

EQUALITY ACT 2010

Introduction

1. Several objectors refer to the Council's equality duties under the Equality Act 2010 ["EqA"].. However, they largely proceed on an inaccurate understanding of those duties. For example, they refer to negative impacts identified in the Council's Equality Impact Assessment ["EIA"] and then assert that, having identified those negative impacts, it follows that the Proposed Order contravenes the Council's statutory equality duties. Some (such as LTDA, BRAG) assert that the public sector equality duty imposed by section 149 Equality Act 2010 ["PSED"] imposes on the Council a duty to take steps to meet the needs referred to in section 149, including a duty to take steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled. Others (such as LTDA when cross-examining Mrs McBride) assert that it is in fact disproportionately detrimental for wheelchair users *of black cabs* to alight or be set down at the top of Bedford Way, and that that is discriminatory under the EqA. These approaches are incorrect.

The Council's potentially relevant equality duties

2. It is necessary therefore to set out what the Council's potentially relevant equality duties are, namely:
 - (1) The procedural PSED under section 149 EqA.
 - (2) The substantive duty not to discriminate when exercising a public function, under section 29(6).

Certain Convention provisions are referred to on pages 5 and 6 of the EIA. The Inspector is asked to note those, when bearing in mind the positive impacts of the Proposed Order which the Council's and Supporters' witnesses have addressed. These Conventions are not incorporated into UK law, but they are illuminative when considering aspects of what the needs set out in section 149 might mean in practice, and so what sorts of things "due regard" might involve considering. Examples include positive opportunities for children and disabled persons to participate in aspects of the physical public realm, and longer term health benefits of public measures, such as those the Proposed Order is considered by Council officers to achieve. They are also illuminative when the Inspector is considering the actual and potential benefits of the Proposed Scheme.

3. CD 1/19 contains the entire Equality Act 2010. An extract of the potentially relevant, and background, provisions is attached as Annex B, with underlining added, for easier navigation and reference. Unsurprisingly, no party appears to suggest that the Council has directly “because of a protected characteristic”, or “because of something arising from a protected characteristic” treated, in either the Trial or the Proposed Order, a person with such a characteristic less favourably than it has treated or would treat others (i.e. direct discrimination within section 13, or discrimination arising from disability within section 15). But for completeness sections 13 and 15 are included in the extract.

Content of the Council’s procedural duty: PSED

4. First, as an accurate reading of section 149 shows, the PSED is a procedural duty. Each of the matters set out (including the reference to “steps” in section 149(3)(b) and (4)) is a matter to which “due regard” must be had. None of the matters (and none of the steps) is itself something that the authority, in complying with its PSED, must carry into effect substantively.
5. Second, in the light of the ample case law on this provision, the correct practical approach is as set out in paragraph 1.11 of Appx A “Legal Implications” to the Cabinet Report dated 22 February 2017 at CD6/2/A page 3:

“Where it is apparent from the analysis of the information that any of the proposed recommendations, should they be agreed, would have an adverse impact on those with protected characteristics, then any adjustments that would avoid or reduce that effect (mitigating steps) should be identified and careful consideration then given to whether and if so how they can be implemented. Members should be aware that the section 149 duty is not to achieve the objectives or take the steps set out in section 149. Rather, the section 149 duty on the authority is to bring these objectives relating to discrimination into proper consideration when carrying out its public functions. There must be a proper appreciation of the potential impact of the decision on the equality objectives set out in section 149 and of the desirability of promoting them. “Due regard” means the regard that is appropriate in all the particular circumstances in which the authority is carrying out its functions. Provided due regard is had in this way, including considering mitigation measures as described above, it is for the authority to decide, taking into account all relevant factors (which may, depending on the circumstances, include the requirement upon the Council to operate within its budget) how much weight to give to the equality implications of the decision.”

6. This is why there will often be cases in which an authority makes a rational finding that, even having considered mitigation measures, adverse or negative impacts are potentially considerable, but in which it will nevertheless comply with its PSED even if it decides to accord greater weight to other implications of the proposal (including other, positive impacts of the scheme, whether in the context of protected characteristics or more widely) and to implement it. Hence the PSED imposes no duty to avoid a proposal that has an overall negative impact.
7. An example of how the courts have approached the PSED in the context of experimental traffic orders is the first instance decision of Singh J in *Hamnett v Essex County Council* [2014] 1 WLR 2562¹ at paras [67] – [79]. A copy is attached as Annex D. Note in particular paras [75]-[76] and [78]-[79].
8. Given the correct interpretation of the PSED, BRAG and LTDA (and others) fall into error when they assert for example that because:
 - (1) negative impacts are identified in the EIA [CD/6/2/E] (and note that there appears to be no criticism of how the Council has identified these impacts – generically, all the points made by objecting witnesses are reflected in the EIA and objectors have relied on its contents extensively, indicating that even on their case the Council’s officers got this analysis right) (BRAG)
 - and/or
 - (2) the list of negative impacts is longer than the list of positive ones (LTDA - see Mr Masset’s analysis of the “Grid” at para 18 of his statement, for example, in which he ignores the steps recorded at pages 43-44 of the EIA),

that must mean that the proposal breaches the PSED.

