

SPENCER KEEN'S COMPARATIVE GUIDE TO THE EQUALITY BILL 2009

Overview of the Structure of the Bill	2
Equality Bill Clause 4 – The Protected Characteristics	3
Equality Bill Clause 5 – Definition of Age Group	4
Equality Bill Clause 6 – Definition of Disability	5
Equality Bill Clause 7 - Definition of Gender Reassignment	7
Equality Bill Clause 8 - Definition of Marriage and Civil Partnership.....	8
Equality Bill Clause 9 – Definition of Race.....	9
Equality Bill Clause 10 – Definition of Religion or Belief.....	10
Equality Bill Clause 11 – Definition of Sex	11
Equality Bill Clause 12 – Definition of Sexual Orientation.....	12
Equality Bill Clause 13 & 18 – Direct Discrimination	13
Equality Bill Clause 14 – Combined Discrimination.....	18
Equality Bill Clause 15 – Discrimination Arising from Disability	20
Equality Bill Clause 16 – Gender Reassignment Discrimination: Cases of Absence from Work	21
Equality Bill Clause 17 & 18 – See Direct Discrimination.....	22
Equality Bill Clause 19 – Indirect Discrimination	23
Equality Bill Clause 20 – Duty to Make Adjustments	27
Equality Bill Clause 23 - Comparators.....	30
Equality Bill Clause 23 – Discrimination.....	32
Equality Bill Clause 25 & 38 – Harassment.....	35
Equality Bill Clause 26 and 74 – Victimisation	39
Equality Bill, Clause 154 & 155 – Positive Action.....	44
Equality Bill Schedule 9, Part 1, s 1 –Occupational Requirement Defence	46

Overview of the Structure of the Bill

PART 2 – Chapter 1
The Protected
Characteristics

PART 2 – Chapter 2
The Meaning of
Discrimination

PART 5 – Chapter 1
Discrimination at
Work

PART 9 – Chapter 3
Actionable
Discrimination

Equality Bill Clause 4 – The Protected Characteristics

EQUALITY BILL	EXISTING LEGISLATION	
<p>4 The protected characteristics</p> <p> The following characteristics are protected characteristics</p> <p> Age</p> <p> Disability</p> <p> Gender reassignment</p> <p> Marriage and civil partnership</p> <p> Pregnancy and maternity</p> <p> Race</p> <p> Religion or belief</p> <p> Sex</p> <p> Sexual Orientation</p>		N/A

Equality Bill Clause 5 – Definition of Age Group

EQUALITY BILL	EXISTING LEGISLATION	
<p>5 Age</p> <p>(1) In relation to a protected characteristic of age –</p> <p style="padding-left: 20px;">a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;</p> <p style="padding-left: 20px;">b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.</p> <p>(2) A reference to an age group is a reference to a group or persons defined by reference to age, whether by reference to a particular age or to a range of ages.</p>	<p>AgeRegs 3(3)</p>	<p>3(3) In this Regulation –</p> <p style="padding-left: 20px;">a) “age group” means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages; and</p> <p style="padding-left: 20px;">b) the reference in paragraph 1(a) to B’s age includes B’s apparent age.</p>

<p>includes a reference to a person who has not had the disability.....</p> <p>(6) Schedule 1 (disability: supplementary provision) has effect.</p>		<p>(1) An impairment is to be taken to affect the ability of the person concerned to carry out normal day to day activities if it affects one of the following:</p> <ul style="list-style-type: none"> (a) mobility; (b) manual dexterity; (c) physical co-ordination; (d) continence; (e) ability to lift, carry or otherwise move everyday objects; (f) speech, hearing or eyesight; (g) memory or ability to concentrate, learn or understand; (h) perception or risk of physical danger.
---	--	--

Equality Bill Clause 7 - Definition of Gender Reassignment

EQUALITY BILL	EXISTING LEGISLATION	
<p>7 Gender Reassignment</p> <p>(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purposes of reassigning the person's sex by changing physiological or other attributes of sex).</p> <p>(2) A reference to transsexual person is a reference to a person who has the protected characteristic of gender reassignment.</p> <p>(3) In relation to the protected characteristic of gender reassignment:</p> <p style="padding-left: 40px;">(a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;</p> <p style="padding-left: 40px;">(b) a reference to persons who share a protected characteristic is a reference to a transsexual person.</p>	<p>SDA, s 82</p>	<p>82 gender reassignment" means a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such process.</p>

Equality Bill Clause 8 - Definition of Marriage and Civil Partnership

EQUALITY BILL	EXISTING LEGISLATION	
<p>8 Marriage and Civil Partnership</p> <p>(1) A person has the protected characteristic of marriage and civil partnership if the person is married or a civil partner.</p> <p>(2) In relation to the protected characteristic of marriage and civil partnership:</p> <p>(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;</p> <p>(b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.</p>	<p>SDA, s 3</p>	<p>No definition</p>

Equality Bill Clause 9 – Definition of Race

EQUALITY BILL	EXISTING LEGISLATION	
<p>9 Race</p> <p>(1) Race includes:</p> <p style="padding-left: 20px;">(a) colour,</p> <p style="padding-left: 20px;">(b) nationality;</p> <p style="padding-left: 20px;">(c) ethnic or national origin.</p> <p>(2) In relation to the protected characteristic of race:</p> <p style="padding-left: 20px;">(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;</p> <p style="padding-left: 20px;">(b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.</p> <p>(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.</p> <p>(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.</p>	<p>RRA, s 3</p>	<p>3 Meaning of “racial grounds”, “racial group” etc</p> <p>(1) In this Act unless the context otherwise requires: “racial grounds” means any of the following grounds, namely colour, race, nationality, or ethnic or national origins, “racial group” means a group of persons defined by reference to colour, race, nationality, or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls.</p> <p>(2) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Act.</p>

