limited her claim to 18 hours per day (and thus in effect accepting a daily rest period of six hours per day) we find that that was the position.

232. The Claimant was entitled for all of those hours to be paid at the then prevailing National Minimum Wage. We attach to these Judgment six schedules setting out the amounts due to the Claimant, the amounts paid and allowable as offset for accommodation costs, and the sums now due for each of the relevant periods depending on the changed rates of the National Minimum Wage. The total shortfall of payments under the Regulations is £183,773.53 and the Respondents are not only in breach of the National Minimum Wage Regulations but also in breach of the Working Time Regulations as to maximum weekly working time (Regulation 4), daily rest (Regulation 10), weekly rest (Regulation 11) and annual leave (Regulations 13 and 13A).

233. The Claimant was unfairly dismissed contrary to Section 94 of the Employment Rights Act 1996.

234. On 21st November 2012, when the Claimant returned to the Respondents" home in the company of police officers, the Claimant was given an ultimatum by the first Respondent as to whether she wished to continue working for the Respondents and demanded a "yes or no" answer at that time. She also said, in the Claimant's hearing and about the Claimant, "I don't like this girl".

235. The Claimant resigned by advising that she no longer wished to work for the first Respondents.

236. At that time the Respondents were, and had been for a considerable period of time, in fundamental breach of the Claimant's contract of employment. Their conduct towards the Claimant throughout the period of her employment amounted to a total disregard for and a fundamental breach of the implied term of mutual trust and confidence. She had received no salary for many months, was unable to contact her family in India, was denied the daily, weekly and annual rest to which she was entitled by law, and was on call 24 hours per day at the beck and call of the Respondents, on duty in the event that the Respondents'' children woke in the night and was afforded no privacy. The terms of the inadequate contract which the Claimant signed (but did not understand) were not complied with by the Respondents. They failed to pay the Claimant, they used a bank account opened in the Claimant's name and the money paid into it for their own use.

237. The Claimant resigned because she did not wish to continue to work for the Respondents in the circumstances in which she had been working. She was entitled to resign because of the fundamental breaches of contract of which the Respondents were guilty and thus she was dismissed under the provisions of Section 95(1)(c) of the Employment Rights Act 1996 as at the time when she resigned she was entitled to terminate her contract of employment without notice by reason of the employer's conduct. The "final straw" was the events of 21st November 2012 when, as a result of the Claimant seeking to exercise one small element of the freedoms the Respondents have claimed she had at all times, the Respondents chased after the Claimant, concerned that she was out – not out of concern for the Claimant, because why should that be a concern if, as the Respondents alleged, she was so free to come and go, but in fact for themselves – that their treatment of the Claimant may come to light.

238. The Respondent has sought to advance the twin arguments that the Claimant's workload was diminishing and thus she was looking for work elsewhere, and secondly that in early course she would have been redundant as the Respondents would have had no need for her continued services. We reject both of those arguments.

239. According to the Respondents the Claimant had approached Daisy Johar for a job "in or around May 2011" and Ms Johar indicated that the Claimant had changed her mind about working for her when she found out that changing employers might have an adverse effect on her visa extension because the rules relating to domestic helpers visas were about to change.

240. We do not accept that the Claimant would be aware of the visa rules and any potential changes to them. Further, the position, on the Respondents' own evidence, was that some 18 months before the termination of her employment with the Respondent she had considered working for another person but had changed her mind. Ms Johar's evidence does not indicate that there was any other contact or suggestion regarding the future employment with her and therefore as at May 2011 the Claimant was no longer considering it. The suggestion as portrayed to the police that the Claimant had other work ready to begin the following day and that her new

employer would collect her from the Travelodge in Milton Keynes lacks any credibility or evidential support.

241. We have found that the Respondents' attempts to provide minute by minute analysis of the duties which the Claimant carried out to be of no assistance to us. The fact that we have found is that the Claimant was required to be on call at all times, that her tasks as set up by the Respondents are understated, and that the Respondents had failed to provide any guaranteed breaks on a daily, weekly or annual basis. At no stage had either Respondent discussed with the Claimant the prospect that her workload was diminishing and that there might come a time work was no longer required (or required for a reduced period of time) by the Respondents. We find that the suggestion that the Claimant would have been dismissed in any event on the ground of redundancy to lack any credibility or evidential support, just as we find the same to apply to the argument that the Claimant was in fact seeking work elsewhere.

242. The Claimant resigned in circumstances which amounted to a dismissal, based on the Respondents' conduct which entitled her to resign. The Claimant was unfairly dismissed. There was no potentially fair reason for the dismissal (none being advanced) and we are satisfied that the reason the Claimant resigned was because she no longer wished to work for the Respondents in the conditions she had been working. The Claimant was not about to be made redundant and had not sought work elsewhere.

243. One final point which Counsel for the Respondent advanced was that in considering the claims under the National Minimum Wage we should give credit for the sums paid into the account in the Claimant's name, as they were payments of salary, and that any misuse of those funds was an act of theft (in respect of which the Tribunal has no jurisdiction). We reject that argument. Placing money in an account in the name of another person over which they have no control and to which they have no access is not a payment to them. The account was a device for the benefit of the Respondents, not somewhere into which they paid money to the Claimant or for her benefit.

Summary

244. The Claimant was unfairly dismissed.

245. The Claimant was not provided with a statement of terms and conditions as required by Section 1 of the Employment Rights Act 1996.

246. The Claimant was not provided with itemised pay statements as required by Section 8 of the Employment Rights Act 1996.

247. The Claimant was unfairly dismissed contrary to Section 94 of the Employment Rights Act 1996.

248. The Claimant was not paid the National Minimum Wage throughout the period of her employment.

249. The Claimant did not receive daily or weekly rest as required by the Working Time Regulations 1998.

250. The Claimant did not receive annual leave in accordance with the Working Time Regulations 1998.

251. The Claimant was the victim of harassment on the ground of her race when the Respondents:

(1) Withheld her passport.

(2) Spoke about her in a derogatory way, in particular by referring to her as a "girl".

(3) Prevented her from buying or wearing clothes of her own choosing.

(4) Failed to pay her the National Minimum Wage.

(5) Failed to provide her with a payslip.

(6) Required the Claimant to work onerous hours.

(7) Broke the Working Time Regulations in relation to the Claimant's employment.

(8) Failed to provide the Claimant with a contract of employment or statement of terms and conditions; and

252. Subjected the Claimant to unacceptable working conditions in relation to:

(1) The length of her working day.

(2) The failure to provide proper accommodation for her, in particular with regard to a failure to provide any privacy and requiring her to sleep on the floor.

(3) Not allowing her to leave the Respondents' house without another member of the Respondents' family being present.

(4) Not allowing the Claimant to keep in contact with her family.

(5) Failing to pay the Claimant.

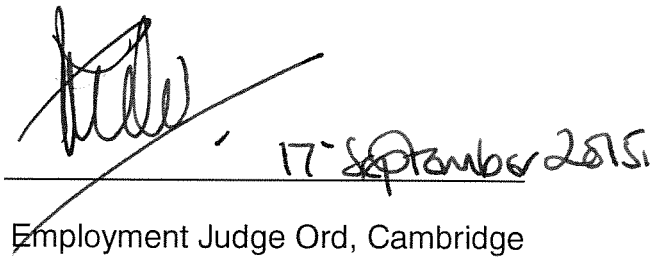
(6) And generally seeking to exercise control over her not as an employee or worker but as someone servile to their needs and whims.

253. The Claimant was the victim of unlawful, indirect, discrimination on the ground of her religion when she was prevented from exercising her religion or belief through the refusal by the first Respondent to allow the Claimant to bring her bible to the UK and throughout her period of employment by preventing her from attending church on Sundays or appropriate religious holy days.

254. It is inappropriate to make any reduction in the awards to be made to the Claimant on the basis that she failed to raise a grievance. No grievance procedure existed and the only people to whom she could complain about the treatment she was receiving at the hands of the two Respondents were those two Respondents themselves.

Remedy

255. The shortfall in the Claimant's wages compared to the amount she should have received under the National Minimum Wage was £183,773.53. The remedy to which the Claimant is entitled for the acts of discrimination, the failure to provide a statement of terms and conditions of employment, the failure to provide pay slips, her unfair dismissal, the failure to provide statutory rest on a daily or weekly basis, the failure to provide paid annual leave, the breaches of the Working Time Regulations, the acts of direct race discrimination and the acts of indirect religious discrimination will be determined at a remedy hearing to take place on **5th and 6th November 2015** at **Cambridge Employment Tribunal**, Cambridge Magistrates Court, 12 St Andrews Court, Cambridge, CB2 3AX.



17 September 2015

Employment Judge Ord, Cambridge

JUDGMENT SENT TO THE PARTIES ON

17/09/2015

FOR THE SECRETARY TO THE TRIBUNALS

SCHEDULE OF AMOUNTS UNDERPAID UNDER NATIONAL MINIMUM WAGE ACT 1998 and REGULATIONS MADE THEREUNDER

SUMMARY OF AMOUNTS DUE UNDER NATIONAL MINIMUM WAGE

Period 1	£16,948.72
Period 2	£40,691.41
Period 3	£39,557.13
Period 4	£39,652.09
Period 5	£41,090.82
Period 6	£ 5,833.36

TOTAL OUTSTANDING	£183,773.53

For which sum the Claimant is entitled to Judgment

PERIOD 1

DATES 1/5/08 to 30/09/08

NUMBER OF DAYS 153

HOURS PER DAY – 18

RATE OF NMW £5.52 p.h.

CURRENT RATE OF NMW £6.50 p.h.

RATE OF ACCOMODATION ALLOWANCE £30.10 p.w. (£4.30 p.d.)

AMOUNTS PAID TO CLAIMANT R25,000 (£250)

AMOUNT DUE UNDER NMW (18x 153) x £5.52 =	£15,202.08
Shortfall	£ 14,952.08
Currently due (due/prevailing nmw x current nmw)	£ 17,606.62
(less) accommodation allowance 153 x £4.30	£ 657.90
AMOUNT NOW DUE FOR UNDERPAYMENT	£16,948.72

PERIOD 2

DATES 1.10.08 – 30.9.09

NUMBER OF DAYS 365

HOURS PER DAY – 18

RATE OF NMW £5.73 p.h.