9. This ignores, wrongly, the Council’s officers’ careful analysis of the impacts, the resulting identification of potential mitigating measures, and the consequent attribution of weight. As it happens, the EIA concluded that, in light of proposed mitigating measures, the positive impacts of the proposal outweighed the negative impacts in all the circumstances. Even if it

¹ Upheld on appeal on a different point, in which the finding of compliance with the PSED was not challenged.

had not, however, it would still have been rational and open to the Council, acting within section 149, to conclude that the proposal should be pursued – because, by analysing the negative and positive impacts and considering them in the light of potential mitigating measures, it would still have had due regard to the needs defined in section 149. The Inspector is asked to revisit the EIA in full.

10. The PSED is a continuing duty: the Inspector will have noted the additional mitigation proposals suggested by the Council’s officers in evidence to this Inquiry, and will no doubt bear in mind that the Council and its officers will continue to pay due regard to the needs set out in section 149.
11. As a discrete point of correction, contrary to para 6.2 of Mr Russell’s Proof [9/21 ILHL 16] (which he said in xx was written by ILHL’s legal advisers) ILHL is plainly not exercising public functions for the purpose of section 149(2) EqA: those functions are defined in section 150(5) as functions of a public nature for the purposes of the Human Rights Act 1998. ILHL has no such functions.

Content of the Council’s substantive duty: section 29(6) EqA

12. In exercising its road traffic regulation functions the Council is exercising a public function that is not a provision of a service. Therefore it “must not, in the exercise of [that] public function” “do anything that constitutes discrimination” (s.29(6)).
13. Further, by section 29(7)(b), a “duty to make reasonable adjustments”, in relation to disabled people, applies to the Council in exercising this public function.
14. Section 25(2) defines “disability discrimination” as discrimination which falls within
 - (1) section 13 because of disability
 - (2) section 15 (discrimination arising from disability)
 - (3) indirect discrimination within section 19 where the relevant protected characteristic is disability
 - (4) discrimination within section 21(2) (failure to comply with the duty to make reasonable adjustments in accordance with section 20).

15. Section 25(1) defines age discrimination as discrimination within section 13 because of age (direct discrimination) and discrimination within section 19 where the protected characteristic is age (indirect discrimination).

Types of discrimination for the purposes of the section 29(6) duty not to discriminate in the exercise of a public function by the Council

Sections 13 (age, disability) and 15 (disability only)

16. In so far as there are negative impacts on disabled persons identified in the EIA or otherwise (although generically, all the negative impacts referred to by Objectors at this Inquiry are identified in the EIA), it is unsurprising that no-one has suggested the Council, in implementing the Trial or taking the Proposed Order forward, has treated disabled or elderly persons less favourably than others “because of” their disability or age or “because of” something arising in consequence of a person’s disability. Rather, Objectors have argued that it is the effects of the Trial on disabled or elderly persons that give rise to negative impacts. Hence sections 13 and 15 do not arise for consideration.

Section 19: indirect discrimination (age, disability)

17. Section 19 does not arise for consideration unless (among other things) the Council 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”: see section 19(2)(b). Hence for example, a group consisting of those disabled persons needing wheelchair or swivel seat access who are black cab users (Mr Massett stating at para [9] of his Proof [14/2] that black cabs are “unique” in having nearside access only) as opposed to disabled users of other types of cab which do not need nearside access, is not a group of persons sharing the protected characteristic of disability as compared with persons who are not disabled, so section 19 could not apply to that group or members of it. That alone disposes of both LTDA’s and ILHL’s case (which both Mr Massett and Mr Russell accepted concerns black cabs only) in this particular regard.
18. Further, section 19 does not arise for consideration if the Trial or the Proposed Order is “a proportionate means of achieving a legitimate aim”: see section 19(2)(d). Here, as to both age and disability (and indeed as to any of the protected characteristics) the balance of benefits

and disbenefits comes into play, informing the wide spectrum, as to which the Inspector will form a view, of what is of “proportionate”. A number of points demonstrating this are highlighted in the main Closing Submissions. The Order that the Council has proposed is indeed a proportionate means of achieving the legitimate aims the scheme is designed to meet.

