



# Understanding the legal and policy framework for inclusion

## The Equality Act 2010



The University has a legal responsibility to comply with the Equality Act (2010) – hereafter ‘the Act’, which replaced the Equal Pay Act 1970, Sex Discrimination Act (1975), Race Relations Act (1976), Disability Discrimination Act (1995), Employment Equality (Religion or Belief) Regulations (2003), Employment Equality (Sexual Orientation) Regulations (2003) and the Employment Equality (Age) Regulations (2006) for England, Scotland and Wales.

### Protected characteristics

[Section 4, chapter 1, part 2](#) of the Act, outlines 9 characteristics protected against discrimination:

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

Although marriage and civil partnership is listed in the Act as a protected characteristic, the Act does not provide protection against discrimination because of marriage and civil partnership in the further and higher institutions provisions. However, the [University's Equality of Opportunity Policy Statement](#) does commit to non-discrimination on these grounds.

### Public sector equality duty

[Section 149, chapter 1, part 11](#) of the Act requires the University pay due regard of the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (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.

In relation to education the Act not only makes discrimination in relation to the protected characteristics unlawful, it also places a responsibility on education providers to promote inclusion and positive relations between different groups.



### **Prohibited conduct**

The Act recognises five distinct forms of discrimination:

- direct discrimination,
- indirect discrimination,
- discrimination arising from a disability,
- harassment,
- victimisation.

### **Direct discrimination**

[Section 13, chapter 2, part 2 of the Act](#) defines direct discrimination to be when a person treats one person less favourably than they would another because of a protected characteristic. For example - a university refuses to let a student go on a residential trip because they are a wheelchair-user. Direct discrimination also covers discrimination by association and perception.

Discrimination on the basis of association can occur when an individual's association with another person with a protected characteristic e.g. a partner, sibling, child, friend, leads to unfavourable treatment. For example a student whose partner has a mental health condition and is refused access to their graduation ceremony because of this. Discrimination based on perception can occur if, for example, a student is excluded from a social event on the assumption they are Muslim.

### **Indirect discrimination**

[Section 19, chapter 2, part 2](#) of The Act covers indirect discrimination referring to situations where for example, a 'provision, criterion or practice', applicable to everyone or a particular group of people and thus apparently neutral, has outcomes which are specifically detrimental for individuals with certain protected characteristics compared to others without those characteristics.

Indirect discrimination may occur if, for example, a student with dyslexia is required to sit an examination which puts them at a particular disadvantage compared to non-disabled students (and if such an exam is not shown to reasonably constitute a competence standard or is justified on other grounds), or a student with anxiety is required to give a presentation in front of their class, unless this can be objectively justified as necessary.

In each case, the student with dyslexia or with anxiety would still need to show that their condition affected them personally in such a way as to satisfy the legal definition of a disability. They would also need to show that other students with their disability were also particularly disadvantaged.

Indirect discrimination can also occur when a policy would particularly disadvantage an individual if applied to them. For example, where an individual is discouraged from doing

something, such as applying for a grant at an institution, because a policy would result in their disadvantage, this may amount to indirect discrimination.

In every case of alleged indirect discrimination, no unlawful act will be committed if the act in question is shown to be a proportionate means of achieving a legitimate aim. In the context of further and higher education, examples of legitimate aims might include maintaining academic and other standards and ensuring the health and safety and welfare of students.

### **Discrimination arising from a disability**

The Act protects disabled people from being treated unfavourably for reasons pertaining to their disability. HEIs are liable in cases where the institution must know, or could reasonably be expected to know, that the person is disabled. Discrimination arising from disability can occur if, for example, a student is disciplined because of poor attendance, but the absence is because of treatment the student is undertaking to manage a mental health difficulty (assuming that it amounted to a disability). This may be discrimination arising from a disability, unless it can be shown the disciplinary measures were justified, or they did not know about the student's mental health difficulty.

In every case of alleged discrimination arising from disability, no unlawful act

will be committed if the treatment in question is shown to be a proportionate means of achieving a legitimate aim. In the context of further and higher education, examples of legitimate aims might include maintaining academic and other standards and ensuring the health and safety and welfare of students.