Equality Bill Clause 10 – Definition of Religion or Belief

EQUALITY BILL	EXISTING LEGISLATION	
<p>10 Religion or Belief</p> <p>(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.</p> <p>(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.</p> <p>(3) In relation to the protected characteristic of religion or belief:</p> <p>(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;</p> <p>(b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.</p>	<p>RBReg 2(1)(a)-(d)</p>	<p>2(1) In these Regulations</p> <p>(a) “religion” means any religion,</p> <p>(b) “belief” means any religious or philosophical belief,</p> <p>(c) a reference to religion includes a reference to a lack of religion, and</p> <p>(d) a reference to belief includes a reference to lack of belief.</p>

Equality Bill Clause 11 – Definition of Sex

EQUALITY BILL	EXISTING LEGISLATION	
<p>11 Sex</p> <p>(1) In relation to the protected characteristic of sex:</p> <p>(a) a reference to a person who has a particular protected characteristic is a reference to a man or a woman;</p> <p>(b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.</p>	<p>SDA, s 5(2)</p>	<p>5 Interpretation</p> <p>(2) In this Act:</p> <p>“woman” includes a female of any age; and</p> <p>“man” includes a male of any age.</p> <p>(repeated in s. 82)</p>

Equality Bill Clause 12 – Definition of Sexual Orientation

EQUALITY BILL	EXISTING LEGISLATION	
<p>12 Sexual Orientation</p> <p>(1) Sexual orientation means a person's sexual orientation towards</p> <ul style="list-style-type: none"> (a) persons of the same sex; (b) persons of the opposite sex; or (c) persons of the same sex. <p>(2) In relation to the protected characteristic of sexual orientation:</p> <ul style="list-style-type: none"> 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. 	<p>SOREgs 2</p>	<p>In these Regulations "sexual orientation" means a sexual orientation towards:</p> <ul style="list-style-type: none"> a) persons of the same sex; b) persons of the opposite sex; c) persons of the same sex and of the opposite sex.

Equality Bill Clause 13 & 18 – Direct Discrimination

EQUALITY BILL	EXISTING LEGISLATION	
<p>13 Direct Discrimination</p> <p>(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</p> <p>(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.</p> <p>(3) If the protected characteristic is disability, A does not discriminate against B only because:</p>	<p>SDA, ss 1(2) & 2</p>	<p>1 DirectDiscrimination against Women</p> <p>1(2) In any circumstances relevant for the purposes of any provision to which this subsection applies, a person discriminates against a woman if:</p> <p style="padding-left: 20px;">a) on the ground of her sex he treats her less favourably than he treats or would treat a man...</p> <p>Section 2 extends the protection to men</p>
<p>(a) A treats a third person who has a disability in a way which is permitted by or under this Act;</p> <p>(b) B does not have a disability; and</p> <p>(c) A does not treat B in that way.</p> <p>(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 B is married or a civil partner.</p>	<p>SDA, s2A</p>	<p>2A Discrimination on the grounds of gender reassignment</p> <p>(1) A person ("A") discriminates against another person ("B") in any circumstances relevant for the purposes of:</p> <p style="padding-left: 20px;">(a) any provision of part II (employment)....</p> <p>if he treats B less favourably than he treats or would treat other persons, and does so on the ground that B intends to undergo, is undergoing, or has undergone gender reassignment.</p>
<p>(5) If the protected characteristic is race, less favourable treatment includes</p>	<p>SDA, s 3</p>	<p>3 Discrimination against married persons and civil partners in employment field</p> <p>(1) In any circumstances relevant for the purposes of any provision of Part 2, a person discriminates against a person (A) who fulfils the condition [of being married or a</p>

<p>segregating B from others.</p> <p>(6) If the protected characteristic is religion or belief, it does not matter whether the religion or belief is also A's.</p>		<p>civil partner] if:</p> <p>a) on the grounds of the fulfilment of the condition, he treats A less favourably than he treats or would treat a person who does not fulfil the condition...</p>
<p>(7) If the protected characteristic is sex</p> <p>(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast feeding;</p> <p>(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.</p> <p>(8) Section 7(a) does not apply for the purposes of Part 5 (work)</p> <p>(9) This section is subject to ss. 16(6) <u>17(6)</u> and 17(7) <u>18(7)</u>.</p> <p>18 Pregnancy and maternity discrimination; work cases</p> <p>(1) This section has effect for the purposes of the application of Part 5(Work) to the protected characteristic of pregnancy and maternity.</p> <p>(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her <u>unfavourably</u> less favourably;</p> <p>(a) because of her pregnancy; or</p> <p>(b) because of illness suffered by her as a result of it.</p> <p>(3) A person (A) discriminates against a woman if A treats her <u>unfavourably</u></p>	<p>SDA, s 3A</p>	<p>3A Discrimination on the ground of pregnancy or maternity leave</p> <p>(1) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if—</p> <p>(a) at a time in a protected period, and on the ground of the woman's pregnancy, the person treats her less favourably [words removed from 06 April 2008: than he would treat her had she not become pregnant]; or</p> <p>(b) on the ground that the woman is exercising or seeking to exercise, or has exercised or sought to exercise, a statutory right to maternity leave, the person treats her less favourably [words removed from 06 April 2008: than he would treat her had she not become pregnant]</p> <p>(2) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if, on the ground that section 72(1) of the Employment Rights Act 1996 (compulsory maternity leave) has to be complied with in respect of the woman, he treats her less favourably [than he would treat her if that provision did not have to be complied with in respect of her].</p> <p>(3) For the purposes of subsection (1)—</p> <p>(a) in relation to a woman, a protected period begins each time she becomes pregnant, and the protected period associated with any particular pregnancy of hers ends in accordance with the following rules—</p>