Section 21 and 20: the Council’s duty to make reasonable adjustments (disability only)

19. Section 21(2) provides that a person A discriminates against a disabled person if A fails to comply with the first second or third requirement set out in section 20.
20. However it is essential to read section 20 as expressly amended, *in relation to the exercise of public functions*, by paragraph 2(2)-(5) of Schedule 2 (which applies by virtue of section 31(9)). For convenience section 20 as so amended is set out with insertions tracked and attached to this Annex as Annex C, with underlining added to aid navigation.

21. From that it can be seen that:

(1) Whether the Trial or Proposed Order is regarded as a “provision” or “physical feature” (“other physical element or quality” within section 20(10(d)), it must - for discrimination even potentially to arise - affect in the relevant way “disabled persons generally” in “comparison with” persons who are not disabled. As with section 19, a sub-group of disabled persons – such as disabled users of black cabs who can only enter or exit the cab on the nearside because uniquely, as Mr Massett says in his Proof, that is how the black cab is designed – does not engage the duty.

(2) The relevant effect (negative impact) must be a “substantial disadvantage” in that it must amount to “an unreasonably adverse experience when being subjected to the detriment” (Schedule 2 para 2(5)(b)). The Proposed Order, including the proposed mitigating measures both as set out in the EIA and as further ventilated in evidence before this Inquiry, do not give rise to an experience that is “unreasonably adverse”.

(3) Even if the experience could be said to be an “unreasonably” adverse one to which disabled persons *generally* are subject, where, as here, what is in question is a

physical feature (rather than a provision criterion or practice), the duty then arising is limited to taking “such steps as it is reasonable to have to take” to either avoid the disadvantage or to “adopt a reasonable alternative method of exercising the function”. Again, the steps already taken as part of the Trial as well as mitigating measures proposed to ensure, for example,

- continued lawful drop off along the whole of Corridor (with access made easier by removal of the existing raised kerb between northern cycle and motor traffic lanes),
- adequate loading bays,
- a taxi rank,
- drop off in Bedford Way within 50 m of a hotel’s entrance,
- proposals for resting places and benches at the requisite intervals along the Corridor,
- taking account of likely reductions in taxi emissions,

all comprise alternatives that are “reasonable alternative methods” of exercising the Council’s road traffic regulation functions.

The duties of the Tavistock Hotel in relation to its disabled and/or elderly visitors including those using wheelchairs or having mobility impairments

22. ILHL as owner and operator of the Tavistock Hotel providing services to the public is subject to its own duties. These arise under section 29(1) read with section 31(2) (6) and(7), section 29(2) and section 29(7)(b) EqA, (a duty not to discriminate) and, in relation to disabled persons, to make reasonable adjustments in accordance with section 21 and section 20 as read with Schedule 2 paragraph 2. For the purposes of this Inquiry, ILHL can be expected to comply with its own duties including taking the steps that it is reasonable for it to have to take in assisting disabled visitors into and out of the Hotel and facilitating their access to the Hotel’s services.

Taxi drivers’ duties

23. Taxi drivers are service providers and have the same duties as the hotel, but they also have specific duties (not flagged by LTDA). These are duties to provide mobility assistance to passengers in wheelchairs (section 165(1) (4) and (5) EqA). That includes assistance enabling the

passenger (in or out of their wheelchair) to get into and out of the taxi, and to load and unload their luggage (and wheelchair, if the passenger does not wish to travel sitting in the wheelchair).

24. The LTDA (in cross-examination of Mrs McBride) sought to emphasise that this statutory provision does not expressly require a taxi driver to help a wheelchair using passenger into or out of a building. However, Mr Massett himself, both in his Proof (page 9 – “seeing the passenger safely into the hotel”) and in cross-examination described taxi drivers assisting such passengers into the building, and it was pointed out that should a PCN erroneously be issued, the taxi driver could take and provide the passengers’ details to the issuing authority to ensure that enforcement action was not taken.

Considering the evidence in the light of the overall elements of equality duties relating to disability and age (the principal protected characteristics discussed by the participants in this Inquiry)

25. Stepping back therefore, in the statutory equalities context the position in light of the evidence in this Inquiry set against the statutory background is as follows:

(1) The Council (and through its officers) has had due regard to its PSED. It has satisfied that procedural duty.

(2) In considering whether any persons are potentially affected by the Proposed Order, as far as substantive equalities duties are concerned the Inspector needs to be sure to focus on person(s) with a protected characteristic as distinct from persons not having that characteristic (rather than, say, focussing on persons grouped according to the wheelchair ramp design of different types of taxi used).

(2) The Proposed Order, with the proposed associated improvements and mitigations, is a proportionate means of achieving the undoubtedly legitimate aims of the Council if it were to make the Order, including enabling proportionate and reasonable access along the Corridor.

(3) Even if the Proposed Order, and associated improvements and mitigations, would involve disabled persons suffering any identifiable detriment in the Council’s exercise of its traffic functions, the Order would not cause “disabled persons generally” to

suffer any “unreasonably adverse” experience so that no “substantial detriment” (the relevant test) would arise.