### **Harassment**

According to [Section 26, chapter 2, part 2 of the Act](#), there are three types of outlawed harassment:

- 1) Unwanted conduct related to a relevant protected characteristic whose purpose or effect is to create an intimidating, hostile, degrading, humiliating or offensive environment, or violates a person's dignity (this applies to all protected characteristics except pregnancy and maternity, and marriage and civil partnership)
  - 2) Unwanted conduct of a sexual nature (sexual harassment)
  - 3) Treating a person less favourably than another because they have either submitted to, or did not submit to, sexual harassment or harassment related to sex or gender reassignment.
- An individual is also protected from harassment if they are perceived to possess or associate with, another person with a protected characteristic.



## **Victimisation**

Under [section 27, chapter 2, part 2 of The Act](#), victimisation is prohibited. Victimisation occurs when one person treats another less favourably because he or she has carried out a 'protected act' (ie asserted a right in line with the Act or helped someone else to do so). Victimisation can also occur when one person treats another less favourably because they are suspected to have asserted a right, or of intending to do so.

## **Positive action**

The Equality Act permits positive action measures to be taken to help students from the protected groups overcome disadvantage. Adopting positive action is voluntary and can help alleviate disadvantage experienced by people who share a protected characteristic, reduce underrepresentation in relation to particular activities, and meet particular needs ([section 158 of the Act](#)). This applies to all protected characteristics. Any measures taken would need to be relevant and proportionate as a means of achieving the specific aim. For instance, this could include taking action aimed at increasing participation from underrepresented students of a particular group (e.g. from ethnic minority backgrounds, or non-traditional backgrounds), or actions taken to narrow the attainment gap between BAME students and their white counterparts.

## **Reasonable adjustments, competence standards and anticipatory design**

HEIs have a legal duty under the Act to make 'reasonable adjustments' to ensure disabled students are not discriminated against or substantially disadvantaged compared to students who are not disabled.

Factors relevant to deciding whether or not a particular proposed adjustment is reasonable include (but are not limited to):

- whether taking any particular steps would be effective in overcoming the substantial disadvantage
- the extent to which it is practicable to take such steps
- the type of education or other benefit, facility or service being provided
- the effect of the disability on the individual
- the financial and other costs of making the adjustment
- the availability of grants, loans and other assistance to disabled students
- the extent to which aids and services will otherwise be provided to disabled people or students
- the resources of the education provider and the availability of financial and other assistance
- health and safety requirements
- the relevant interests of other people, including other students

Disabled students cannot be charged for the cost of making any reasonable adjustments.

The question of whether or not a particular proposed adjustment is reasonable is an objective question for the courts and Tribunals to ultimately decide.

Changes depend on the facts of each case but might include providing extra support and aids (e.g. specialist support workers or equipment), and providing alternative means of assessment (e.g. allowing concessions for a student with ASD from giving presentations or participating in group-assessed activities).

For a detailed guide, see the [ECU's report on reasonable adjustments in higher education](#), consult with the University's Policy and Procedures on Inclusive Assessment, reasonable adjustments and alternative assessment arrangements for students with impairments or disabilities (<https://www2.worc.ac.uk/aqu/documents/>

[Inclusive assessment and reasonable adjustments policy and procedures](#)) and refer to the Staff guidance for inclusive assessments and making reasonable adjustments ([https://www2.worc.ac.uk/aqu/documents/Staff\\_Guidance\\_for\\_inclusive\\_assessments\\_web\\_version\\_Jan\\_2021.pdf](https://www2.worc.ac.uk/aqu/documents/Staff_Guidance_for_inclusive_assessments_web_version_Jan_2021.pdf))

There is no legal defence for the failure of the University to make a reasonable adjustment, in an appropriate scenario, which would amount to discrimination under Section [21, chapter 2, part 2](#), of the Act.

Moreover, the responsibility of the University to make reasonable adjustments is also **anticipatory**. The University should attempt to

anticipate the needs of students with additional requirements rather than wait for students to disclose their disabilities, or request adjustments. Common and predictable solutions to likely difficulties should be prepared in advance to ensure disabled students are not substantially disadvantaged wherever possible. Taking an anticipatory approach to reasonable adjustments will ensure you are engaging in practices associated with inclusive design.

### Competence standards

Understanding the relationship between reasonable adjustments and competence standards is important for successfully implementing an inclusive curriculum with an anticipatory character. The ECU's (2015) guide [Understanding the interaction of competence standards and reasonable adjustments](#) is a useful resource on this aspect of inclusion and legal compliance.

A competence standard is used by an education provider to determine whether a student has a particular level of competence or ability that is required for the course or module being studied. [Schedule 13](#), of the Act defines a competence standard as:

An academic, medical or other standard applied for the purposes of determining whether or not a person has a particular level of competence or ability.