<p>less favourably because she is on compulsory maternity leave;</p> <p>(4) A person (A) discriminates against a woman if A treats her <u>unfavourably</u> less favourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary maternity leave.</p> <p>(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).</p> <p>(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as</p> <p>(a) it is in the protected period in relation to her and is for a reason mentioned in para (a) or (b) of subsection 2 above;</p> <p>(b) it is for a reason mentioned in subsection (3) or (4).</p> <p>17 — Pregnancy and maternity discrimination: non-work cases</p> <p>(7) — In this section and section 17, a reference to a woman being treated less favourably is a reference to her being treated less favourably than is reasonable.</p>		<p>(i) if she is entitled to ordinary but not additional maternity leave in connection with the pregnancy, the protected period ends at the end of her period of ordinary maternity leave connected with the pregnancy or, if earlier, when she returns to work after the end of her pregnancy;</p> <p>(ii) if she is entitled to ordinary and additional maternity leave in connection with the pregnancy, the protected period ends at the end of her period of additional maternity leave connected with the pregnancy or, if earlier, when she returns to work after the end of her pregnancy;</p> <p>(iii) if she is not entitled to ordinary maternity leave in respect of the pregnancy, the protected period ends at the end of the 2 weeks beginning with the end of the pregnancy;</p> <p>(b) where a person's treatment of a woman is on grounds of illness suffered by the woman as a consequence of a pregnancy of hers, that treatment is to be taken to be on the ground of the pregnancy;</p> <p>(c) a "statutory right to maternity leave" means a right conferred by section 71(1) or 73(1) of the Employment Rights Act 1996 (ordinary and additional maternity leave).</p> <p>(4) In subsection (3) "ordinary maternity leave" and "additional maternity leave" shall be construed in accordance with sections 71 and 73 of the Employment Rights Act 1996.</p>
	RRA, s 1	<p>1 Racial Discrimination</p> <p>(1) A person discriminates against another in any circumstances relevant for the</p>

		<p>purposes of any provision of this Act if:</p> <p>a) on racial grounds he treats that other less favourably than he treats or would treat other person.</p>
	DDA, s 3A(5)	<p>3A Meaning of Discrimination</p> <p>(5) A person directly discriminates against a disabled person if, on the grounds of the disabled person's disability, he treats the disabled person less favourably than he treats or would treat a person not having that particular disability whose relevant circumstances including his abilities, are the same as, or not materially different from, those of the disabled person.</p>
	RBregs, 3	<p>3 Discrimination on grounds of religion or belief</p> <p>(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if:</p> <p>a) on the grounds of the religion or belief of B or of any other person except A (whether or not it is also A's religion or belief) A treats B less favourably than he treats or would treat other persons.</p>
	SOREgs Reg 3	<p>3 Discrimination on grounds of sexual orientation</p> <p>(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if</p> <p>a) on grounds of sexual orientation, A treats B less favourably than he treats or would treat other persons...</p>

	AgeRegs Reg 3	<p>3 Discrimination on grounds of age</p> <p>(1) For the purposes of these Regulations, a person (A) discriminates against another person (B) if:</p> <p>(a) on grounds of B's age, A treats B less favourably than he treats or would treat other persons;.....and</p> <p>A cannot show the treatment or, as the case may be, provision, criterion or practice, to be a proportionate means of achieving a legitimate aim.</p>
--	------------------	---

Equality Bill Clause 14 – Combined Discrimination

EQUALITY BILL	EXISTING LEGISLATION	
<p><u>(14) Combined discrimination: dual characteristics</u></p> <p><u>(1) A person (A) discriminates against another person (B) if, because of a combination of two relevant characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those protected characteristics.</u></p> <p><u>(2) The relevant protected characteristics are:</u></p> <p><u>(a) age;</u></p> <p><u>(b) disability;</u></p> <p><u>(c) gender reassignment;</u></p> <p><u>(d) race;</u></p> <p><u>(e) religion or belief;</u></p> <p><u>(f) sex;</u></p> <p><u>(g) sexual orientation.</u></p> <p><u>(3) A does not discriminate against B by virtue of subsection (1) if, in consequence of another provision of this Act, A's treatment of B is not a relevant contravention.</u></p>		<p>No Equivalent Provision</p>

<p><u>(4) A relevant contravention of this Act by virtue of s. 13 because of one of the characteristics in the combination.</u></p> <p><u>(5) For the purposes of establishing a contravention of this Act y virtue of subsection (1), it does not matter, whether, in relation to either of the characteristics in the combination, there is sufficient evidence to justify finding that there has been a relevant contravention.</u></p> <p><u>(6) Proceedings relating to a contravention of this Act by virtue of subsection (1) may not be brought if subsection (7) applies.</u></p> <p><u>(7) This subsection applies if:</u></p> <p><u>(a) a provision of an enactment (including this Act) requires, in circumstances to which the provision applies, proceedings relating to a relevant contravention to be brought in a specified court:</u></p> <p><u>(b) in those circumstances, the court does not have jurisdiction to determine a claim relating to a relevant contravention involving the other characteristic in the combination.</u></p>		
---	--	--