(4) The Proposal involves reasonable steps on the Council’s part to avoid disabled persons generally suffering any unreasonably adverse experience when being subjected to any detriment. The steps the Council is taking forward amount to a reasonable alternative method of exercising its traffic functions.

26. It can be seen that, on the evidence at this Inquiry, by whichever statutory equalities route one approaches the Council’s exercise of the statutory powers by which it might make the Proposed Order permanent, or by which the Inspector would analyse the benefits and disbenefits of taking that step and hence whether to recommend it, as regards people with protected characteristics the Proposed Order as proposed to be implemented is consistent with the Council’s duties.

27. This is illustrated in the main body of Closing Submissions, in which some of particular points of the evidence at this Inquiry are highlighted.

28. Further, and crucially, the Inspector will be aware that the Council has continuing duties and that officers and Cabinet will be ensuring that equalities issues are considered appropriately when, for example, considering such recommendation as the Inspector may make.

Jane Oldham
11KBW
11 King’s Bench Walk
Temple
London EC4Y 7EQ
2nd November 2017

UK Parliament Acts/E/EO-ET/Equality Act 2010 (2010 c 15)/Part 2 Equality: Key Concepts (ss 4-27)/4 The protected characteristics

Part 2

Equality: Key Concepts

Chapter 1

Protected Characteristics

4 The protected characteristics

The following characteristics are protected characteristics--

age;

disability;

gender reassignment;

marriage and civil partnership;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation.

5 Age

(1) In relation to the protected characteristic of age--

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;

(b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.

(2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.

6 Disability

(1) A person (P) has a disability if--

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability--

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)--

(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

(5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

- (6) Schedule 1 (disability: supplementary provision) has effect.

Chapter 2

Prohibited Conduct

Discrimination

13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) If the protected characteristic is sex--

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).

(8) This section is subject to sections 17(6) and 18(7).

14 Combined discrimination: dual characteristics

(1) A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.

(2) The relevant protected characteristics are--

- (a) age;
- (b) disability;
- (c) gender reassignment;
- (d) race
- (e) religion or belief;
- (f) sex;
- (g) sexual orientation.

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

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

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

(6) A Minister of the Crown may by order amend this section so as to--

- (a) make further provision about circumstances in which B can, or in which B cannot, establish a contravention of this Act by virtue of subsection (1);
- (b) specify other circumstances in which subsection (1) does not apply.

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

15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if--

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

19 Indirect discrimination

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

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if--

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are--

age;

disability;

gender reassignment;

marriage and civil partnership;

race;

religion or belief;

sex;

sexual orientation.

Adjustments for disabled persons

NOTE: SECTION 20 IS EXPRESSLY CHANGED BY SCHEDULE 2, IN RELATION TO THE EXERCISE OF PUBLIC FUNCTIONS [e.g.THE COUNCIL exercising statutory traffic functions] AND THE PROVISION OF SERVICES [ILHL, TAXIS] – THE AMENDED VERSION IS SET OUT IN A SEPARATE DOCUMENT. IN RELATION TO PUBLIC SERVICES ONLY, SCHEDULE 2 ALSO ADDS THE PROVISION AT PARAGRAPH 2(5) OF SCHEDULE 2. SEE PAGES 15-18 OF THIS EXTRACT

SECTION 20 AS SET OUT IMMEDIATELY BELOW IS THE VERSION ENACTED BEFORE ANY OF THE CHANGES MADE BY SCHEDULE 2 ARE APPLIED TO IT, INCLUDED HERE MERELY FOR THE PURPOSE OF COMPARISON

20 Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

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

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

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

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

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

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to--

- (a) removing the physical feature in question,
- (b) altering it, or
- (c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to--

- (a) a feature arising from the design or construction of a building,
- (b) a feature of an approach to, exit from or access to a building,
- (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
- (d) any other physical element or quality.

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

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

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

Part of this Act

Applicable Schedule

<u>Part 3 (services and public functions)</u>	<u>Schedule 2</u>
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 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

25 References to particular strands of discrimination

(1) Age discrimination is--

- (a) discrimination within section 13 because of age;
- (b) discrimination within section 19 where the relevant protected characteristic is age.

(2) Disability discrimination is--

- (a) discrimination within section 13 because of disability;
- (b) discrimination within section 15;
- (c) discrimination within section 19 where the relevant protected characteristic is disability;

(d) discrimination within section 21.

(3) Gender reassignment discrimination is--

- (a) discrimination within section 13 because of gender reassignment;
- (b) discrimination within section 16;
- (c) discrimination within section 19 where the relevant protected characteristic is gender reassignment.