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Competence standards must be 'objectively justifiable' – they must be both appropriate and proportionate as a means to a legitimate aim – and must be relevant to the specific course.

For example, the requirement for students studying for a law degree to demonstrate a particular standard of knowledge of certain areas of law in order to obtain the degree is a competence standard.

However, a requirement that a person completes a test in a certain time period is not a competence standard unless the competence being tested is the ability to do something within a limited time period.

Competence standards themselves are not subject to reasonable adjustments under the Act. However, universities are required to make adjustments to the ways competence standards are assessed. This is to ensure disabled students are not disadvantaged by the assessment method used to demonstrate their competence.

For example, the mark required to pass an exam would be a competence standard, so would not be subject to the duty to make reasonable adjustments. However, it might be a reasonable adjustment to give a disabled person a longer time in which to complete an exam if their disability causes them to write slowly.

### **Anticipatory design**

In addition to the duty to provide reasonable adjustments in individual cases, HEIs have a duty to develop an inclusive approach to course design, incorporating anticipatory adjustments in order to reduce the reliance on a case-by-case approach. As the ECU (2015:17) states; "a focus on inclusive design in assessment will reduce the need to make individual adjustments."

Inclusive teaching and assessment is best facilitated by anticipating and planning for the learning requirements of all students. This involves anticipating and considering, in a general way, the requirements of students with learning and/or physical difficulties. As principle 1.5 of the University's Policy and Procedures on Inclusive Assessment, making reasonable adjustments and providing for alternative assessment arrangements outlines, key aspects of inclusion for learning, teaching and assessment, "should inform all phases of programme design, development, approval, evaluation and review on an ongoing basis."

Anticipatory inclusive practice involves:

- providing accessible learning and assessment for all students;
- providing for flexibility in learning, teaching and assessment;
- ensuring the relevance of curriculum assessment items for all students;
- ensuring teaching staff have the requisite professional competencies for teaching and assessing all students;
- making reasonable adjustments where appropriate and/or considering applications for alternative assessment arrangements

Inclusive anticipatory design does not necessarily eliminate the need for individual reasonable adjustments – only in a fully inclusive society would the requirement for reasonable adjustments be unnecessary.

The content of the curriculum is not subject to a duty to make reasonable adjustments. This means that the university is not restricted in the range of issues, ideas and materials used in a course's syllabus and will have the academic freedom to expose students to a range of thoughts and ideas, however controversial. Even if the content of the curriculum causes offence to students with certain protected characteristics, this will not make it unlawful unless it is delivered in a way which results in harassment or subjects students to discrimination or other detriment.

### **Inclusion for all**

Inclusive anticipatory design can and should, be applicable to all groups of students who experience barriers to learning success. The University has adopted a more expansive understanding

of inclusion based on [Universal Design for Learning \(UDL\)](#), which recognises the value of incorporating principles of inclusive practice in all aspects of teaching and learning. The UDL approach works to accommodate the needs and abilities of all learners by removing unnecessary barriers in the learning process. This is achieved by cultivating a flexible learning environment which provides multiple ways of presenting information, engaging students, and in assessing student learning. Any environment, be it building, service in that environment, or product, should be designed to be accessible and meet the needs of all people. An accessible, useable and convenient environment benefits everyone, meaning Universal Design is essentially, good design.



# Understanding the Protected Characteristics

## Age

[Section 5, chapter 1, part 2](#) of the Act defines age by reference to an individual's age group and protects against discriminatory practices on the basis of age.

## Gender reassignment

[Section 7, chapter 1, part 2](#) of the Act specifies gender reassignment as a protected characteristic and applies to anyone who has undergone, is undergoing or who is proposing to undergo, a process (or part of one) to reassign the person's sex. The [EHRC](#) qualifies the Act's definition by stating there is no requirement that a person has undergone specific treatment or surgery as "changing your physiological or other gender attributes is a personal process rather than a medical one."

Gender reassignment involves a person expressing their gender in a way which differs from or is inconsistent with the physical sex they were born with. The Act uses the term 'transsexual person' to refer to someone who has the protected characteristic of gender reassignment.

Protection from discrimination is also extended to anyone associated with a transgender individual, e.g. a partner, and any individual assumed or believed to be transgender by another person. Moreover, it is prohibited for any person to instruct others to discriminate against a trans person, or someone who is assumed or believed to be trans.

## Race

[Section 9, chapter 1, part 2](#) of The Act protects individuals on the basis of race and specifies that race includes skin colour, nationality, ethnic or national origins.