CURRENT RATE OF NMW £6.50 p.h.

RATE OF ACCOMODATION ALLOWANCE £31.22 p.w. (£4.46 p.d.)

AMOUNTS PAID TO CLAIMANT R34,000 (£340)

AMOUNT DUE UNDER NMW (18x 365) x £5.73 =	£ 37,646.10
Shortfall	£ 37,306.10
Currently due (due/prevailing nmw x current nmw)	£ 42,309.31
(less) accommodation allowance 365 x £ 4.46	£ 1,627.90
AMOUNT NOW DUE FOR UNDERPAYMENT	£ 40,691.41

PERIOD 3

DATES 1.10.09 – 30.9.10

NUMBER OF DAYS 365

HOURS PER DAY – 18

RATE OF NMW £5.80 p.h.

CURRENT RATE OF NMW £6.50 p.h.

RATE OF ACCOMODATION ALLOWANCE £31.57 p.w. (£4.51 p.d.)

AMOUNTS PAID TO CLAIMANT R134,000 (£1,340)

AMOUNT DUE UNDER NMW (18x 365) x £5.80 =	£ 38,106.00
Shortfall	£ 36,766.00
Currently due (due/prevailing nmw x current nmw)	£ 41,203.23
(less) accommodation allowance 365 x £ 4.51	£ 1,646.15
AMOUNT NOW DUE FOR UNDERPAYMENT	£ 39,557.13

PERIOD 4

DATES 1.10.10 – 30.9.11

NUMBER OF DAYS 365

HOURS PER DAY – 18

RATE OF NMW £5.93 p.h.

CURRENT RATE OF NMW £6.50 p.h.

RATE OF ACCOMODATION ALLOWANCE £32.27 p.w. (£4.61 p.d.)

AMOUNTS PAID TO CLAIMANT R125,000 (£1,250)

AMOUNT DUE UNDER NMW (18x 365) x £5.80 =	£ 38,960.00
Shortfall	£ 37,710.00
Currently due (due/prevailing nmw x current nmw)	£ 41, 334.74
(less) accommodation allowance 365 x £ 4.61	£ 1,682.65
AMOUNT NOW DUE FOR UNDERPAYMENT	£ 39,652.09

PERIOD 5

DATES 1.10.11 – 30.9.12

NUMBER OF DAYS 366

HOURS PER DAY – 18

RATE OF NMW £6.08 p.h.

CURRENT RATE OF NMW £6.50 p.h.

RATE OF ACCOMODATION ALLOWANCE £33.11 p.w. (£4.73 p.d.)

AMOUNTS PAID TO CLAIMANT NIL

AMOUNT DUE UNDER NMW (18x 366) x £6.08 =	£ 40,055.04
Shortfall	£ 40,055.04
Currently due (due/prevailing nmw x current nmw)	£ 42,822.00
(less) accommodation allowance 366 x £ 4.73	£ 1,731.18
AMOUNT NOW DUE FOR UNDERPAYMENT	£ 41,090.82

PERIOD 6

DATES 1.10.12 – 21.11.12

NUMBER OF DAYS 52

HOURS PER DAY – 18

RATE OF NMW £6.19 p.h.

CURRENT RATE OF NMW £6.50 p.h.

RATE OF ACCOMODATION ALLOWANCE £33.74 p.w. (£4.82 p.d.)

AMOUNTS PAID TO CLAIMANT NIL

AMOUNT DUE UNDER NMW (18x 52) x £6.19 =	£ 5,793.84
Shortfall	£ 5,793.84
Currently due (due/prevailing nmw x current nmw)	£ 6,084.00
(less) accommodation allowance 52 x £ 4.82	£ 250.64
AMOUNT NOW DUE FOR UNDERPAYMENT	£ 5,833.36

IN THE EMPLOYMENT APPEAL TRIBUNAL **UKEAT/ 0190/14/KN**

B E T W E E N:

MR A CHANDHOK (1)

MRS P CHANDHOK (2)

Appellant

- and -

MS P TIRKEY

Respondent

THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

Intervener

SKELETON ARGUMENT ON BEHALF OF THE EQUALITY AND HUMAN RIGHTS COMMISSION

[*References in bold and square brackets are to the pages in the EAT bundle]*

1. This skeleton argument is submitted on behalf of the Equality and Human Rights Commission (the "Commission") in accordance with the directions of Mr Justice Langstaff in a letter dated 31 October [**94**]. The parties are referred to below as Claimant and Respondents, as they were before the employment tribunal (the "Tribunal").

2. The Commission is grateful for being granted permission to intervene. As the EAT is no doubt aware, it is an independent public body established under the Equality Act 2006 which has statutory duties, among other matters, to promote understanding of the importance of equality, diversity and human rights, and

work towards the elimination of unlawful discrimination.[1] It plays an active role in monitoring compliance of the UK with UN Treaties.

3. In making these submissions the Commission has not addressed all the issues raised in the Notice of Appeal or the Answer but has focussed on those issues on which it hopes it can assist the EAT and supplement the arguments.

4. **Central issue - summary**. The issue determined by the Tribunal was whether to strike out the Claimant's claim in §54 of the amended IT1 [**64**], in which the Claimant supplemented her claim of direct race discrimination under ss 9 and 13 of the Equality Act 2010 ("EqA") by contending that her ethnic origins included her status in the caste system as perceived by the Respondents. The Tribunal also dealt with other related pleadings - see §2 of reasons [**2-3**].

5. In the event, the Tribunal decided not to strike out those parts of the claim for the reasons set out in its conclusions [**14-15**], including that discrimination by descent was unlawful under existing case law on race discrimination (§26.2) and the breadth of the term "ethnic origin" in the EqA (§26.4). The Commission submits that the Tribunal was right not to do so. In outline it submits as follows.

   (1) For the purpose of a strike out application on the ground, presumably, that the claim stood no reasonable prospect of success under rule 37(1)(a) of the 2013 Rules, the Tribunal was correct to proceed on the assumption that the Claimant proved her case.

   (2) If the Respondents believed the Claimant (i) to be the member of a separate race or ethnic group, (ii) to be descended from what they believed to be a distinct racial or ethnic origin or (ii) not to be a member of a distinct racial or ethnic group, and treated her less favourably because of their belief, this would be direct race discrimination for the purpose of s.9 EqA read with s.13 EqA. The basis for the Respondents' belief is irrelevant, whether religious or otherwise: such treatment is direct race discrimination owing to racial or ethnic origin. The existing

[1] See ss 9-10 of the Equality Act 2006

provision of the EqA protect against this form of discrimination, in accordance with normal principles of domestic law.

(3) The Claimant contends that she was a member of the Adivasi people, recognised as a distinct servant caste with their own appearance and culture, that she was perceived to be a member of a separate caste by the Respondents, and that she was treated less favourably as a result of that perception. In that light it was not appropriate for the Tribunal to strike out the case prior to a full hearing on the facts: it requires a full hearing to determine whether in fact the case on direct race discrimination is made out.

(4) This argument is reinforced by the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), which expressly includes discrimination on the basis of descent, and which the Respondents do not dispute covers caste-based discrimination. In accordance with ordinary principles of construction, domestic law in the field of ICERD should be interpreted, if reasonably possible, to be compatible with that Convention; s.9 of EqA can be so interpreted.

(5) The submission is also supported by Council Directive 2000/43/EC (the "Race Directive"), implementing the principle of equal treatment between persons irrespective of racial or ethnic origins. The recitals to the Directive, the international human rights instruments to which they refer and the general principles of EU law show that the Directive has a broad, not narrow, reach and applies to descent-based discrimination. The practical impossibility of separating discrimination on grounds of race or ethnicity from discrimination on grounds of descent show that the Race Directive is intended to cover descent-based discrimination too.

(6) No preliminary reference is necessary to the Court of Justice of the EU (the "ECJ"), above all prior to a full hearing on the facts which would be necessary to provide the factual circumstances to the ECJ.

(7) The existence of, at the material time, a power in s.9(5) EqA to extend the

reach of that section to include "caste" discrimination is an insufficient basis upon which to restrict the scope of s.9(1). It is inconceivable that Parliament intended a subsection which potentially extended the reach of s.9 to have the effect of restricting its scope until such legislation is passed. Nothing in the legislative history points to that result. Such an interpretation would in some circumstances be incompatible with the Race Directive as well as with ICERD.

Legal and Factual Context

6. **Facts**. The facts alleged by the Claimant for the purpose of the claim are set out in the amended ET1 [**45-68**] and her witness statement for the preliminary hearing [**100-102**]. The relevant factual background to the Tribunal's decision is at §§3-5 and §§8-10 of its reasons [**3-5**], explaining the Claimant's evidence about her membership of the Adivasi people, including they are regarded as a servant caste and wear distinct clothing, and that the Respondent enquired about her caste but would have known it from her dark skin, poor clothes and dialect (§4). At §9 the Tribunal set out information about the Adivasi people, described as a "heterogeneous set of ethnic and tribal groups claiming to be the indigenous or aboriginal population" of India, whose treatment has been linked with the Dalits and who have protected status under the Indian Constitution. The Claimant complains of various acts of discriminatory treatment up until her employment terminated in November 2012: Tribunal §1 [**2**].

7. **Caste and EqA**. Race is a protected characteristic for the purpose of the EqA (s.4). Race is not exhaustively defined in s.9 but "includes" colour, nationality, and ethnic or national origins. This is similar to the definition in s.3 of the Race Relations Act 1976 ("RRA").