(4) Marriage and civil partnership discrimination is--

- (a) discrimination within section 13 because of marriage and civil partnership;
- (b) discrimination within section 19 where the relevant protected characteristic is marriage and civil partnership.

(5) Pregnancy and maternity discrimination is discrimination within section 17 or 18.

(6) Race discrimination is--

- (a) discrimination within section 13 because of race;
- (b) discrimination within section 19 where the relevant protected characteristic is race.

(7) Religious or belief-related discrimination is--

- (a) discrimination within section 13 because of religion or belief;
- (b) discrimination within section 19 where the relevant protected characteristic is religion or belief.

(8) Sex discrimination is--

- (a) discrimination within section 13 because of sex;
- (b) discrimination within section 19 where the relevant protected characteristic is sex.

(9) Sexual orientation discrimination is--

- (a) discrimination within section 13 because of sexual orientation;

- (b) discrimination within section 19 where the relevant protected characteristic is sexual orientation.

Part 3

Services and Public Functions

Preliminary

28 Application of this Part

- (1) This Part does not apply to the protected characteristic of--
 - (a) age, so far as relating to persons who have not attained the age of 18;
 - (b) marriage and civil partnership.

- (2) This Part does not apply to discrimination, harassment or victimisation--
 - (a) that is prohibited by Part 4 (premises), 5 (work) or 6 (education), or
 - (b) that would be so prohibited but for an express exception.

- (3) This Part does not apply to--
 - (a) a breach of an equality clause or rule;
 - (b) anything that would be a breach of an equality clause or rule but for section 69 or Part 2 of Schedule 7;
 - (c) a breach of a non-discrimination rule.

Provision of services, etc

29 Provision of services, etc

(1) A person (a "service-provider") concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.

(2) A service-provider (A) must not, in providing the service, discriminate against a person (B)-

-

(a) as to the terms on which A provides the service to B;

(b) by terminating the provision of the service to B;

(c) by subjecting B to any other detriment.

(3) A service-provider must not, in relation to the provision of the service, harass--

(a) a person requiring the service, or

(b) a person to whom the service-provider provides the service.

(4) A service-provider must not victimise a person requiring the service by not providing the person with the service.

(5) A service-provider (A) must not, in providing the service, victimise a person (B)--

(a) as to the terms on which A provides the service to B;

(b) by terminating the provision of the service to B;

(c) by subjecting B to any other detriment.

(6) A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.

(7) A duty to make reasonable adjustments applies to--

(a) a service-provider (and see also section 55(7));

(b) a person who exercises a public function that is not the provision of a service to the public or a section of the public.

(8) In the application of section 26 for the purposes of subsection (3), and subsection (6) as it relates to harassment, neither of the following is a relevant protected characteristic--

- (a) religion or belief;
- (b) sexual orientation.

(9) In the application of this section, so far as relating to race or religion or belief, to the granting of entry clearance (within the meaning of the Immigration Act 1971), it does not matter whether an act is done within or outside the United Kingdom.

(10) Subsection (9) does not affect the application of any other provision of this Act to conduct outside England and Wales or Scotland.

31 Interpretation and exceptions

(1) This section applies for the purposes of this Part.

(2) A reference to the provision of a service includes a reference to the provision of goods or facilities.

(3) A reference to the provision of a service includes a reference to the provision of a service in the exercise of a public function.

(4) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

(5) Where an employer arranges for another person to provide a service only to the employer's employees--

- (a) the employer is not to be regarded as the service-provider, but
- (b) the employees are to be regarded as a section of the public.

(6) A reference to a person requiring a service includes a reference to a person who is seeking to obtain or use the service.

- (7) A reference to a service-provider not providing a person with a service includes a reference to--
- (a) the service-provider not providing the person with a service of the quality that the service-provider usually provides to the public (or the section of it which includes the person), or
 - (b) the service-provider not providing the person with the service in the manner in which, or on the terms on which, the service-provider usually provides the service to the public (or the section of it which includes the person).
- (8) In relation to the provision of a service by either House of Parliament, the service-provider is the Corporate Officer of the House concerned; and if the service involves access to, or use of, a place in the Palace of Westminster which members of the public are allowed to enter, both Corporate Officers are jointly the service-provider.
- (9) Schedule 2 (reasonable adjustments) has effect.
- (10) Schedule 3 (exceptions) has effect.

Part 11

Advancement of Equality

Chapter 1

Public Sector Equality Duty

149 Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to--
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to--

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to--

- (a) tackle prejudice, and
- (b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are--
age;

disability;
gender reassignment;
pregnancy and maternity;
race;
religion or belief;
sex;
sexual orientation.

- (8) A reference to conduct that is prohibited by or under this Act includes a reference to--
- (a) a breach of an equality clause or rule;
 - (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.