Equality Bill Clause 15 – Discrimination Arising from Disability

EQUALITY BILL	EXISTING LEGISLATION	
<p>(15) Discrimination Arising From Disability</p> <p>(1) A person (A) discriminates against a disabled person (B) if:</p> <p style="margin-left: 20px;">(a) A treats B in a particular way</p> <p style="margin-left: 20px;">(b) because of B's disability, the treatment amounts to a detriment, and</p> <p style="margin-left: 20px;">(c) A cannot show that the treatment is a proportionate means of achieving a legitimate aim</p> <p>(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.</p> <p>(3) It does not matter whether A has complied with a duty to make reasonable adjustments in relation to B.</p> <p>(An amendment to this clause was suggested at the committee stage but was then, unfortunately, withdrawn).</p>	<p>DDA</p> <p>3A(1)</p>	<p>3A Meaning of Discrimination</p> <p>(1) For the purpose of this Part, a person discriminates against a disabled person if:</p> <p style="margin-left: 20px;">(a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and</p> <p style="margin-left: 20px;">(b) he cannot show that the treatment in question is justified.</p> <p>(3) Treatment is justified for the purposes of subsection 1(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.</p> <p>(4) But treatment of a disabled person cannot be justified under subsection (3) if it amounts to direct discrimination falling within subsection (5).</p>

Equality Bill Clause 16 – Gender Reassignment Discrimination: Cases of Absence from Work

EQUALITY BILL	EXISTING LEGISLATION	
<p>16 Gender reassignment discrimination: cases of absence from work</p> <p>(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of gender reassignment.</p> <p>(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:</p> <p style="margin-left: 20px;">(a) B's absence was because of sickness or injury; or</p> <p style="margin-left: 20px;">(b) B's absence was for some other reason and it is not reasonable for B to be treated less favourably.</p> <p>(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).</p>	<p>SDA 2A(3)&(4)</p>	<p>2A Discrimination on the grounds of gender reassignment</p> <p>(3) For the purposes of subsection (1) [discrimination at work], B is treated less favourably than others under such arrangements if, in the application of the arrangements to any absence due to B undergoing gender reassignment</p> <p style="margin-left: 20px;">(a) he is treated less favourably than he would be if the absence was due to sickness or injury; or</p> <p style="margin-left: 20px;">(b) he is treated less favourably than he would be if the absence was due to some other cause and, having regard to the circumstances of the case, it is reasonable for him to be treated no less favourably.</p>

Equality Bill Clause 17 & 18 – See Direct Discrimination

Equality Bill Clause 19 – Indirect Discrimination

EQUALITY BILL	EXISTING LEGISLATION	
<p>19 Indirect Discrimination</p> <p>(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.</p> <p>(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 :</p> <p>(a) A applies or would apply, it to persons with whom B does not share the characteristic;</p> <p>(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;</p> <p>(c) it puts, or would put, B at that disadvantage, and</p> <p>(d) A cannot show it to be a proportionate means of</p>	<p>SDA s 1(2) & 2</p>	<p>1 Indirect Discrimination against Women</p> <p>1(2) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if:</p> <p>(b) he applies to her a provision, criterion or practice which he applies or would apply equally to a man, but:</p> <p>(i) which puts or would put women at a particular disadvantage when compared with men;</p> <p>(ii) which puts her at that disadvantage; and</p> <p>(iii) which he cannot show to be a proportionate means of achieving a legitimate aim.</p> <p>(3) Subsection 2 applies to:</p> <p>(a) any provision of part II [employment]</p> <p>(aa) ss 29 to 31, except in so far as it relates to an excluded matter [goods facilities & services];</p> <p>(b) ss 35A or 35B [barrister & advocates]</p> <p>(c) any other provision of Part 3 so far as it applies to vocational training.</p> <p>Section 2 extends the protection to men</p>
	<p>SDA, s2A</p>	<p>No Indirect discrimination provisions relating to gender reassignment (although see SDA provisions</p>

<p>achieving a legitimate aim.</p>		<p>referred to in clause 15 above)</p>
<p>(3) This section is subject to ss.16(6) and 17(7).</p>	<p>SDA, s 3(1)(b)</p>	<p>3 Discrimination against married persons and civil partners in employment field</p> <p>(1) In any circumstances relevant for the purposes of any provision of Part 2, a person discriminates against a person (A) who fulfils the condition [of being married or a civil partner] if:</p> <p>(b) he applies to A a provision, criterion or practice, which he applies or would apply equally to a person who does not fulfil the condition, but</p> <p>(i) which puts or would put persons fulfilling the condition at a particular disadvantage when compare with persons not fulfilling the condition, and</p> <p>(ii) which puts A at that disadvantage; and</p> <p>(iii) which he cannot show to be a proportionate means of achieving a legitimate aim.</p>
	<p>RRA, s 1(1)(b)</p>	<p>1 Racial Discrimination</p> <p>(1) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if:</p> <p>b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but:</p> <p>(i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and</p> <p>(ii) which he cannot show to be justifiable irrespective of the colour, race, nationality, ethnic or national origins of the person to whom it is applied; and</p>

		<p>(iii) which is to the detriment of that person because he cannot comply with it.</p> <p>(1A) A person discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in subsection 1B, he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other but -</p> <p>(a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons; and</p> <p>(a) which puts or would put that other at that disadvantage; and</p> <p>(b) which he cannot show to be a proportionate means of achieving a legitimate aim.</p>
	DDA	No Indirect discrimination provisions in relation to disability discrimination
	RBRegs, 3(1)(b)	<p>3 Discrimination on grounds of religion or belief</p> <p>(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if:</p> <p>(b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same religion or belief as B, but:</p> <p>(i) which puts or would put persons of the same religion or belief as B at a particular disadvantage when compared with other persons, and</p> <p>(ii) which puts B at that disadvantage; and</p> <p>(iii) which A cannot show to be a proportionate means of achieving a legitimate aim.</p>
	SOREgs 3(1)(b)	<p>3 Discrimination on grounds of sexual orientation</p> <p>(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if</p>