8. The original Equality Bill contained no reference to caste discrimination.[2] Eventually, however, the Government supported an amendment from the Lords, adding a power to s.9(5) by which a Minister "may" amend the EqA to "provide for cast to be an aspect of race". The Government also commissioned research on

[2] The history of the debates is usefully summarised in D Pyper, *The Equality Act 2010: Caste Discrimination* (9 April 2014: House of Commons Library).

caste discrimination by the National Institute of Economic and Social Research (NIESR).[3]

9. Subsequently, following votes in the House of Lords to add caste as an aspect of race in s.9(1) EqA, the coalition government introduced s.97 of the Enterprise and Regulatory Reform Act 2013 ("ERRA"), which amended a s.9(5) so as to provide that a Minister "must" amend s.9 to provide for caste to be an aspect of race. This subsection came into force on 25 June 2013, after the Claimant's employment terminated: see s.103(2) ERRA. By virtue of s.97(5) ERRA a Minister of the Crown may carry out a review of the effect of s.9(5) and any orders made under it. By s.97(7) ERRA, if the Minster considers it appropriate in the light of the outcome of such a review, the Minister may by order repeal or amend s.9(5) EqA.

10. The Government's original programme and timetable provided for a public consultation with legislation to be issued in the summer of 2015.[4] However, this timetable has been subject to delay for two reasons. First, the Government is considering how to conduct research to establish "baseline data" on caste discrimination; second, it is awaiting developments in the present litigation to see whether caste discrimination is already unlawful under the EqA.[5]

11. "Caste" is not defined in the EqA. It is a contested concept with no single definition, primarily associated with South Asia. As summarised by a leading academic writer on the subject, Annapurna Waughray:[6]

> There is no agreed sociological or legal definition of caste, but a number of salient features can be identified. Castes are enclosed groups, historically related to social function, membership of which is involuntary, hereditary (that is determined by birth) and permanent....Unlike class, it is not generally possible for individuals or their descendants to move into a different caste. Caste is governed by

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[3] See Metcalf and Rolfe, *Caste Discrimination and Harassment in Great Britain*, December 2010 (NIESR).

[4] See the Government Equalities Office, *Caste Legislation Introduction - Programme and Timetable* (July 2013) [**96-99**].

[5] See *Hansard* 9 July 2014 C139WH.

[6] See A Waughray, Capturing Caste in Law: Caste Discrimination and the Equality Act 2010 (2014) 14 *Human Rights Law Review* 359-379.

> rules relating to comensality (food and drink must only be shared by others of the same caste) and is maintained by endogamy (marriage must be within the same caste). It entails the idea of innate characteristics and hierarchically graded distinctions based on notions of purity and pollution, with some groups considered to be ritually pure and others ritually impure. A crucial feature of caste in South Asia is the concept of 'Untouchability', whereby certain people are considered to be permanently and irredeemably polluted and polluting, hence 'Untouchable', with whom physical and social contact is to be avoided. Despite the notional nature of caste, Untouchability is conceptualised as an innate, physical property separating the untouchables from the rest of society.

The term "caste" encompasses the *varna* concept in Hinduism based on the four classes in Sanskrit texts, outside of which are the Dalits; the South Asian concept of *jati*, found in South Asian religious communities; and the *biradari*, most in the Punjabi region.[7] A workable explanation of caste is also included in the Explanatory Notes to the EqA, set out in the research of the NIESR[8] and cited by the Tribunal at §8 [**4**].

12. There is, therefore, no single definition of "caste". The label covers many different empirical social structures and many different belief systems and cultures, as well as many different perceptions about members of a caste, emphasising the need for a hearing on the facts, and not determination on a strike out. This applies as much to the Claimant's claim as it does to any other claim labelled as caste discrimination.

<u>Submission - domestic law</u>

13. The Commission's first contention is that many (if not all) forms of caste discrimination, including the kind alleged by the Claimant, fall within the conception of race discrimination in the EqA as a matter of ordinary domestic law. However, this matter can only be determined at a full hearing with evidence about e.g. the Claimant's ethnic origins and the Respondents' perceptions of her racial or ethnic origins. Hence the Tribunal was right not to strike out the relevant parts of the pleaded claim (see, generally in the discrimination sphere

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[7] See Waughray note 6 above at p 363.

[8] See Metcalf and Role, *Caste Discrimination and Harassment in Great Britain* (NIERS: December 2010)

the well-know comments of Lord Steyn in ***Anyanwu v South Bank Student Union*** [2001] ICR 391 at §24 of the importance of not striking out discrimination claims "except in the most obvious cases").

14. **Ordinary domestic law**. The previous definitions of "racial grounds" and "racial group" in s.3(1) RRA was in similar terms to s.9 EqA, though it also included "race" as a concept. The test for establishing what is an ethnic group, and the cognate term of ethnic origins, for the purpose of s.3(1) RRA is well-known: see ***Mandla v Lee*** [1983] 2 AC 548 per Lord Fraser at 562D–563B. The test, so far as Counsel is aware, has never been doubted. The Commission draws attention to the following in his speech:

    (1) The term "ethnic" should be construed widely, in a broad cultural/historical sense: 563D.

    (2) Membership of an ethnic group can occur by birth or adherence: see 562H-563A.

    (3) Discrimination can arise from a person's subjective perception that another belongs to a racial or ethnic group, even if that perception is erroneous: 563B.[9]

15. Subsequent case-law has confirmed the application of Lord Fraser's criteria in ***Mandla v Lee***: see especially ***Regina (E) v Governing Body of JFS*** [2010] 2 AC 728, in which the Supreme Court held that the term "ethnic origin" in s.3 RRA include descent which can be traced to an ethnic group (per Lord Phillips at §§33, 42-45; Baroness Hale at §66; Lord Mance at §§81-84). Moreover:

    (1) The flexible test in ***Mandla*** is broad enough to encompass not only an ethnic group in accordance with the criteria of Lord Fraser but also the narrower test, used e.g. by the CA in ***Mandla***, of descent from a common ancestry (or, to be more accurate, perceived descent from such ancestry):

[9] See too the citation from the New Zealand case, ***King-Ansell v Police*** [1979] 2 NZLR 531 at 564B-D, endorsed by Lord Fraser at 564E.

see Lord Mance at §82.

(2) Confirming ***Mandla***, ***JFS*** makes clear that race discrimination can arise because a person subjectively perceives another to be a member of an ethnic group: see Lord Mance at §85, citing ***English v Thomas Sanderson*** [2009] ICR 543.[10] Indeed, the worst forms of race discrimination have frequently been justified by false assertions or beliefs, including religious beliefs, about the inferiority of other groups who are perceived as different - see the example given Sedley LJ in the Court of Appeal in ***JFS***, cited by Lord Clarke at §150.

(3) It is not necessary that the victim of discrimination is a member of the ethnic group so long as he or she is a descendant of such a group (see Lord Phillips at §§44-45) - or, it follows, is believed to be.

(4) Even if the relevant group today is not an ethnic group on the basis of the ***Mandla*** criteria, if the test of membership of that group focuses on descent from a particular people, that is itself a test based on ethnic origins: Lord Mance at §86.

(5) The logic of ***JFS*** applies equally whether the claimant is discriminated against because of his or her membership or descent from an ethnic group or people, or non-membership or non-descent from such a group: see Baroness Hale at §60.

16. The decisions in ***Mandla v Lee*** and ***JFS*** must apply equally to the conception of race discrimination in EqA. The two Acts use the same term, "ethnic origin", share the same purpose, and the policy of both Acts is that individuals should be treated as individuals and not have assumptions made about them, such as false stereotypes, based on their actual or perceived membership of a group, including as a result of birth: see Lord Mance in ***JFS*** at §90.

17. Applying the criteria in ***Mandla v Lee*** and the reasoning in ***JFS*** to the Claimant's

[10] See Sedley LJ at §§39-40 and Lawrence Collins LJ at §46.

case shows there is a serious issues to be tried, including whether the Claimant's less favourable treatment was because (i) the Adivasi constitute an ethnic group of which the Claimant was a member or a descendant; (ii) the Claimant was perceived by the Respondents as a member or descendant of that or another ethnic group; and/or (iii) the Claimant was not, or was perceived as not being, a member of another ethnic or racial origin (e.g. her lack of "high caste" status). In the event that her less favourable treatment was because of those reasons, her claim would be a good one under the RRA.

18. Not all forms of unequal treatment based on descent amount to unlawful discrimination under the EqA. The examples given in ***JFS*** were of discrimination because a person was not the son of a peer or the son of a member of the SOGAT union,[11] where a link to an actual or perceived ancestral ethnic group (or other protected characteristic) is absent. The Commission doubts, however, that these examples will ever be relevant to discrimination based on caste. Whether the discrimination arises because a "caste" is identified as different owing to religious belief, to beliefs of innate difference, to beliefs on descent from a different people or to a distinct ethnic identity, in each case the ***JFS*** test is likely to be met. But this serves only to emphasise the need for a full hearing, to decide whether the Claimant was treated as she alleges and, if so, the reasons and beliefs which led to her treatment.

19. **ICERD**. The above argument is strengthened as a matter of pure domestic law by reference to the ICERD.

20. Ratified by the General Assembly of the UN on 21 December 1965, the ICERD entered into force on 4 January 1969 (Article 19). It defines racial discrimination in Article 1.1 on five grounds as follows:

> In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the

[11] See Lord Phillips at §29. See too Baroness Hale at §66.

political, economic, social, cultural or any other field of public life.

State parties undertake to pursue a policy of eliminating race discrimination (Article 2.1) and providing effective remedies (Article 6). The Committee for the Elimination of Racial Discrimination ("CERD"), established by Article 18, monitors compliance with the ICERD. ICERD was ratified by the UK in 1969, and thus has bound the UK since that date.

21. There is a strong presumption in favour of interpreting English law in a way which does not place the UK in breach of its international treaty obligations: see ***Hounga v Allen*** [2014] ICR 847 at §50. The words of domestic legislation in the field of the UK's international obligations are to be construed, if they are reasonably capable of bearing such as meaning, as intended to carry out the obligation: see ***Garland v British Rail*** [1983] 2 AC 751 per Lord Diplock at 771A-C; ***AH v West London Mental Health Trust*** [2011] UKUT per Lord Carnwarth at §16 (referring to the Convention on Persons with Disabilities). This rule does not apply, of course, where Parliament makes it plain that it intends to pass legislation inconsistent with an international obligation.