150 Public authorities and public functions

- (1) A public authority is a person who is specified in Schedule 19.
- (2) In that Schedule--
- Part 1 specifies public authorities generally;
 - Part 2 specifies relevant Welsh authorities;
 - Part 3 specifies relevant Scottish authorities.
- (3) A public authority specified in Schedule 19 is subject to the duty imposed by section 149(1) in relation to the exercise of all of its functions unless subsection (4) applies.
- (4) A public authority specified in that Schedule in respect of certain specified functions is subject to that duty only in respect of the exercise of those functions.

(5) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

165 Passengers in wheelchairs

(1) This section imposes duties on the driver of a designated taxi which has been hired--

(a) by or for a disabled person who is in a wheelchair, or

(b) by another person who wishes to be accompanied by a disabled person who is in a wheelchair.

(2) This section also imposes duties on the driver of a designated private hire vehicle, if a person within paragraph (a) or (b) of subsection (1) has indicated to the driver that the person wishes to travel in the vehicle.

(3) For the purposes of this section--

(a) a taxi or private hire vehicle is "designated" if it appears on a list maintained under section 167;

(b) "the passenger" means the disabled person concerned.

(4) The duties are--

(a) to carry the passenger while in the wheelchair;

(b) not to make any additional charge for doing so;

(c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;

(d) to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;

(e) to give the passenger such mobility assistance as is reasonably required.

(5) Mobility assistance is assistance--

- (a) to enable the passenger to get into or out of the vehicle;
 - (b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
 - (c) to load the passenger's luggage into or out of the vehicle;
 - (d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- (6) This section does not require the driver--
- (a) unless the vehicle is of a description prescribed by the Secretary of State, to carry more than one person in a wheelchair, or more than one wheelchair, on any one journey;
 - (b) to carry a person in circumstances in which it would otherwise be lawful for the driver to refuse to carry the person.
- (7) A driver of a designated taxi or designated private hire vehicle commits an offence by failing to comply with a duty imposed on the driver by this section.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) It is a defence for a person charged with the offence to show that at the time of the alleged offence--
- (a) the vehicle conformed to the accessibility requirements which applied to it, but
 - (b) it would not have been possible for the wheelchair to be carried safely in the vehicle.
- (10) In this section and sections 166 and 167 "private hire vehicle" means--
- (a) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976;
 - (b) a vehicle licensed under section 7 of the Private Hire Vehicles (London) Act 1998;
 - (c) a vehicle licensed under an equivalent provision of a local enactment;
 - (d) a private hire car licensed under section 10 of the Civic Government (Scotland) Act 1982.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 216(3).

Appointment

Appointment (for certain purposes): 1 October 2010: see SI 2010/2317, art 2(1), (12)(b); for savings see art 15 thereof.

Appointment (for remaining purposes): 6 April 2017: see SI 2017/107, art 2(a).

166 Passengers in wheelchairs: exemption certificates

(1) A licensing authority must issue a person with a certificate exempting the person from the duties imposed by section 165 (an "exemption certificate") if satisfied that it is appropriate to do so--

(a) on medical grounds, or

(b) on the ground that the person's physical condition makes it impossible or unreasonably difficult for the person to comply with those duties.

(2) An exemption certificate is valid for such period as is specified in the certificate.

(3) The driver of a designated taxi is exempt from the duties imposed by section 165 if--

(a) an exemption certificate issued to the driver is in force, and

(b) the prescribed notice of the exemption is exhibited on the taxi in the prescribed manner.

(4) The driver of a designated private hire vehicle is exempt from the duties imposed by section 165 if--

- (a) an exemption certificate issued to the driver is in force, and
- (b) the prescribed notice of the exemption is exhibited on the vehicle in the prescribed manner.

(5) For the purposes of this section, a taxi or private hire vehicle is "designated" if it appears on a list maintained under section 167.

(6) In this section and section 167 "licensing authority", in relation to any area, means the authority responsible for licensing taxis or, as the case may be, private hire vehicles in that area.

167 Lists of wheelchair-accessible vehicles

(1) For the purposes of section 165, a licensing authority may maintain a list of vehicles falling within subsection (2).

(2) A vehicle falls within this subsection if--

- (a) it is either a taxi or a private hire vehicle, and
- (b) it conforms to such accessibility requirements as the licensing authority thinks fit.

(3) A licensing authority may, if it thinks fit, decide that a vehicle may be included on a list maintained under this section only if it is being used, or is to be used, by the holder of a special licence under that licence.

(4) In subsection (3) "special licence" has the meaning given by section 12 of the Transport Act 1985 (use of taxis or hire cars in providing local services).

(5) "Accessibility requirements" are requirements for securing that it is possible for disabled persons in wheelchairs--

- (a) to get into and out of vehicles in safety, and
- (b) to travel in vehicles in safety and reasonable comfort,

either staying in their wheelchairs or not (depending on which they prefer).