		<p>(b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same sexual orientation as B, but:</p> <p>(i) which puts or would put persons of the same sexual orientation as B at a particular disadvantage when compared with other persons, and</p> <p>(ii) which puts B at that disadvantage; and</p> <p>(iii) which A cannot show to be a proportionate means of achieving a legitimate aim.</p>
	<p>AgeRegs Reg 3</p>	<p>3 Discrimination on grounds of age</p> <p>(1) For the purposes of these Regulations, a person (A) discriminates against another person (B) if:</p> <p>(b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but:</p> <p>(i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and</p> <p>(ii) which puts B at that disadvantage; and</p> <p>A cannot show the treatment or, as the case may be, provision, criterion or practice, to be a proportionate means of achieving a legitimate aim.</p>

Equality Bill Clause 20 – Duty to Make Adjustments

EQUALITY BILL	EXISTING LEGISLATION	
<p>19 Duty to Make Adjustments</p> <p>(1) Where this Act imposes a duty to make reasonable adjustments on a person this section, ss 20 <u>21</u> and 21 <u>22</u> and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.</p> <p>(2) The duty comprises the following three requirements.</p> <p>(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.</p> <p>(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.</p> <p>(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.</p>	<p>DDA, s 4A</p>	<p>4A Employers: discrimination and harassment</p> <p>(1) Where:</p> <p>(a) a provisions, criterion or practice applied by or on behalf of an employer, or</p> <p>(b) any physical feature of premises occupied by the employer;</p> <p>Places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, of feature having that effect.</p> <p>(3) Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know:</p> <p>(a) in the case of an application or potential applicant, that the disabled person concerned is, or may be, an applicant for the employment; or</p> <p>(b) in any case that the person has a disability and is likely to be</p>

<p>(6) A reference in section 20 <u>21</u> or 21 <u>22</u> or an applicable Schedule to the first , second or third requirement is to be construed in accordance with this section.</p> <p>(7) A reference in this section, section 20 <u>21</u> or 21 <u>22</u> or an applicable Schedule (apart from paragraph 2 to 4 of Schedule 4) to a physical feature is a reference to:</p> <p>(a) a feature arising from the design or construction of a building;</p> <p>(b) a feature or an approach to, exit from or access to a building;</p> <p>(c) a fixture or fitting or furniture, furnishings, materials, equipment or other chattels, in or on premises;</p> <p>(d) any other physical element or quality.</p> <p>(8) A reference in this section, section 20 <u>21</u> or 21 <u>22</u> or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.</p> <p>(10) 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.</p>		<p>affected in the way mentioned in subsection (1).</p>														
<table border="1"> <thead> <tr> <th data-bbox="322 901 680 933"><u>Part of this Act</u></th> <th data-bbox="680 901 920 933"><u>Applicable Schedule</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="322 965 748 997">Part (3) (Services and public functions)</td> <td data-bbox="792 965 920 997">Schedule 2</td> </tr> <tr> <td data-bbox="322 1029 524 1061">Part (4) (Premises)</td> <td data-bbox="792 1029 920 1061">Schedule 4</td> </tr> <tr> <td data-bbox="322 1093 490 1125">Part (5) (Work)</td> <td data-bbox="792 1093 920 1125">Schedule 8</td> </tr> <tr> <td data-bbox="322 1157 530 1189">Part (6) (Education)</td> <td data-bbox="792 1157 920 1189">Schedule 13</td> </tr> <tr> <td data-bbox="322 1220 553 1252">Part (7) (associations)</td> <td data-bbox="792 1220 920 1252">Schedule 15</td> </tr> <tr> <td data-bbox="322 1284 701 1316">Each of the parts mentioned above</td> <td data-bbox="792 1284 920 1316">Schedule 21</td> </tr> </tbody> </table>	<u>Part of this Act</u>	<u>Applicable Schedule</u>	Part (3) (Services and public functions)	Schedule 2	Part (4) (Premises)	Schedule 4	Part (5) (Work)	Schedule 8	Part (6) (Education)	Schedule 13	Part (7) (associations)	Schedule 15	Each of the parts mentioned above	Schedule 21		
<u>Part of this Act</u>	<u>Applicable Schedule</u>															
Part (3) (Services and public functions)	Schedule 2															
Part (4) (Premises)	Schedule 4															
Part (5) (Work)	Schedule 8															
Part (6) (Education)	Schedule 13															
Part (7) (associations)	Schedule 15															
Each of the parts mentioned above	Schedule 21															

21	<p>Failure to comply with the duty</p> <p>(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.</p> <p>(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.</p> <p>(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 otherwise actionable.</p>		
----	--	--	--

Equality Bill Clause 23 - Comparators

EQUALITY BILL	EXISTING LEGISLATION	
<p>23 Comparison by reference to circumstances</p> <p>(1) On a comparison of cases for the purposes of ss 13, 19 <u>19</u> or 19 <u>20</u>, there must be no material difference between the circumstances relating to each case;</p> <p>(2) if the protected characteristic is disability, the circumstances related to a case include a person's abilities;</p> <p>(3) If the protected characteristic is sexual orientation, the fact that one person (whether or not the person referred to as B) is a civil partner while another is married is not a material difference between the circumstances related to each case.</p>	<p>SDA s 5</p>	<p>5 Interpretation</p> <p>(3) Each of the following comparisons, that is</p> <p>(a) a comparison of the cases of persons of different sex under s1(1) or (2);</p> <p>(b) a comparison of the cases of persons required for the purposes of s2A, and</p> <p>(c) a comparison of the cases of persons who do not fulfil the condition in s3(2);</p> <p>must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.</p>
	<p>SDA</p>	<p>2A Discrimination on the grounds of gender reassignment</p> <p>See SDA s 5 above.</p>
	<p>SDA, s 3</p>	<p>3 (2) Discrimination against married persons and civil partners in employment field</p> <p>See SDA s 5 above.</p>
	<p>RRA, s 3(4)</p>	<p>3 Meaning of "racial grounds", "racial group"</p> <p>(4) A comparison of the case of a person of a particular racial group with that of a person not of that group under section 1(1) [or 1A] must be such that the relevant circumstances in the one case are the</p>