22. The Respondents do not dispute that caste discrimination falls within Article 1.1. ICERD; their argument is that it only falls within the category of "descent": see Notice of Appeal at §11-12 [**10**]. The Commission agrees that caste discrimination has been treated as an aspect of "descent" in Article 1.1 (cf. Lord Mance in ***JFS*** at §81). Thus:

(1) The CERD "strongly reaffirmed" in its General Recommendation XXIX[12] ("GR 29") that discrimination based on "descent" under Article 1 includes discrimination "against members of communities based on forms of social stratification such as caste and analogous systems which nullify or impair their equal enjoyment of human rights." It recommended, too, that State parties took steps to identify "descent-based communities who suffer from discrimination, especially on the basis of caste" and drew attention to factors that allow such communities to be recognised, including

[12] The CERD first affirmed in 1996 that discrimination on the basis of descent includes discrimination based on caste: see Waughray note 6 above at p 367.

inability to alter inherited status, socially enforced restrictions on outside marriage and dehumanising discourses.

(2) In resolution 2000/4 the UN Sub-Commission on Human Rights declared that discrimination due to work and descent is a form of discrimination prohibited by international human rights law, based on Article 2 of the Universal Declaration of Human Rights. In 2001 the first Working Party established as a result addressed caste-based distinctions as the most notable manifestation of discrimination due to descent and listed the various manifestations of such discrimination.[13] A subsequent Working Party report in 2003 examined communities not traditionally referred to as "castes" but identified causal factors common to caste-based and other forms of descent-based discrimination, including descent as a defining criterion for membership of the group, traditional menial roles often associated with religious beliefs, endogamous isolation, being regarded as "polluted", hierarchical ranking based on ideas of "purity", basis in religious belief and ascribing a different "racial" or ethnic origin to the dominant community.[14]

(3) Third, as Waughray notes, since 2003 the CERD has called upon the UK government to protect against caste-based discrimination.[15]

23. The Commission does not accept, however, the second step in the Respondents' argument. It is irrelevant that UK law does not explicitly prohibit "descent" as a form of discrimination in s.9 EqA. The EqA should be interpreted if reasonably possible to protect against the forms of racial discrimination which fall within the ICERD's conception of descent-based discrimination: see the authorities cited in §21 above. It is the *end*, not the means, that matters.

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[13] See Goonesekere *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities*, UN Doc. E/CN.4/Sub.2/2001/16 at §7. It listed the various manifestations of such discrimination as including prohibitions on intermarriage, physical segregation, and social prohibitions on physical contact and sharing utensils based, it appears, on Hindu scriptures and widespread social beliefs: see §§8-10.

[14] See Eide and Yokoata, *Prevention of Discrimination*, UN DoC. E/CN.4/Sub 2/2003/24 at §§45-51.

[15] See note 6 above, at p 368.

24. The Commission submits that the concept of "ethnic origin" in s.9 EqA is perfectly capable of accommodating the forms of descent-based discrimination identified by the CERD and the UN Sub-Commission Working Parties. First, the "broad, flexible" test in ***Mandla*** can accommodate a test based on actual or perceived common ancestry, however remote in time, which is often central to descent-based discrimination (per Lord Mance in ***JFS*** at §82). Second, the causal factors identified e.g. in §1(a) of GR29 and by the 2003 Working Party as associated with descent-based discrimination are precisely the sorts of matters which a tribunal would and should examine in applying that "broad, flexible" test - either to decide that the claimant is perceived as a member of a particular ethnic minority or is perceived as not belonging to another, perhaps dominant, ethnic group.

25. The Commission, at present, finds it hard to think of an example of caste-based discrimination which would not be caught by direct race discrimination. Whenever that discrimination is the result of a belief that another caste is descended from a distinct ancestry, or has its own ascribed characteristics (based on e.g. religious of social beliefs of difference), this is likely to amount to direct race discrimination, given the flexible test under domestic law and the purpose of the legislation. But, at the risk of repetition, this issue does not arise at the strike out stage and can only properly be addressed after a full hearing with evidence about the matter.

Submission - the Race Directive

26. For reasons already set out above, the Commission considers it would be premature to make a reference to the ECJ under Article 267 before there has been a full hearing, to see if the Claimant's claim can be addressed under domestic law without need of any reference to the ECJ. Prior to that stage, it is not clear if a reference to the ECJ is "necessary to enable [the tribunal] to give judgment" within the meaning of Article 267, and the absence of full factual material will hamper observations from the parties, the Commission and Member States. The ECJ has become increasingly strict that it has sufficient information about the factual circumstances on which a reference is based: see e.g. Case C-388/04, ***Criminal Proceedings against Placanica*** [2007] 2 CMLR at §34.

27. Subject to that fundamental point, if necessary the Commission will submit that it is plain the Race Directive is intended to protect against discrimination based on descent, including caste-based discrimination, and/or to protect against the sort of discrimination alleged by the Claimant. The argument for the Respondents that there is real doubt whether Directive is intended to protect against discrimination based on descent - see Notice of Appeal at §§17-22 - is not sustainable. The matter is *acte clair*.

28. First, the Directive refers in the third recital to the right to equality before the law and protection against discrimination recognised by, among others, the Universal Declaration of Human Rights, the ICERD, the UN Convention on Civil and Political Rights and the ECHR. Those human rights provisions chime together: all point to a wide conception of what counts as race discrimination, which should therefore embrace descent-based discrimination. Thus:

(1) The ICERD expressly embraces discrimination based on descent in Article 1.1, and the CERD has made clear this includes caste-based discrimination: see above. The Respondents do not dispute this.

(2) The Sub-Commission on Human Rights has made clear that Article 2 of the Universal Declaration of Human Rights protects against descent-based discrimination (see Resolution 2000/4) (which includes, as the Working Papers referred to above show, caste-based discrimination).

(3) The International Covenant on Civil and Political Rights recognises that all persons are entitled to the equal protection of law "without any discrimination" and to equal and effective protection against discrimination "on any ground such as race, colour, language, national or social origin...or other status" (Article 26).

(4) In considering discrimination under Article 14 of the ECHR, the Strasbourg Court has explicitly referred to and adopted the definition in Article 1.1 of the ICERD (as well as the wide definition in the Policy Recommendation No. 7 of the Council of Europe's European Commission against Racism and Intolerance) and, accordingly, has adopted a very

wide conception of race discrimination and ethnicity: see e.g. ***Timishev v Russia***[16] at §§33-34, 55-56. The width of its conception of discrimination is clear from §55 where the Court said:

> Ethnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural or traditional origins and backgrounds.

The Court went on to make clear that discrimination on account of perceived race or ethnicity falls within Article 14 (§56) - especially relevant to race which is a social construct. Thus ***Timishev*** shows (i) there is no bright line between perceived race/ethnicity (or, one might add, between perceived race and perceived descent from common ancestry); (ii) the factors relevant to ethnicity are wide and themselves have reference to origins; (iii) in determining the scope of Article 14, the Court has regard to the ICERD and its wide definition of race discrimination.

29. The Directive should, therefore, be interpreted in accordance with those international instruments referred to in its recitals, all of which indicate a wide scope to what should be included within discrimination on racial or ethnic origin, sufficiently wide to include within it descent-based discrimination, and caste discrimination of the sort alleged by the Claimant.

30. Second, other provisions and principles of EU law further show that the concept of race discrimination in the Directive should be interpreted broadly. Thus:

(1) Article 2 of the Treaty makes clear that respect for equality and non-discrimination are the most fundamental rights protected by the EU. So too, by Article 6(3), referred to in recital (2) to the Race Directive, are rights protected by the ECHR, including therefore the non-discrimination provision in Article 14 ECHR as interpreted in ***Timishev***. The ECJ has

[16] Application No. 55762/00 and 55974/00; judgment final 13 March 2006.

particular regard to these fundamental rights, especially the ECHR and the case-law of the European Court of Human Rights: see, for example, ***Schmidberger v Austria*** [2003] 2 CMLR 34 at §§71-73; AG Sharpston in ***Volker and Marcus v Land Hessen*** [2010] ECR I-11063 at §64.

(2) The Race Directive gives expression to the principle of equality which is a fundamental principle of EU law, and which points to a wide interpretation of the scope of the Race Directive: see, in the related sphere of sex discrimination, ***P v S*** [1996] ICR 795 at §§18-22; ***Del Cerro Alonso v Osakidetza*** [2008] ICR 145 at §§26-28 and §§36-38.

(3) Similarly, non-discrimination and equal treatment in employment, including on grounds of age and therefore race, are general principles of EU law, based on the various international instruments referred to above, and which are given specific expression in the Directives: see ***Küküdeveci v Swedex*** [2010] IRLR 346 per (then) AG Tizzano at §§76-81, ECJ at §§20-22.

(4) Following the Treaty of Lisbon, Article 6(1) TEU provides that the Charter of Fundamental Rights of the EU has the same legal value as the Treaties. By virtue of Article 21(1), "<u>any</u> discrimination based on <u>any</u> ground <u>such as</u>....race, colour, ethnic or social origin, genetic features, language, religion or belief...membership of a national minority [or], birth....shall be prohibited" (emphasis added). The width of those words is evident. By Article 51, the rights and principles of the Charter are to be respected and observed by the institutions of the EU, including the ECJ, when it interprets the Race Directive.[17] A restrictive interpretation of racial or ethnic origins would be in tension with Article 21 of the Charter.

31. <u>Third</u>, there is no bright line in any case between discrimination based on "descent", as set out in Article 1.1 ICERD, and discrimination based on "racial or ethnic origin" (Article 2.1 of the Race Directive). Recital (6) to the Race Directive

[17] See the helpful summary of AG Trstenjak in ***Dominguez v Centre Informatique*** [2012] IRLR 321 at §72-74.

makes clear that for the purpose of the Directive theories based on the factual separation of human races are wrong, so that the Directive treats race as a social construct. The test for racial and ethnic origins must necessarily be flexible, as shown e.g. by the domestic authorities and ***Timishev***. The purposes of the Directive indicate that the test is a wide one. It would generate impossible legal uncertainty to hold, on the one hand, that perceived racial and ethnic origins fall within the Directive but, on the other, a separate category, of descent- or caste-based discrimination, falls outside it.