The EHRC's (2014:24) [Equality Act 2010 Technical Guidance on Further and Higher Education](#) clarify these criteria:

A racial group is a group of people who have or share skin colour, or ethnic or national origins. For example, a racial group could be 'British' people, but another racial group could be 'black' people. The Act protects all racial groups from unlawful discrimination. Moreover, racial groups can be defined by exclusion. For example, those of 'non-British' nationality could form a single racial group that is discriminated against on that basis.

## Religion or belief

[Section 10, chapter 1, part 2](#) of the Act specifies religion or belief to be a protected characteristic. Religion or belief includes any religion and any religious or philosophical belief. It also includes a lack of a religion or belief.

## Sex

Sex is a protected characteristic and refers to a male or a female of any age and in relation to a group of individuals it refers to either men/boys and women/girls.

### **Pregnancy and maternity**

The Act lists pregnancy and maternity as a protected characteristic and protects female students from discrimination because of their pregnancy or maternity.

### **Sexual orientation**

Sexual orientation is a protected characteristic under [section 12, chapter 1, part 2](#) of the Act. Under the Act, this means being attracted to people of the opposite sex, or to people of the same sex, or to people of both sexes.

Sexual orientation relates to how people feel as well as their actions. [EHRC guidance](#) states that:

Sexual orientation discrimination includes discrimination because someone is of a particular sexual orientation, and it also covers discrimination connected with manifestations of that sexual orientation. That may include someone's appearance, the places they visit or the people they associate with.

### **Disability**

[Section 6, chapter 1, part 2](#) of the Act defines disability as having a physical or mental impairment which has a substantial and long term adverse effect on the person's ability to carry out normal day to day activities.

Substantial refers to a condition whose effect is not minor or trivial – for instance, making daily tasks such as getting dressed

considerably more time consuming.

[Schedule 1, Part 1](#) of the Act states that for the purpose of determining whether a person is disabled, the effect of an impairment is long-term if it has lasted, or is expected to last at least 12 months, or is likely to last for the rest of the life of the person affected.

Moreover, 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 the effect is likely to recur.

It is for the person claiming to have a disability to prove that their particular condition satisfies the definition of a disability under the Act.

The only conditions which the Act treats as automatically being disabilities from the point of diagnosis are: HIV infection, cancer and multiple sclerosis.

People who are registered or certified by a consultant ophthalmologist as blind or partially sighted are automatically treated as being disabled under the Act.

For all other conditions, whether or not a condition amounts to a disability in a particular case, depends on it satisfying all the elements of the definition.

However, depending on the facts of each particular case, and in particular how the condition affects the person in question, the definition of disability under the Act might be satisfied in the following cases:

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- Students with Specific learning difficulties (SpLDs), such as dyslexia, dyspraxia, attention deficit (hyperactivity) disorder (AD(H)D);
- Students experiencing mental health difficulties, such as depression, anxiety, eating disorders, obsessive compulsive disorder (OCD), bipolar affective disorder, psychosis;
- Autistic spectrum disorder (ASD)
- Sensory difficulties, for instance a visual or hearing challenge, deafness (with or without British Sign Language as a preferred or first language);
- Mobility challenges, such as scoliosis, chronic pain affecting mobility, and para- and quadriplegia;
- Long term health conditions, such as arthritis, cystic fibrosis, narcolepsy, repetitive strain injury (RSI), hepatitis, Crohn's disease, chronic pain, lupus, chronic fatigue syndrome/ myalgic encephalopathy (CFS/ ME)

The law on disability is extremely complex. In cases of doubt, seek further guidance.

## Further Reading

**Felsing , A. Byford , K. (2010)**  
**[Managing reasonable adjustments in higher education.](#)** London:  
**Equality Challenge Unit.**  
[Online] [Accessed 4/09/18]

ECU's guide for reasonable adjustments under the Equality Act 2010. It covers the legal context, makes the case for an anticipatory approach and discusses mechanisms for delivering one; funding and resourcing reasonable adjustments; mechanisms for publicising available resources and entitlements; and recommendations for action.

**[Understanding the interaction of competence standards and reasonable adjustments.](#)** London:  
**Equality Challenge Unit. (2015)**  
[Online] [Accessed 4/09/18]

Useful guide from ECU addressing the relationship between competence standards and reasonable adjustments. It discusses the legal context and legal definitions of competence standard and reasonable adjustment and their relation to disability legislation. It then provides a detailed guide of various aspects of competence standards: developing and reviewing competence standards; assessing competence standards; professional bodies and competence standards; competence standards in placement and fieldwork; and informing students of competence standards and their assessment.