		same, or not materially different, in the other.
DDA, s 3A(5)	3A	<p>Meaning of Discrimination</p> <p>(5) A person directly discriminates against a disabled person if, on the grounds of the disabled person's disability, he treats the disabled person less favourably than he treats or would treat a person not having that particular disability whose relevant circumstances including his abilities, are the same as, or not materially different from, those of the disabled person.</p>
RBregs Reg 3(3)	3)	a comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.
SOReg Reg 3(2)	(2)	A comparison of B's case with that of another person under paragraph (1) [direct & indirect discrimination] must be such that the relevant circumstances in the one case are the same, or not materially different in the other.
	(3)	For the purposes of paragraph (2), in a comparison of B's case with that of another person the fact that one of the persons (whether or not B) is a civil partner while the other is married shall not be treated as a material difference between their respective circumstances.
AgeRegs Reg 3(2)	(2)	A comparison of B's case with that of another person under paragraph (1) [direct & indirect discrim] must be such that the relevant circumstances in the one case are the same, or not materially different in the other.

Equality Bill Clause 23 – Discrimination

EQUALITY BILL	EXISTING LEGISLATION	
<p>23 References to particular strands of discrimination</p> <p>(1) Age discrimination is:</p> <p style="padding-left: 20px;">(a) discrimination within s.13 because of age;</p> <p style="padding-left: 20px;">(b) discrimination within section 48 <u>19</u> where the relevant protected characteristic is age.</p> <p>(2) Disability discrimination is:</p> <p style="padding-left: 20px;">(a) discrimination within section 13 because of disability;</p> <p style="padding-left: 20px;">(b) discrimination within section 44 <u>15</u>;</p> <p style="padding-left: 20px;">(c) discrimination within section 48 <u>19</u> where the relevant protected characteristic is disability;</p> <p style="padding-left: 20px;">(d) discrimination within section 20 <u>21</u>.</p> <p>(3) Gender reassignment discrimination is:</p> <p style="padding-left: 20px;">(a) discrimination within section 13 because of gender reassignment;</p> <p style="padding-left: 20px;">(b) discrimination within section 45 <u>16</u>;</p> <p style="padding-left: 20px;">(c) discrimination within section 48 <u>19</u> where the relevant protected</p>		<p>No equivalent provisions – the provision in the Equality Bill is really just an aide memoire/ quick reference.</p>

<p>characteristic is gender reassignment.</p> <p>(4) Marriage and civil partnership discrimination is:</p> <p>(a) discrimination within section 13 because of marriage and civil partnership;</p> <p>(b) discrimination within section 18 <u>19</u> where the relevant protected characteristic is marriage and civil partnership.</p> <p>(5) Pregnancy and maternity discrimination is discrimination within ss 16 or 17.</p> <p>(6) Race discrimination is:</p> <p>(a) discrimination within section 13 because of race;</p> <p>(b) discrimination within section 18 <u>19</u> where the relevant protected characteristic is race.</p> <p>(7) Religious or belief-related discrimination is:</p> <p>(a) discrimination within section 13 because of religion or belief;</p> <p>(b) discrimination within section 18 <u>19</u> where the relevant protected characteristic is religion or belief.</p> <p>(8) Sex discrimination is:</p> <p>(a) discrimination within section 13 because of sex;</p> <p>(b) discrimination within section 18 <u>19</u> where the relevant protected characteristic is sex.</p> <p>(9) Sexual orientation discrimination is:</p>		
--	--	--

(a) discrimination within section 13 because of sexual orientation;		
(b) discrimination within section 18 <u>19</u> where the relevant protected characteristic is sexual orientation.		

Equality Bill Clause 25 & 38 – Harassment

EQUALITY BILL	EXISTING LEGISLATION	
<p>25 Harassment</p> <p>(1) A person (A) harasses another (B) if:</p> <p>(a) A engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect mentioned in subsection (2),</p> <p>(b) A engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has that purpose or effect, or</p> <p>(c) because of B's rejection of or submission to conduct (whether or not of A), A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.</p> <p>(2) The purpose or effect is:</p> <p>(a) violating B's dignity, or</p> <p>(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.</p>	<p>SDA 4A</p>	<p>4A Harassment including sexual harassment</p> <p>(1) For the purposes of this Act, a person subjects a woman to harassment if:</p> <p>(a) he engages in unwanted conduct that is related to her sex or that of another person and has the purposes or effect [NB wording prior to April 2008 = on the grounds of sex he engages in unwanted conduct that has the purpose or effect]:</p> <p>(i) of violating her dignity;</p> <p>(ii) of creating an intimidating, hostile, degrading, humiliating, or offensive environment for her;</p> <p>(b) he engages in any form of unwanted verbal, non verbal or physical conduct of a sexual nature that has the purpose or effect:</p> <p>(i) of violating her dignity, or</p> <p>(ii) of creating an intimidating, hostile, degrading, humiliating, or offensive environment for her; or</p> <p>(c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected or submitted to, the conduct.</p>