(6) The Secretary of State may issue guidance to licensing authorities as to--

- (a) the accessibility requirements which they should apply for the purposes of this section;
- (b) any other aspect of their functions under or by virtue of this section.

(7) A licensing authority which maintains a list under subsection (1) must have regard to any guidance issued under subsection (6).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 216(3).

Appointment

Sub-ss (1)-(5), (7): Appointment (for certain purposes): 1 October 2010: see SI 2010/2317, art 2(1), (12)(d); for savings see art 15 thereof.

Sub-ss (1)-(5), (7): Appointment (for remaining purposes): 6 April 2017: see SI 2017/107, art 2(b).

Sub-s (6): Appointment: 1 October 2010: see SI 2010/2317, art 2(1), (12)(e); for savings see art 15 thereof.

173 Interpretation

(1) In this Chapter--

"accessibility requirements" has the meaning given in section 167(5);

...

"taxi"--

(a) means a vehicle which is licensed under section 37 of the Town Police Clauses Act 1847 or section 6 of the Metropolitan Public Carriage Act 1869, and

...

"taxi accessibility regulations" has the meaning given by section 160(1).

(2) A power to make regulations under paragraph (c) or (d) of the definition of "assistance dog" in subsection (1) is exercisable by the Secretary of State.

Part 16 General and Miscellaneous

Interpretation

212 General interpretation

(1) In this Act—

...

"substantial" means more than minor or trivial;

...

(2) A reference (however expressed) to an act includes a reference to an omission.

(3) A reference (however expressed) to an omission includes (unless there is express provision to the contrary) a reference to—

(a) a deliberate omission to do something;

(b) a refusal to do it;

(c) a failure to do it.

(4) A reference (however expressed) to providing or affording access to a benefit, facility or service includes a reference to facilitating access to the benefit, facility or service.

SCHEDULE 2

SERVICES AND PUBLIC FUNCTIONS: REASONABLE ADJUSTMENTS

Section 31

Preliminary

1

This Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part.

The duty

2

(1) A must comply with the first, second and third requirements.

(2) For the purposes of this paragraph, the reference in section 20(3), (4) or (5) to a disabled person is to disabled persons generally.

(3) Section 20 has effect as if, in subsection (4), for "to avoid the disadvantage" there were substituted--

"(a) to avoid the disadvantage, or

(b) to adopt a reasonable alternative method of providing the service or *exercising the function*."

(4) In relation to each requirement, the relevant matter is the provision of the service, or the exercise of the function, by A.

(5) Being placed at a substantial disadvantage in relation to the exercise of a function means--

(a) if a benefit is or may be conferred in the exercise of the function, being placed at a substantial disadvantage in relation to the conferment of the benefit, or

(b) if a person is or may be subjected to a detriment in the exercise of the function, suffering an unreasonably adverse experience when being subjected to the detriment.

(6) In relation to the second requirement, a physical feature includes a physical feature brought by or on behalf of A, in the course of providing the service or exercising the function, on to premises other than those that A occupies (as well as including a physical feature in or on premises that A occupies).

(7) If A is a service-provider, nothing in this paragraph requires A to take a step which would fundamentally alter--

(a) the nature of the service, or

(b) the nature of A's trade or profession.

(8) If A exercises a public function, nothing in this paragraph requires A to take a step which A has no power to take.

Special provision about transport

(1) This paragraph applies where A is concerned with the provision of a service which involves transporting people by land, air or water.

(2) It is never reasonable for A to have to take a step which would--

- (a) involve the alteration or removal of a physical feature of a vehicle used in providing the service;
- (b) affect whether vehicles are provided;
- (c) affect what vehicles are provided;
- (d) affect what happens in the vehicle while someone is travelling in it.

(3) But, for the purpose of complying with the first or third requirement, A may not rely on sub-paragraph (2)(b), (c) or (d) if the vehicle concerned is--

- (a) a hire-vehicle designed and constructed for the carriage of passengers, comprising more than 8 seats in addition to the driver's seat and having a maximum mass not exceeding 5 tonnes,
- (b) a hire-vehicle designed and constructed for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes,
- (c) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976 or section 7 of the Private Hire Vehicles (London) Act 1998 (or under a provision of a local Act corresponding to either of those provisions),
- (d) a private hire car (within the meaning of section 23 of the Civic Government (Scotland) Act 1982),
- (e) a public service vehicle (within the meaning given by section 1 of the Public Passenger Vehicles Act 1981),
- (f) a vehicle built or adapted to carry passengers on a railway or tramway (within the meaning, in each case, of the Transport and Works Act 1992),
- (g) a taxi,
- (h) a vehicle deployed to transport the driver and passengers of a vehicle that has broken down or is involved in an accident, or
- (i) a vehicle deployed on a system using a mode of guided transport (within the meaning of the Transport and Works Act 1992).