**[Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability.](#)**

**London: Office for Disability Issues. (2011)** [Online] [Accessed 4/09/18]

This guide from the Office for Disability Issues provides detailed information on aspects of the Equality Act 2010 which relate to disability. It does not contain specific information for the context of higher education or recommendations for teaching staff, but does provide more information on various legal definitions contained in the Act (e.g. defining disability and discussing conditions which are and are not classified as a disability).

**[Understanding adjustments: supporting staff and students who are experiencing mental health difficulties.](#)**

**London: Equality Challenge Unit (2014).** [Online] [Accessed 5/09/18]

This text focuses on mental health support for staff and students. It discusses the context of mental health in HE in the UK and the challenges individuals experience when deciding whether to disclose their mental health difficulty. It also focuses on various aspects of support: Talking to fellow students or colleagues about mental health difficulties, support and adjustments, asking for support, responses to requests for support, receiving support, and

recommendations going forward.

**Pugh, E. (2017) [Trans staff and students in HE and colleges: improving experiences.](#) ECU: London. [Online] [Accessed 4/09/18].**

N.B. this document currently is not available publicly through the ECU website. The file is available on [Warwick University's website](#).

This ECU document is aimed at informing staff how to support trans staff and students in HE and colleges. It covers; the legislative context; discusses trans equality and trans-inclusive policies; building a trans inclusive environment; responsibilities when supporting trans applicants, staff, students and former students; further resources; and supporting trans people through medical processes.

**[What equality law means for you as an education provider – further and higher education.](#) Equality and Human Rights Commission (EHRC) [Online] [5/09/2018]**

Guidance from the Equality and Human Rights Commission. It discusses the legal context and general guidance, before focusing specifically on less commonly discussed issues. It discusses what is outlawed under the act in admissions, then discusses education provision and access to benefits, services, or

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facilities and exclusions, and finally, dispute resolution and enforcement.

**[Equality Act 2010 Technical Guidance on Further and Higher Education \(2014\). Equality and Human Rights Commission \(EHRC\).](#)**  
[Online] [Accessed 5/09/18]

Lengthy and detailed technical guidance on all aspects of the Act.

work; placements; retention; progress and transition; and employability. The aim of the guide is to raise questions, provide examples of good practice, and encourage staff to reflect on their own learning, teaching and assessment practices in relation to their subject discipline and to consider reasonable adjustments for disabled students.

**[Guide to complying with positive action provisions in the Equality Act 2010](#)**

**Bar Council [Online] [28/04/2021]**

This guide discusses accommodations under the Act for positive action, its distinction from positive discrimination, and the specific accommodations for the protected characteristics under the Act.

**[Disability legislation: practical guidance for academic staff \(Revised 2010\).](#)** London: Equality Challenge Unit. [Online] [5/09/2018]

This guide provides guidance for academic staff on how to support students with disabilities. The guidance focuses primarily on academics working with students on undergraduate programmes. It provides guidance on: the legal context; assessment and induction; programme design and validation; lectures; practical sessions; group

## UW Specific links, guides and policies

[Principles for course design: Guide to writing learning outcomes and developing assessment criteria](#)

[Principles and Guidance for Design of Undergraduate Courses](#)

[University's Policy and Procedures on Inclusive Assessment, reasonable adjustments and alternative assessment arrangements for students with impairments or disabilities](#)

[Diversity & Equality: Equality Framework.](#)

This page contains links to the Equality Objective 2013-2018, Equality of Opportunity Statement, and the Policy on Dealing with Harrassment and Bullying

[Disability and Dyslexia Support \(DDS\) homepage](#)

[Staff guidance for inclusive assessments & making reasonable adjustments](#)

[Busy Lecturer's Guide to Inclusive Practice](#)

More detailed guidance on inclusive learning and teaching practice is available in the Inclusive Practice Guides that are part of this Toolkit.

These baseline principles have been developed by Daniel Harrington, Research Assistant, and Dr Marie Stowell, Director of Quality and Educational Development at the University of Worcester, with the help of colleagues across the University and drawing on the work on inclusion of Plymouth University and the University of Leeds.

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<https://inclusiveteaching.leeds.ac.uk/>; <https://www.plymouth.ac.uk/your-university/teaching-and-learning/inclusivity>.

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