32. The preliminary facts illustrate the point well. The discrimination alleged by the Claimant, though labelled by reference to caste in §54 of the pleading, is likely to involve a complicated set of factual findings about what the label "caste" in fact means. The attempt to carve out an exception for treatment based on perceptions of "descent" compared to treatment based on beliefs about "ethnic or racial origins" is, in practical terms, impossible to apply. Origin, after all, embodies within it the notion of descent. If A believes B is descended from ethnic group or people Z and treats B less favourably as a result, is that discrimination because of perceived racial or ethnic origin or descent?

33. In its Notice of Appeal the Respondents contend that the Race Directive potentially sought to include only "race" and "ethnic origin" from the ICERD, but to exclude the other terms in Article 1.1 ICERD (colour, descent and national origin): see §18 [**24**]. However, in ***Centrum voor Gelijkheid v Firma Feryn*** [2008] ICR 1390 the ECJ wasted little time in deciding that public statements by a firm that its customers did not want "immigrants" or "Moroccans" constituted direct discrimination: see §25. On the Respondent's argument, if this were categorised as discrimination because of "descent" - on the basis that the "immigrants" referred to were descended from Moroccans who moved to Belgium - it fell outside the Directive. But in fact race discrimination cannot be placed in five hermetically sealed compartments: the concepts shade into each other - see ***Timishev*** - and factors relevant to one category will be relevant to another.

34. It is trite that the EqA must, so far as is possible, be interpreted to achieve the result sought by the Race Directive: see ***Rowstock Ltd v Jessemy*** [2014] ICR 550 per Underhill LJ at §§40-41. There is no difficulty in interpreting s.13 so as to

include descent-based discrimination or in accordance with the Race Directive: the section is an inclusive not exhaustive list; it adopts similar language to the Directive; and descent can in any case be seen as part of the term "ethnic...origins" :see Lord Kerr in ***JFS*** at §108.

The Respondents' argument - s.9(5) EqA

35. In the notice of appeal [**20-21**]the Respondents place much reliance on the existence of s.9(5) EqA, providing that a Minister may/must[18] amend s.9 to provide for caste to be an aspect of race. The Respondents contend that the Tribunal decision ousts the will of Parliament, and renders s.97 ERRA void, because the section shows that Parliament intended to "preclude caste discrimination from its auspices until further democratic consultation has taken place" (§2). Hence, it is suggested, the decision in ***JFS*** should not apply to the EqA (§4).

36. The Commission submits that s.9(5) will not bear the weight which the Respondent seeks to place on it. It provides no sufficient basis for restricting the interpretations set out above both on ordinary rules of domestic law and in order to comply with the Race Directive.

37. First, the purpose of s.9(5) is, plainly, to extend what is embraced within s.9 not to restrict what otherwise fell within the scope of s.9(1).

38. Second, strictly, at the time the Claimant's employment terminated, s.9(5) stated that a Minister "may" by order amend s.9 to include caste in race. It is inconceivable that a permissive power to extend or clarify the reach of the section should be read as restricting its coverage. Viewed in that historical light, nor can the amendment making s.9(5) into a duty have that effect: it merely requires the extension of the subsection.

39. Third, such a result is contrary to the purpose of and history to the EqA. It has the surprising result that, while many if not all forms of caste-based

[18] Depending on the version in force at different times - in the case of the Claimant, the first version.

discrimination could have been caught by the terms of s.3(1) RRA, which was an exclusive definition, the re-enactment of the almost the same words in s.9(1) EqA,[19] which is a wider, inclusive subsection, must be read subject to s.9(5). If Parliament had intended such a radical result, potentially restricting the previous understanding and case-law of what was included in race, s.9(1) would say so explicitly. It would say, for example "subject to s.9(5)" or "provided always that race shall not include caste within the meaning of s.9(5)" .

40. Fourth, as already submitted, it is not possible conceptually or factually to draw neat distinctions between discrimination because of caste and discrimination because of ethnic origins. The two overlap. It is inconceivable that Parliament intended to allow a new defence to a claim of race discrimination that, in essence, this was "caste" discrimination. Suppose, for example, the child in ***JFS*** was excluded from the school because he was believed to be a descendant of a group who possess a distinct ethnic identity as well as being viewed as a distinct caste. That discrimination would, plainly, have been caught by the RRA, just as in the ***JFS*** case. Without the existence of s.9(5) it would plainly have been caught by the EqA. Yet, on the Respondents' argument, the employer would now have a good defence to the claim. The bizarre logic of the Respondents' case is that a provision designed to extend the scope of EqA has the effect of restricting it.

41. Fifth, as set out above, domestic law should be interpreted consistently with the UK's international obligations, including the ICERD. This can be done simply by treating s.9(5) as a power to supplement or clarify s.9(1), not to restrict it. Such an interpretation is reasonably possible on any view. There is no basis for an argument that Parliament intended not to comply with ICERD or other provisions of international law in enacting the EqA or s.9.

42. Sixth, the Commission submits that the meaning and effect of s.9(1) is not ambiguous or obscure for the purpose of ***Pepper v Hart***. But if the EAT considers it necessary to refer to Hansard, the Commission submits that the statements made by Ministers or on their behalf show that the subsection was never intended to restrict what was caught by s.9(1). On the contrary, the statements

[19] The only omission is "race".

show that the Government considered that caste-discrimination could already be dealt with by the existing law. Thus, answering a question at the Second Reading, Harriet Harman, the Minister for Women and Equality, said that discrimination by caste and descent was already covered by the law.[20] When, in the Committee Stage in the Lords several peers argued for an express inclusion of "caste" to make the position clearer;[21] in response Baroness Thornton, for the Government, stated that more research was needed to see if caste discrimination related to areas covered by discrimination law and whether the current law already provided redress.[22]

43. Seventh, such a result is incompatible with EU law. It is clear, as set out above, that the conception of race discrimination in the Directive is a wide one, owing to the human rights instruments referred to in recitals to the Directive and the general principles of EU law. In any case domestic law must protect against discrimination on "racial or ethnic origin" within the meaning of Article 1 of the Directive. But if s.9(5) is to operate so as to remove from s.9(1) discrimination on grounds of ethnic origin which would otherwise be caught by s.9, it has the result that the protection given by the EqA will not be, in some cases, co-extensive with that in the Directive. Take the present case. Ignoring s.9(5), the Claimant may have a good claim under s.9(1) and s.13 EqA and the Race Directive, on the basis of discrimination owing to her "ethnic origins". If her claim is debarred because it could also be categorised as discrimination on grounds of caste, this would be incompatible with the Directive, which contains no exclusion for caste-based discrimination. There is no difficulty in interpreting s.9 to avoid this result - by treating s.9(5) as an extension of s.9(1) not a restriction of it.

Conclusion

44. The Commission's position is, in summary, that the Tribunal was undoubtedly right not to strike out the claim. On the alleged facts, it cannot be argued that the claim has no reasonable prospect of success, as the pleaded claim falls squarely within the concept of direct race discrimination as a matter of domestic law and

[20] See the citation from HC Deb 11 May 2009 C652 in Pyper, above.

[21] See the citations in Pyper, above, at pp 10-12.

[22] See HL Deb 11 January 2010 C342-45 (quoted in Pyper above).

EU law. No reference to the ECJ is required because such a reference is (i) premature and/or (ii) unnecessary in any event.

45. The Commission has not addressed other points which were made before the Tribunal - including e.g. the direct effect of the Charter of Fundamental Rights and the potential relevance of religious discrimination - but will, of course, assist the EAT if it wishes it do so.

MICHAEL FORD QC
14 November 2014

United Kingdom Employment Appeal Tribunal

Appeal No. U

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON, EC4Y 8JX

At the Tribunal
on 2 December 2014
Judgment handed down on 19 December 2014

Before

THE HONOURABLE MR JUSTICE LANGSTAFF

SITTING ALONE

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(1) MR A CHANDHOK APPELLANTS
(2) MRS P CHANDHOK

MS P TIRKEY RESPONDENT

JUDGMENT

APPEARANCES

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SUMMARY

RACE DISCRIMINATION

The Claimant worked for the Respondents as a domestic worker. She claimed that they treated demeaning manner, and (by amendment) that this was in part because of her low status which considerations of caste. The Respondents applied to strike out this amendment, on the ground that within the definition of "race" in s.9 of the **Equality Act 2010**, and that the enactment of s.9(5) b subsequently amended by the **Enterprise and Regulatory Reform Act 2013** demonstrated that Par it was excluded from the definition in s.9(1).

Held That though "caste" as an autonomous concept did not presently come within s.9(1) many of t considering caste in many of its forms might be capable of doing so, since "ethnic origins" in s.9(1) flexible ambit, including characteristics determined by "descent", and it became common ground d that it was possible that the facts found in hearing the present claim might come within the sco General observations were made about the inappropriateness of relying on assertions as to facts not form when seeking to strike out part of the claim.

THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)

1. This judgment on appeal from a refusal of Employment Judge Sigsworth at Huntingdon to of a claim may have more importance in what needs to be said about the approach to striking out p has to say about whether treating a person adversely because of their perceived caste is justiciable stands.

2. In reasons sent on 24th January 2014 the judgment stated simply that "…the claim of caste out in the amended statement of claim is not struck out and the claim will proceed to a merits hear that a claim had been made that there had been "caste discrimination" as if it were a separate speci

3. By her claim, set out at somewhat excessive length over 64 paragraphs, many of which Claimant said that she was "of Indian nationality and national origin", had been recruited as a nar first for the Respondents in India (they being Indian) and then in the UK until her employ November 2012. She described how she was treated in a demeaning way, such that she was more than service. Apart from a number of other breaches of statute, she claimed in her ET1 as initiall her entitlements to

> **"compensation for direct or indirect race discrimination and harassment includ feelings;" and**
>
> **"compensation for discrimination on the grounds of religion or belief, includ feelings…""**

Despite its length, nothing was said about "caste discrimination".

4. On 23 May 2013, her statement of claim was amended. The amendment of central relev paragraphs 53 and 54. In paragraph 53 the words initially present were:

> **"The Claimant contends that the reason she was treated as complained of was that sh nationality and/or national origin."**

The amendment added the word "ethnic" after the words "Indian nationality", thus asserting her e a further or alternative ground of the disadvantageous treatment meted out to her.