- (4) In so far as the second requirement requires A to adopt a reasonable alternative method of providing the service to disabled persons, A may not, for the purpose of complying with the requirement, rely on sub-paragraph (2)(b), (c) or (d) if the vehicle is within sub-paragraph (3)(h).
- (5) A may not, for the purpose of complying with the first, second or third requirement rely on sub-paragraph (2) of this paragraph if A provides the service by way of a hire-vehicle built to carry no more than 8 passengers.
- (6) For the purposes of sub-paragraph (5) in its application to the second requirement, a part of a vehicle is to be regarded as a physical feature if it requires alteration in order to facilitate the provision of--
- (a) hand controls to enable a disabled person to operate braking and accelerator systems in the vehicle, or
 - (b) facilities for the stowage of a wheelchair.
- (7) For the purposes of sub-paragraph (6)(a), fixed seating and in-built electrical systems are not physical features; and for the purposes of sub-paragraph (6)(b), fixed seating is not a physical feature.
- (8) In the case of a vehicle within sub-paragraph (3), a relevant device is not an auxiliary aid for the purposes of the third requirement.
- (9) A relevant device is a device or structure, or equipment, the installation, operation or maintenance of which would necessitate making a permanent alteration to, or which would have a permanent effect on, the internal or external fabric of the vehicle.
- (10) Regulations may amend this paragraph so as to provide for sub-paragraph (2) not to apply, or to apply only so far as is prescribed, in relation to vehicles of a prescribed description.

Interpretation

4

- (1) This paragraph applies for the purposes of paragraph 3.
- (2) A "hire-vehicle" is a vehicle hired (by way of a trade) under a hiring agreement to which section 66 of the Road Traffic Offenders Act 1988 applies.
- (3) A "taxi", in England and Wales, is a vehicle--

- (a) licensed under section 37 of the Town Police Clauses Act 1847,
 - (b) licensed under section 6 of the Metropolitan Public Carriage Act 1869, or
 - (c) drawn by one or more persons or animals.
- (4) A "taxi", in Scotland, is--
- (a) a hire car engaged, by arrangements made in a public place between the person to be transported (or a person acting on that person's behalf) and the driver, for a journey starting there and then, or
 - (b) a vehicle drawn by one or more persons or animals.

Part 9

Transport

Application to disability

32

This Part of this Schedule applies in relation to disability discrimination.

...

[Transport by land: road]

34

(1) Section 29 does not apply to transporting people by land, unless the vehicle concerned is--

- (a) a hire-vehicle designed and constructed for the carriage of passengers and comprising no more than 8 seats in addition to the driver's seat,

...

- (d) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976 or section 7 of the Private Hire Vehicles (London) Act 1998 (or under a provision of a local Act corresponding to either of those provisions),

...

(h) a taxi,

...

(2) Paragraph 4 of Schedule 2 applies for the purposes of this paragraph as it applies for the purposes of paragraph 3 of that Schedule.

Duty to make reasonable adjustments as applied to the exercise of a public function (e.g. the Council) and the provision of a service (e.g. ILHL, taxis):

Ssection 20 as read in accordance with Schedule 2, which requires section 20 to be modified

(Emphasis by underlining added.)

UK Parliament Acts/E/EO-ET/Equality Act 2010 (2010 c 15)/Part 2 Equality: Key Concepts (ss 4-27)/20 Duty to make adjustments

Adjustments for disabled persons

20 Duty to make adjustments

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

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts disabled persons generally at a substantial disadvantage in relation to **the provision of the service / the exercise of the function** in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts disabled persons generally at a substantial disadvantage in relation to **the provision of the service / the exercise of the function** in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take **(a) to avoid the disadvantage or (b) to adopt a reasonable alternative method of providing the service or exercising the function.**

(5) The third requirement is a requirement, where disabled persons generally would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to **the provision of the service / the exercise of the function** in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

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

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

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

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to--

- (a) removing the physical feature in question,
- (b) altering it, or
- (c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to--

- (a) a feature arising from the design or construction of a building,
- (b) a feature of an approach to, exit from or access to a building,
- (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
- (d) any other physical element or quality.

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

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

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

<i>Part of this Act</i>	<i>Applicable Schedule</i>
Part 3 (services and public functions)	<u>Schedule 2</u>
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

Schedule 2 para 2(5):

“Being placed at a substantial disadvantage in relation to the exercise of a function means:-

(a) If a benefit is or may be conferred in the exercise of the function, being placed at a substantial disadvantage in relation to the conferment of the benefit, or

(b) If a person is or may be subjected to a detriment in the exercise of the function, suffering an unreasonably adverse experience when being subjected to the detriment.”