<p>(3) In deciding whether conduct has that effect, each of the following must be taken into account:</p> <ul style="list-style-type: none"> (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect. <p>(4) For the purposes of subsection (1)(c), the conduct is:007A</p> <ul style="list-style-type: none"> (a) conduct mentioned in subsection (1)(a), if the relevant protected characteristic is gender reassignment or sex; (b) conduct mentioned in subsection (1)(b). 		<p>(2) Conduct shall be regarded as having the effect mentioned in sub-paragraph (i) or (ii) of subsection (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of the woman, it should be reasonably be considered as having that effect.</p> <p>(5) Subsection (1) is to be read as applying equally to the harassment of men, and for that purpose shall have effect with such modifications as are requisite.</p> <p>(6) For the purposes of subsections (1) and (3), a provision of Part 2 or 3 framed with reference to harassment of women shall be treated as applying equally to the harassment of men, and for that purpose will have effect with such modifications as are requisite.</p>
<p>(5) The relevant protected characteristics are:</p> <p>age;</p> <p>disability;</p> <p>gender reassignment;</p> <p>race;</p> <p>religion or belief;</p> <p>sex;</p> <p>sexual orientation.</p> <p>NB –marriage, civil partnership, pregnancy and maternity are NOT included</p> <p>38 Employees and applicants: harassment</p>	<p>SDA 4A(3) Gender Reassign</p>	<p>4A(3) [Harassment and Gender Reassignment]</p> <p>(3) For the purposes of this Act, a person (“A”) subjects another person (“B”) to harassment if:</p> <ul style="list-style-type: none"> (a) A, on the ground that B intends to undergo, is undergoing or has undergone gender reassignment, engages in unwanted conduct that has the purpose or effect: <ul style="list-style-type: none"> (i) of violating B’s dignity, or (ii) of creating an intimidating, hostile, degrading, humiliating, or offensive environment for B; or (b) A, on the ground of B’s rejection of or submission to unwanted conduct of a kind mentioned in paragraph (a), treats B less favourably than he would treat B had B not rejected or submitted to, the conduct.

<p>(1) An employer (A) must not, in relation to employment by A, harass a person(B)</p> <p>(a) who is an employee of A's;</p> <p>(b) who has applied to A for employment.</p> <p>(2) The circumstances in which A is to be treated as harassing B under subsection (1) include those where:</p> <p>(a) a third party harasses B in the course of B's employment, and</p> <p>(b) A failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.</p>		<p>(4) Conduct shall be regarded as having the effect mentioned in sub-paragraph (i) or (ii) of subsection (3)(a) only if, having regard to all the circumstances, including in particular the perception of B, it should be reasonably be considered as having that effect.</p> <p>(6) For the purposes of subsections (1) and (3), a provision of Part 2 or 3 framed with reference to harassment of women shall be treated as applying equally to the harassment of men, and for that purpose will have effect with such modifications as are requisite.</p>
<p>(3) Subsection (2) does not apply unless A knows that B has been harassed in the course of B's employment on at least two other occasions by a third party; and it does not matter whether the third party is the same or a different person on each occasion.</p> <p>(4) A third party is a person other than:</p> <p>(a) A, or</p> <p>(b) an employee of A's.</p>	RRA, s 3A	<p>3A Harassment</p> <p>(1) A person subjects another to harassment in any circumstances relevant for the purposes of any provision referred to in s 1(1B) [work] where, on grounds of race or ethnic or national origins [NB no colour or nationality], he engages in unwanted conduct which has the purpose or effect of:</p> <p>(a) violating that other person's dignity;</p> <p>(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.</p> <p>(2) Conduct shall only be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.</p>
	DDA, s 3B	<p>3B Meaning of "harassment"</p> <p>(1) For the purposes of this Part, a person subjects a disabled person to harassment, where, for a reason which relates to the disabled person's disability, he engages in</p>

		<p>unwanted conduct which has the purpose or effect of:</p> <p>(a) violating the disabled person's dignity;</p> <p>(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.</p> <p>(2) Conduct shall only be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.</p>
	RRegs 5	<p>5 Harassment on grounds of religion or belief</p> <p>(1) For the purposes of these Regulations, a person ("A") subjects another person ("B") to harassment where, on grounds of religion or belief, A engages in unwanted conduct which has the purpose or effect of:</p> <p>(a) violating Bs dignity;</p> <p>(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.</p> <p>(2) Conduct shall be regarded as having the effect specified in paragraph 1(a) or (b) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.</p>
	SOregs 5 AgeRegs 6	These Regs are drafted in substantially identical terms as the RRegs

Equality Bill Clause 26 and 74 – Victimisation

EQUALITY BILL	EXISTING LEGISLATION	
<p>26 Victimisation</p> <p>(1) A person (A) victimises another person (B) if A subjects B to a detriment because:</p> <p style="padding-left: 40px;">(a) B does a protected act, or</p> <p style="padding-left: 40px;">(b) A believes that B has done, or may do, a protected act.</p> <p>(2) Each of the following is a protected act:</p> <p style="padding-left: 40px;">a) bringing proceedings under this Act;</p> <p style="padding-left: 40px;">(b) giving evidence or information in connection with proceedings under this Act;</p> <p style="padding-left: 40px;">(c) doing any other thing for the purposes of or in connection with this Act.</p> <p style="padding-left: 40px;">(d) making an allegation (whether or not express) that A or another person has contravened this Act.</p> <p>(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</p>	<p>SDA, s 4</p>	<p>4 Discrimination by way of victimisation</p> <p>(1) A person (“the discriminator”) discriminates against another person (“the person victimised”) in any circumstances relevant for the purposes of any provision of this Act if he treats the person victimised less favourably than in those circumstances he would treat or would treat other persons, and does so by reason that the person victimised has:</p> <p style="padding-left: 40px;">(a) brought proceedings against the discriminator or any other person under this Act or the Equal Pay Act 1970 ...; or</p> <p style="padding-left: 40px;">(b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act or the Equal Pay Act 1970...; or</p> <p style="padding-left: 40px;">(c) otherwise done anything under or by reference to this Act or the Equal Pay Act 1970.. in relation to the discriminator or any other person;</p> <p style="padding-left: 40px;">(d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this act or give rise to a claim under the Equal Pay Act 1970...;</p> <p>or by reason that the discriminator knows the person victimised intends to do any of</p>