5. This was in accord with Section 9 of the **Equality Act 2010**, which provides materially as fol

"(1)Race includes—
(a)colour;
(b)nationality;
(c)ethnic or national origins."

6. Paragraph 54, completely new, by amendment, reads as follows:-

> **"For the avoidance of doubt the Claimant avers that her ethnic and/or national origins but is not limited to her status in the caste system as perceived by the Respondents. The Convention on the Elimination of All Forms Racial Discrimination ("ICERD discrimination on the grounds of "descent": its principles are adopted by the Rac Directives and, it follows, the Equality Act. Thus s13 EA 2010 must be taken to p discrimination. The Claimant avers that the and/or a reason why she was recruited and manner alleged was that the Respondents concluded that she was of a lower status to th was tainted by caste considerations."**

7. The wording of paragraph 54 asserted primarily a claim that she had been treated as sh ethnic and/or national origins. There was no separate claim of caste discrimination as such. The talk of "ethnic and national origins" with "status", "caste", and "descent", both together, as factu legal argument as to the scope of section 13 of the **Equality Act**. What is not said as a matter of caste, if any, to which the Respondents thought the Claimant belonged; nor does it say anythin "caste considerations" involved. However, depending upon the way the paragraph is read, it r Respondents thought her to have a particular status in the caste system (thereby, separately asser "caste system" of relevance).

8. All this was said "for the avoidance of doubt", a phrase normally used to make it clear h point should be understood: in this case, that discrimination against the claimant because of her " be, national) origins" was to be established in part by factual evidence about the Respondents vie lower status than they were, a perspective associated with their idea of her caste.

9. It was however on the basis that this paragraph raised a case that the Claimant had been c specifically on the ground of her caste that an application to strike out paragraph 54 was pursued.

10. Though the paragraph is not as clear as it might be (because of its reference to several diffe and mixture of fact and law), I do not accept that it can properly be read in this way. These are my a) The originating application has to be read as a whole. At paragraph 64, where the claims are and set out in summary, there is no separate claim for caste discrimination – merely for dire discrimination, or alternatively discrimination on the grounds of religion or belief;

b) Paragraph 54 itself begins by confining what is to be said to explaining how "ethnic and/or nat advanced;

c) It stops short of asserting that in this particular case "caste" is a discrete reason for the adverse t

d) As Mr Samson and Mr Briggs for the Appellants were keen to show me, there is conside authoritative literature as to the precise definition and boundaries of "caste" – such that there is s some "caste considerations" involve no consideration of "descent". To allege that "caste" on its c adverse treatment is not only too general a concept to be useful, but likely to have been seen as su the literature is at all a reliable guide, it would require considerable qualification. Here "discrimination on the grounds of descent", which shows that what is being complained of is the the Claimant, which repeats the concept expressed in the first sentence of paragraph 54, rather unspecific general sense relied on by the Appellants. After all, "origins" invites a consideration of

11. Though I think that the preferable reading of the paragraph is that it argues that in the case perceived caste was bound up factually with the Respondent's perception of her ethnic origins, I a also open to the view that the Claimant is asserting there that she was treated as she was in part that discrimination on the grounds of caste is prohibited, and that this is so because caste is det This appears to be the view the Appellants took of it, though upon reflection it is not mine.

12. The amendment was made at a hearing before Employment Judge Ward on 30th May 2013. the amendment was effected at that hearing, the Appellants did not apply then that it be re subsequently to strike it out. That application came before Judge Sigsworth, whose judgment is ur

13. The question whether there was, here, a justiciable claim involving caste was not heard as What was proposed was the removal of paragraph 54 coupled with those parts of the claim wh Claimant was treated as she was because of her perceived caste.

14. She did not say in the claim itself that she belonged to any caste, nor give particulars of would have made her recognisable as a caste member. The Judge, however, set these details out a in part. He thus went well beyond the words of the originating application. He also set out in con "the caste position" was, seeking definitions of it from Wikipedia, and considering factual mate and its various meanings, which was put before him by the parties. None of this material w

examination, for the Judge heard no evidence: the application was to strike-out parts of the clain preliminary issue.

15. In paragraph 4 of his judgment the judge identified the Claimant's case – saying it was tha Adivasi people - not from what was asserted in the claim, lengthy though it was, but from mater have come from either her witness statement (which was brief) or what he was told.

16. I do not think that the case should have been presented to him in this way or that it should his determination. That is because such an approach too easily forgets why there is a formal clair out in an ET1. The claim, as set out in the ET1, is not something just to set the ball rolling, as necessary to comply with time limits but which is otherwise free to be augmented by whatever t add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary fun essential case. It is that to which a Respondent is required to respond. A Respondent is not r witness statement, nor a document, but the claims made – meaning, under the Rules of Procedur set out in the ET1.

17. I readily accept that Tribunals should provide straightforward, accessible and readily ur which disputes can be resolved speedily, effectively and with a minimum of complication. They v designed to be populated by lawyers, and the fact that law now features so prominently before Er does not mean that those origins should be dismissed as of little value. Care must be taken t formalism as prevents a Tribunal getting to grips with those issues which really divide the partie said, the starting point is that the parties must set out the essence of their respective cases on pap ET1 and the answer to it. If it were not so, then there would be no obvious principle by which ref document (witness statement, or the like) could be restricted. Such restriction is needed to k sensible bounds, and to ensure that a degree of informality does not become unbridled licence. Th an important function in ensuring that a claim is brought, and responded to, within stringent time or a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, i litigant after the expiry of any relevant time limit to assert that the case now put had all along b was "their case", and in order to argue that the time limit had no application to that case documents or statements, not contained within the claim form. Such an approach defeats the pur denying amendments; it allows issues to be based on shifting sands; it ultimately denies that

justice most needs, which is focus. It is an enemy of identifying, and in the light of the identifi central issues in dispute.

18. In summary, a system of justice involves more than allowing parties at any time to raise seems to suit the moment from their perspective. It requires each party to know in essence what tl they can properly meet it; so that they can tell if a Tribunal may have lost jurisdiction on time costs incurred can be kept to those which are proportionate; so that the time needed for a case, which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itsel be taken that any one case does not deprive others of their fair share of the resources of the syste for focus on the central issues. That is why there is a system of claim and response, and why an E should take very great care not to be diverted into thinking that the essential case is to be found e pleadings.

19. Neither party complained directly of this error of approach in the notice of appeal or Respo sought to take advantage of the licence it gave to make wide-ranging submissions about "caste", respect of the present case, though Mr. Ford QC for the Intervener was more circumspect. It was, those occasions on which a strike out should succeed before the full facts of the case struck-out ha evidence were rare. This is particularly so where the claim is one of discrimination. Such a require a Tribunal to establish why an employer acted as it did. That will usually require an eval which the relevant decision-maker(s) or alleged discriminators had for acting as they did. Such an often critically, upon what may be inferred as well as proved directly from all the surroun including evidence of the behaviour (whether by word, deed, or inaction) of such ir contemporaneously to the events complained of but also in the past and, sometimes, even since the claim was founded; and it may include an assessment, in the light of the evidence that was c failure to call other evidence was of significance. These can often be challenging assessments, a there are complications of language and culture. Considerations such as these led Lord Steyn in **Bank Student Union** [2001] ICR 391, HL, to express the view at paragraph 24 (echoed b paragraph 37) as follows:

> "**In the result this is now the fourth occasion on which the preliminary question sustainability of the appellants' claim against the university is being considered. For vagaries in discrimination jurisprudence underline the importance of not striking out s an abuse of the process except in the most obvious and plainest cases. Discriminati generally fact-sensitive, and their proper determination is always vital in our pluralis this field perhaps more than any other the bias in favour of a claim being examined on**

> **necessary to explain why on the allegations made by the appellants it would be wrong their claims against the university**."

20. This stops short of a blanket ban on strike-out applications succeeding in discrimination cla be occasions when a claim can properly be struck out – where, for instance, there is a time bar tc evidence is advanced that it would be just and equitable to extend time; or where, on the case as pl no more than an assertion of a difference of treatment and a difference of protected chara Mummery LJ at paragraph 56 of his judgment in **Madarassy v Nomura** [2007] ICR 867):

> **"…only indicate a possibility of discrimination. They are not, without more, sufficient r which a tribunal "could conclude" that, on the balance of probabilities, the res committed an unlawful act of discrimination."**

Or claims may have been brought so repetitively concerning the same essential circumstances tha response) is an abuse. There may well be other examples, too: but the general approach remains t discretion to strike-out a claim should be sparing and cautious. Nor is this general position affec evidence, as is often the case when deciding a preliminary issue, unless a Tribunal can be conf evidence advanced at a later hearing, which is within the scope of the issues raised by the pleadi decision.

The Judgment

21. The Judge dismissed the application to strike out the claim in this case because:-

a) The definition of race in section 9(1) of the **Equality Act 2010** is not exclusive, but inclusive: origin. It could be argued that "caste" insofar as it was an aspect of "ethnic" origin was thus alreac

b) Domestic case law, namely **Mandla v Dowell Lee** [1983] 2AC 548 HL, and the "Jewish Free S **v Governing Body of JFS and Another** [2010] 2 AC 728, SC - were authority that discrimina unlawful as being direct race discrimination.

c) If "caste" is based on ethnic origin – and discrimination on grounds of ethnic origin is nc **Equality Act -** then arguably the **Equality Act** does not fully implement the provisions of the which was intended to give effect to the International Convention on the Elimination of I ("ICERD") (to which the UK is a signatory), and "racial discrimination defined therein includes c basis of, inter alia, descent".

d) The EHRC Code of practice on employment gives a wide breadth to the definition of "ethnic group".

e) Since the Claimant's case was that her Adivasi status was inextricably linked with her case c discrimination, and "the Claimant's case is she is lower caste by birth and therefore descent" h these legal provisions.

22. He would have been entitled to add that it was necessary to adopt an attitude of reluctance a claim for discrimination, for the reasons set out in the immediately foregoing paragraphs.

23. Stripping out of the Judge's reasons those matters of which he was told but which were no such, points (a)-(c) above were all principles of law; and whereas (d) and (e) included matters wl in the claim form or any amendment of it, nonetheless they reflect the essence of the case w paragraph 54 as I read it: that the claim was that there had been discrimination against the Claima ethnic and national origins, of which a broad view was to be taken, and with which her caste (lower status was bound up.

The Grounds of Appeal

24. The first ground was entitled "ousting the will of Parliament". It argued that "caste" w protected characteristic within the definition of "race" in section 9(1) of the **Equality Act 2010**. deliberately omitted was emphasised by the provision at section 9(5) as originally enacted:

> **"A Minister of the Crown may by order – (a) amend this section so as to provide for c aspect of race; (b) amend this Act so as to provide for an exception to a provision of this or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances."**

In the **Enterprise and Regulatory Reform Act 2013** ("**ERRA**") this subsection was amended only so far as material):

> **"5. A Minister of the Crown…. (a) must by order amend this section so as to provide f an aspect of race; (b) may by order amend this Act so as to provide for an exception to a this Act to apply, or not to apply, to caste, or to apply or not to apply, to caste circumstances."**

25. The section effecting this amendment was Section 97 of **ERRA**. Sub-section 5 of it provi the Crown to carry out a review of the effect of section 9(5) of the **Equality Act 2010** and order whether it remained appropriate, though this power was not to be exercised before a period of 5 y the day on which the **ERRA** was passed had elapsed. Having reviewed the matter, the Minist power under section 97(7) might by order repeal or otherwise amend section 9(5) of the **Equality**

26. It was originally proposed that there would be full public consultation during 2014, with c caste being introduced into Parliament during summer 2015.

27. In the light of this, the Appellants argue that Parliament was expressing its recognitio included within the definition of race within section 9(1). It was not for an Employment Tribu legislation to be introduced next summer by holding that the Claimant could currently maintain a c caste.

28. The second ground argued that **JFS** and **Mandla v Lee** were distinguishable from the Clain judgments adopted a purposive interpretation to the meaning of "ethnic origin" as provided for u legislation (the **Race Relations Act 1976**). That legislation had no specific provision for the raci (respectively Jews and Sikhs) whereas caste had been singled out for specific statutory provision b **Equality Act 2010**, rendering those authorities inapplicable.

29. In my view, this raises essentially the same point as does the first ground, for it argues enactment of the **ERRA** is to shut out any consideration of caste by an employment tribunal.

30. The third ground was that the EU Race Directive was inapplicable since the present case v individuals and not against the State or emanations of the State. A directive could only have direc not horizontal effect. ICERD included not only race, colour, national and ethnic origin but als definition of race which it adopted. Caste discrimination fell within that category, as opposed tc race, colour, national or ethnic origin. Neither descent, nor caste as an aspect of descent, could b of those characteristics. The EU Race Directive however, made no reference to either des discrimination. Article 2 defined the principle of equal treatment as meaning: "that there shall be discrimination based on racial or ethnic origin". Even if applicable, therefore, it was open to P caste as it recognised (by providing, by enacting the **ERRA**, that future amendment would be ne had chosen to do.

31. A fourth ground argued that the judge was in error to hold that caste could come discrimination on the grounds of religion and belief.

32. In argument, Mr Samson who appeared with Mr Briggs for the Appellant, drew attention t interpretation of legislation adopted by Underhill LJ in his judgment in **Rowstock Ltd v Jessen** beginning at paragraph 28. The natural reading of the words should be considered before asking Parliament had been; the first step should be to ask whether domestic law before the enactment h had not previously been considered as included as part of "race". The second step was to as intention was. It was that "caste" needed specifically to be added to the legislation for the law t third step was to see whether there was a clear indication from the contextual material as to whet included: there was every indication here from the words used in the **Equality Act** itself, as well legislation set out in **ERRA**, that Parliament intended that "caste" needed to be added if discrim was to be proscribed. Just as Underhill LJ had looked to the Explanatory Notes to the statute to d of Parliament in enacting it, so here a court is entitled to look at the context provided by the **ER** Underhill LJ asked if to construe the statute in the way proposed would be in breach of an inte which Parliament would not have intended, so here it could be said that the interpretation for contended was compliant with international obligations: the provision in the **2010 Act**, as amer "caste" should be included would give effect to the international obligations to which the UK was comply. Fifth, just as Underhill LJ sought to seek a rational basis for the interpretation, so here t was to conclude that the wording of the Act was insufficient to encompass "caste", which is what the enactment of the **ERRA** in the relevant respects was to remedy. It had not done so yet: therefore paragraph 54 of the claim, and any part necessarily associated with it, should have been s

Discussion

33. There are two central questions. The first is whether the law of discrimination as it stood u statute, the **Race Relations Act 1976** provided a remedy for discrimination in the factual circu claimant was offering in her claim form to establish in evidence. The second is whether, if **Equality Act 2010** both as originally enacted, and as amended by the **ERRA**, envisages the "caste" to the list of those matters specifically included in section 9(1) means that any claim asse favourable treatment which are labelled "caste" reasons is precluded, such that the law no longer remedy for them.

34. To answer the first question, it is necessary to consider the two principal authorities as to t the **Race Relations Act 1976**.

35. **Mandla v Dowell Lee** considered whether the headmaster of a private school was discriminatory manner when he refused to admit a Sikh youth as a pupil without his cutting his wear a turban. To wear such a turban was a sign of communal identity. He could not theref instruction to remove it without sacrificing that identity.

36. The issue before the court was whether Sikhs as a group came within the definition of ' **Race Relations Act 1976** (which was as it is in section 9 of the **Equality Act** set out above). If sc the refusal to admit the youth was discriminatory. Sikhs were not a group defined by refere nationality or national origins: the argument turned entirely upon whether they constituted a grou origins". Lord Fraser of Tullybelton said in his speech (562D – H):

> **"For a group to constitute an ethnic group in the sense of the Act of 1976, it must, in regard itself and be regarded by others, as a distinct community by virtue of certain ch Some of these characteristics are essential; others are not essential, but one or more commonly be found and will help to distinguish the group from the surrounding com conditions which appear to be essential are these: (1) a long shared history of which conscious as distinguishing it from other groups, and the memory of which it keeps alive tradition of its own, including family and social customs and manners, often but nc associated with religious observance. In addition to these two essential characteristics characteristics are, in my opinion, relevant: (3) either a common geographical origin, or a small number of common ancestors; (4) a common language, not necessarily peculiar (5) a common literature peculiar to the group; (6) a common religion different neighbouring groups or from the general community surrounding it; (7) being a minorit oppressed or a dominant group within a larger community, for example a conquered pe inhabitants of England shortly after the Norman Conquest) and their conquerors m ethnic groups.**
>
> **A group defined by reference to enough of these characteristics would be capable converts, for example, persons who marry into the group, and of excluding apostates. person who joins the group feels himself or herself to be a member of it, and is accep members, then he is, for the purposes of the Act, a member. That appears to be consis words at the end of Section 3(1): "references to a person's racial group refer to any ra which he falls." In my opinion it is possible for a person to fall into a particular racial gr birth or by adherence, and it makes no difference, so far as the Act of 1976 is concern route he finds his way into the group."**

At 563 C-D Lord Fraser added:

> **"In my opinion, the word "ethnic" in the Act of 1976 should be construed relatively wi was referred to as Mr Irvine as a broad, cultural/historic sense."**

37. Applying that approach, and borrowing from words used by Richards J in the Court of **King-Ansell v Police** [1979] 2NZLR531, at 542 and 543, he held that Sikhs were a group defi origins even though not biologically distinguishable from other peoples living in the Punjab.

38. The Jewish Free School case concerned the refusal of a place by the governing body of the school gave priority to children recognised as Jewish according to the Office of the Chief Rabl based on matrilineal descent or conversion in accordance with the tenets of Orthodox Judaism. Tl converted according to non-Orthodox Judaism, whose conversion was not recognised by the off was on that ground that her child was refused a place. An appeal against the holding by the (constituted a racial group defined principally by ethnic origin, such that the school's admissio racial grounds against the Claimant's son, was dismissed. Since the Orthodox test as to wh matrilineal descent, that fell for specific consideration. Lord Phillips at paragraph 29 said:-

> **"Discrimination on the basis of descent simpliciter is not necessarily discrimination or discriminate against someone because he is not the son of a peer, or the son of a me printing union, is not racial discrimination. Under the Orthodox test the Jewish wom maternal line may be a convert of any nationality and from any ethnic background. F the Orthodox test focuses exclusively on the female line, any Jewish national or ethn diluted generation after generation, by the blood of fathers who have no Jewish characte**

It was argued before the Supreme Court by Lord Pannick for the School that it was possible to ide applying the criteria set out in **Mandla**: they shared what Lord Fraser regarded as the essentials, a the man in the street as a Jew. A second group, however, could be identified by Orthodox crit considerable overlap between these two groups, there would be some in the latter group who **Mandla** group, most of those being descendants from Jewish women who had married out of and would not satisfy the two vital criteria identified by Lord Fraser.

39. As to that argument Lord Phillips commented at paragraph 33:

> **"Initially I found Lord Pannick's argument persuasive but on reflection I have conclude The fallacy lies in treating current membership of a Mandla ethnic group as the exclu discrimination. It ignores the fact that the definition of "racial grounds" in Section 3 of "ethic or national *origins*" (my emphasis). Origins require one to focus on *descent.* Lord submit that *descent simpliciter* is not a ground of racial discrimination. It will only be descent in question is one which traces racial or ethnic origin."**

He went on to hold that although the matrilineal test included descent from Jews by conversion, a test applying religious criteria, it was not restricted to application to Jews by conversions and was origin.