<p>allegation is made, in bad faith.</p> <p>(4) This section applies only where the person subjected to a detriment is an individual.</p> <p>(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.</p>		<p>these things, or suspects that the person victimised has done, or intends to do, any of them.</p> <p>(2) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.</p> <p>(3) [applies the section equally to men]</p>
<p>74 Discussions with colleagues</p> <p>(2) A relevant pay discussion is a discussion with a colleague –</p> <p>(a) which is about pay;</p> <p>(b) which relates to 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.</p> <p>(3) Being involved in a discussion includes:</p> <p>(a) seeking disclosure by a colleague of information;</p> <p>(b) disclosing information to a colleague;</p> <p>(c) receiving information disclosed by a colleague.</p> <p>(4) Being involved in a relevant pay discussion is to be treated as a protected act for the purposes of the relevant victimisation provision;</p> <p>(5) The relevant victimisation provision is, in relation to a description of work specified in the first column of the table, section 25 in so</p>	<p>RRA, s 2</p>	<p>2 Discrimination by way of victimisation</p> <p>1) A person (“the discriminator”) discriminates against another person (“the person victimised”) in any circumstances relevant for the purposes of any provision of this Act if he treats the person victimised less favourably than in those circumstances he would treat or would treat other persons, and does so by reason that the person victimised has:</p> <p>(a) brought proceedings against the discriminator or any other person under this Act; or</p> <p>(b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act; or</p> <p>(c) otherwise done anything under or by reference to this Act in relation to the discriminatory or any other person;</p> <p>(d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this act;</p> <p>or by reason that the discriminator knows the person victimised intends to do any of these things, or suspects that the person victimised has done, or intends to do, any of</p>

<p>far as it applies for the purposes of a provision in the second column.</p> <p><u>Description of Work Provision by virtue of which s.25 has effect</u></p>		<p>them.</p> <p>(2) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.</p>
<p>Employment Section 3637(3) or (4)</p>	<p>DDA, s 55</p>	<p>55 Victimization</p> <p>(1) For the purposes of Part 2 [work]....a person ("A") discriminates against another person ("B") if:</p> <p>(a) he treats B less favourably than he treats or would treat other persons whose circumstances are the same as B's; and</p> <p>(b) he does so for a reason mentioned in subsection (2).</p> <p>(2) The reasons are that</p> <p>(a) B has:</p> <p>(i) brought proceedings against A or any other person under this Act; or</p> <p>(ii) given evidence or information in connection with such proceedings brought by any person; or</p> <p>(iii) otherwise done anything under or by reference to this Act in relation to A or any other person; or</p> <p>(iv) alleged that A or any other person has (whether or not the allegation so states) contravened this Act; or</p> <p>(b) A believes or suspects that B has done or intends to do any of those things.</p> <p>(3) Where B is a disabled person, or a person who has had a disability, the disability in</p>

		<p>question shall be disregarded in comparing his circumstances with those of any other person for the purposes of subsection 1(a).....</p> <p>(4) Subsection (1) does not apply to treatment of a person because of an allegation made by him if the allegation was false and not made in good faith.</p> <p>(5) In the case of an act which constitutes discrimination by virtue of this section, sections 4, 4B, 4D, 4G, 6A, 7A, 7C, 13, 14A, 14C, 15B and 16A also apply to discrimination against a person who is not disabled.</p>
	<p>RBRegs 4</p>	<p>4 Discrimination by way of victimisation</p> <p>(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if he treats B less favourably than he treats or would treat other persons in the same circumstances, and he does so by reason that B has:</p> <ul style="list-style-type: none"> (a) brought proceedings against A or any other person under these Regulations; (b) given evidence or information in connection with proceedings brought by any person against A or any other person under these Regulations; (c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or (d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations. <p>or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.</p>

		(2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made in good faith (or, as the case may be, given) in good faith.
	SORegs 4 AgeRegs 4	These regs are drafted in substantially identical terms to the RBRegs

Equality Bill, Clause 154 & 155 – Positive Action

EQUALITY BILL

154 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 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 ~~153~~155(3), or
 - (b) anything that is permitted by virtue of section ~~99~~101.
- (5) If section ~~99~~101(7) is repealed by virtue of section ~~100~~102, 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.

155 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, and
 - (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.
- (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.

Equality Bill Schedule 9, Part 1, s 1 –Occupational Requirement Defence

EQUALITY BILL

1 General

- (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;
 - 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)
- (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
 - (b) in the case of marriage and civil partnership, as references to a requirement not to be married or a civil partner
- (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.

PARTICULAR POINTS OF NOTE CONCERNING THE NEW OR DEFENCE

- 1) Old test required the occupation requirement to be a “genuine” and “determining” occupational requirement.
- 2) New test requires the application of the requirement to be a proportionate means of achieving a legitimate aim.
- 3) New test applies to disability whereas previous one did not.
- 4) Employers may provide childcare facilities to children of a particular age (protects employer’s from associate age discrimination)
- 5) Reference to specific occupations (i.e drama, entertainment and modelling) in the SDA and RRA are removed.