40. This approach, and the stress placed upon "origin" as demonstrated by the italics used by the judgment of Lord Mance at paragraph 86:

> **"But, assuming that Orthodox Jews are not a separate ethnic group or sub-group for t indirect discrimination… I consider that the Orthodox Jewish test of descent in the r must still be regarded as a test based on ethnic origins for the purposes of direct discri the evidence, it is at its core a test by which Orthodox Judaism identifies those to be reg the descendants of a particular people, enlarged from time to time by the assimilation of**

41. In turn Lord Mance considered it to be consistent with the underlying policy of the p discrimination in the Act that it should apply to rejection of the child on the grounds held by t paragraph 90:

> **"…the policy is that individuals should be treated as individuals and not assumed to members of a group: *R (European Roma Rights Centre) v Immigration Officer of Prague* 2AC 1, paras 82 and 90, per Baroness Hale of Richmond and *R (Gillan) v Commisioner Metropolis* [2006] 2 AC 307, paras 44 and 90, per Lord Hope of Craighead and Lord B under Haywood. To treat individual applicants to a school less favourably than others, happenstance of their respective ancestries, is not to treat them as individuals, but as group defined in a manner unrelated to their individual attributes… To treat as determi of others which an applicant may not share that a child is not Jewish by reason of his an effect not to the individuality of the interests of the applicant, but to the viewpoint deeply held though it be, of the school applying the less favourable treatment. That does either consistent with the scheme or appropriate in the context of legislation desig individuals from discrimination."**

42. The effect of the principles expressed in **Mandla** and **JFS** is to give a wide and flexible s of "ethnic origins". Given the stress to be placed on the word "origins" in that phrase, desce clearly to be included within it, at least where it is linked to concepts of ethnicity. This is em that the argument that "descent" was not part of "race" as defined by the 1976 Act was mad school, urging that any inclusion of it depended on applying Article 1(1) of ICERD; it should since the inspiration for that Article had been caste based discrimination, and it was confined was rejected. However, this demonstrates to me the close link between descent and caste.

43. On analysis, each of the grounds save the fourth which is relied on by the Appellants depen section 9(5) as originally enacted and as amended by the **ERRA** upon the interpretation to be ado In agreement with Michael Ford QC who appeared for the Intervener I consider that this places a 9(5) which it cannot bear. In my view there is a distinction to be drawn between the intention o enacts legislation, and its subsequently displayed understanding of the effect of the legislation it h are not the same, however closely it may be hoped they will align. Once statute is enacted it has

will assign to it. The meaning of a statute, and the intention of Parliament in and when enacting it a number of sources: the words themselves, the apparent thrust of the legislation, material identi the enactment of the statute was sought to remedy, relevant international obligations which Parliament intended to satisfy rather than flout. But Parliament's own view - even by inferenc subsequently expresses legislatively - as to that which the legislation meant cannot be conclusiv That is a matter for the courts applying the tools at their disposal which I have summarised above, of which there are many examples, amongst which are the passages from Underhill LJ's judgm which Mr Samson drew attention.

44. Nor do I accept that the answer to the question whether "caste" as a distinct concept exists in the definition of race is determinative. If the answer is it does not, this still does not exclude appearing in section 9(1) from bearing their usual interpretation, applying the canons of construc above. Since "ethnic origins" is a wide and flexible phrase (**Mandla**) and covers questions of des some of those situations which would fall within an acceptable definition of caste would fall withi argument I was referred to the summary by a leading academic writer, Annapurna Waughruay, in Law: Caste discrimination and the **Equality Act 2010**" (2012) 14 Human Rights Law Review 35 said:

> **"There is no agreed sociological or legal definition of caste, but a number of sa identified. Castes are enclosed groups, historically related to social function, mer involuntary, hereditary (that is determined by birth) and permanent… Unlike clas possible for individuals or their descendants to move into a different caste. Caste relating to commensality (food and drink must only be shared by others of the maintained by endogamy (marriage must be within the same caste). It entails characteristics and hierarchically graded distinctions based on notions of purity and groups considered to be ritually pure and others ritually impure. A crucial feature c is the concept of "Untouchability", whereby certain people are considered to irredeemably polluted and polluting, hence "untouchable", with whom physical and avoided. Despite the notional nature of caste, Untouchability is conceptualised a property separating the Untouchables from the rest of society"**

45. The fact that there is no single definition of caste, as the parties before me were agreed, situation to which that label can, in one of its manifestations, be attached cannot and does not fal "ethnic origins".

46. The pleading at paragraph 54 of the grounds in the ET1 is framed in broad and general appearing for the Claimant readily accepts that the sentence "Thus s13 EA 2010 must be tak discrimination" does not entirely follow from what goes before, and claims too much: plainl

Equality Act does not, even taking into account section 9, cover anything and everything th "caste" as a ground for discrimination. I understood him to be content that no reliance should sentence. But the essential case is not an allegation, set apart from the facts of the case, as t sections 13 and 9: it is that when applying section 9, as it has been and should be interpreted, Claimant was treated disadvantageously because of her having a status which was heavily rel position in society cannot be ruled out as being established on the evidence. The Tribunal heari need to establish what it accepts of the treatment alleged and, in relation to the acts which Respondent did them in respect of the Claimant. If the reason or reasons establish factually t treated the Claimant as they did for reasons which more than minimally included their view of and if that status, or that view is bound up with her ethnic origins as understood in domestic ca will succeed in a claim for discrimination. It cannot be ruled out that facts coming within the brc out in paragraph 54 could amount to this. It is not necessary in order for her to succeed that the l "lower status" should be applied to her: her case must stand or fall by that which the facts establis some of those facts might be adequately and appropriately summarised or grouped under some label "ethnic origins") for which a significance of its own above and apart from those facts is clai to say that facts which establish that a person is seen as belonging to a particular caste are irr person is within the scope of section 9(1) of the **Equality Act 2010**.

47. In the course of argument, most notably in reply, Mr Samson conceded that aspects of " where "ethnic origins" applied, and thus it was possible under the existing law for a case in whic established to give rise to liability to race discrimination. He did not concede that caste as such concerned that given that these submissions were made at the end of a tiring afternoon they migh considered (they were made amongst other submissions which were not entirely easy to follow, me in effect to concede the appeal). I thus invited Mr Samson and Mr Briggs to offer further subr the advantage of time for reflection.

48. The context in which the apparent concession was made was in response to a submission the effect of the law prior to the introduction of the **Equality Act**, had in accordance with **Manc** scope to the words "ethnic origins" sufficient to encompass many aspects of that which separatel the heading "caste" so as to cover the current case. Mr. Ford had characterised the Appellant's ar reduce the scope of the **2010 Act** so that it no longer covered situations the law once had, a

forensic point that the Appellant's submissions must be flawed since the circumstances in wh made unlawful have grown over recent years, not shrunk.

49. In their written further response, after taking the time offered, Mr. Samson and Mr. Briggs **Act** reduced the scope of the **1976 Act**. No claim for "status in the caste system" as a racial characteristic was within the Tribunal's jurisdiction under either Act. "Caste" was not simply bas comprised socio-economic issues, occupation, class and the like. However, it is accepted in further submissions that if the less favourable treatment was because of race/ethnic origins whic low-caste status the position was "more nuanced"; that the claim might have been capable of **1976 Act,** and that it may be capable of proceeding under the **2010 Act.** Thus:

> **"If the Respondent perceived the Claimant as lower caste because of her ethnic origin permit a claim under either Act."**

50. The acceptance by the Appellants that the claims might (depending on the facts) fall und the **2010 Act** coincides, if less enthusiastically, with that which the Respondent and the Intervene accords with my own view of the law. The only point then which divides the parties is whethe asserts "caste" as part of a protected characteristic rather than simply being evidence of it. As I ha I do not read paragraph 54 of the claim as being so restrictive.

51. It follows that with the omission of the bold assertion from paragraph 54 that "cas prohibited by the **Equality Act** – as to which the answer must be there is as yet no formal defi those purposes - there may be factual circumstances in which the application of the label "caste" of which are capable - depending on their facts - of falling within the scope of section 9(1), partic "ethnic origins", as portraying a group with characteristics determined in part by descent, and of be described as "ethnic". As the Judge put it, caste "is an integral part of the picture" in the presen

52. I am particularly happy to have reached this conclusion upon the effect of the wording in statute, given its interpretation as expressed in **Mandla** and in **JFS**, albeit by reference to the ear accept that the effect of section 9(5) of the **Equality Act** is to limit the scope to which the statut extends. The decisions in those two leading cases remain fully applicable. Such an interpretati the UK's international obligations, including that derived from ICERD. On this basis, section 9(5

formal introduction of "caste" as a separate, and separately defined, species of the genus wh interpretation which I favour is compatible with EU Law. These are additional reasons for thinki which I had come to be correct.

53. I would propose the excision, for the sake of clarity, of the penultimate sentence in amendment, which is as Mr Milsom recognises in no way necessary for the Claimant to succeed can succeed in her claim if she can bring the facts of her case within the scope of the section needing the Tribunal to assume that section 9 of the **Equality Act 2010** should be re-written as i added to it, separately, as sub-section 9(1)(d), the word "caste". If she proves facts which – wh accurately – could be described as "caste considerations" which come within the heading "ethnic in section 9(1)(c) she will succeed in her claim if the Tribunal concludes that she was less favour of those facts: if she fails, then no matter how much it might be asserted that she is of a particula was a reason for her treatment, she will fail unless at least part of her treatment falls within section

Conclusion

54. In conclusion therefore, since the facts which the Claimant promises to establish if her clai come within section 9(1) of the **Equality Act**, a pleading to that effect cannot properly be struck and determining the full facts. Employment Judge Sigsworth was right so to determine.

Post Script

55. I was taken to seven Treaties, Conventions and UN reports; nineteen authorities; and eleve in an initial bundle of authorities, together with a further eleven authorities, two publications extracts in a supplementary bundle of authorities. Given this, the parties may have been gea definitive decision in principle that discrimination on the ground of caste as such either was, or scope of the **Equality Act 2010**. I hope I shall be forgiven if I have disappointed anyone by ha few of these authorities in the course of this judgment. My focus has been on the appeal in this p particular circumstances: I have not seen my role as being to resolve academic disputes, and es propositions, of no direct relevance to the case in hand. In the event, all that it has been necessary facts of this particular case, and the wording of the amended ET1 as such – without regard to othe the reasons set out above – this Claimant may yet establish that the grounds of her treatmen proscribed by section 9 of the **Equality Act 2010**. If I had paid regard, as the Judge did, and thou

invitation to him to do so was appropriate, to further asserted facts as being "her case" th strengthened the factual basis in favour of this Claimant. It is unnecessary for me to say more.

56. The Appeal is dismissed.

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