

# CONSULTATION DRAFT



**Applying Equality Law in Practice:  
Guidance for Catholics  
and  
Catholic Organisations**

# CONSULTATION DRAFT

Prepared by the Department for Christian Responsibility and Citizenship and approved for publication by The Catholic Bishops' Conference of England and Wales.

[www.catholicchurch.org.uk/equality](http://www.catholicchurch.org.uk/equality)

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This Document provides general guidance based on the Law as it exists on 29 June 2013. Persons or Organisations faced with specific issues or legal challenges are advised to take independent legal advice. No responsibility is accepted for any action taken or not taken as a result of advice in this document.

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## FOREWORD TO THIS CONSULTATION

The purpose of this guidance is to give informed advice and guidance to dioceses and to Catholic individuals and organisations.

It is intended as a resource which can be referred to when a particular issue arises, but it is not a substitution for proper legal advice.

The new world of equality law is complex and there will be challenges for us as Catholics in trying to apply this new law. There are, however, opportunities as it protects against discrimination on the grounds of religion.

Archbishop Peter Smith

### **How to respond to this consultation**

Please send any comments or suggested alterations to William Garnier via email ([william.garnier@cbcew.org.uk](mailto:william.garnier@cbcew.org.uk)) or phone (0207 901 4849).

Please note that the deadline for responses to the consultation is the **31<sup>st</sup> May 2014**.

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## INTRODUCTION

This guidance has been created in response to the Equality Act 2010, a piece of legislation that not only brings together existing equality legislation into a single act, but which also introduces several new provisions. As the Equality Act was only passed relatively recently it is still unclear how many of its provisions will be interpreted by the courts.

This guide seeks to provide an accurate overview of equality law as it stands on [DATE] with a focus on religious issues, as well as setting out the Catholic Church's vision as to how this legislation should be interpreted. This is intended to be general guidance only, which should allow Catholic individuals and organisations to identify areas that may lead to legal complications. Any person or organisation faced with specific issues or legal challenges identified in this guide is advised to take independent legal advice.

From the Catholic Church's perspective equality, in this context at least, is an attempt at establishing a measure of justice for people, and is one important way in which to attempt to promote the inherent human dignity within all of us. All human beings are equal and have intrinsic dignity. This is one of the most fundamental truths of Christianity. All of us are created in the image of God, are loved by God, and are part of one human family; therefore every human being deserves to be treated as being of inestimable value. This belief, articulated by the Second Vatican Council, must be reflected and lived out in the practice of Catholic organisations and institutions.

The Catholic Church has for a number of years actively striven to overcome the difficulties faced by many groups in society. The Church has had a consistent stance, for example, on the inclusion of disabled people within the life of the Church,<sup>1</sup> and has made great efforts to overcome racism in all its forms both within the church and in society in general.<sup>2</sup>

As such the framework of the Equality Act 2010, based as it is on the concept of upholding the inherent dignity of every person, should be interpreted as entirely in accordance with Catholic teaching.

Of course although the framework the 2010 Act is in line with Catholic teaching, not all of the decisions reached through that framework will be. There will be instances of unjust discrimination against religious people, where the rights of some groups will be placed over the deeply held beliefs of others. This is inevitable as equality law has led to many instances of conflicting rights of various protected groups, where a

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<sup>1</sup> *"Valuing difference"* (Catholic Bishops Conference of England and Wales, 1998)

This publication is now out of print but it is available at: <http://www.cbcew.org.uk/document.doc?id=70>

<sup>2</sup> *"The changing face of Britain"* (CARJ, 2008)

Available at: [http://www.carj.org.uk/CARJ\\_publications.html](http://www.carj.org.uk/CARJ_publications.html)

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single situation raises various rights from various protected groups or activities. In such a situation the court will attempt to balance the rights of the groups and determine which group is most in need of protection in the given circumstances. One of the most well publicised instances where religious rights were not upheld was the decision on Catholic adoption agencies in 2009.<sup>3</sup> In such a context, respecting the rights of all and promoting justice and equality is both complex and challenging.

However, the Equality Act makes clear that the protection of religious rights are an important part of that framework and the Catholic Church, organisations and individuals should all participate in the dialogue between all the protected groups to shape what equality law will look like in the future.

In the face of such complex challenges we, as individual Catholics and as Catholic organisations, must always be mindful of several key points:

- Catholics should always remember that our primary obligation is to the values of the gospel and the teachings of the Church. We have a fundamental duty to give witness to the Gospel (by striving to be inclusive, respecting the human dignity of all, and promoting the benefits of the law).
- A fundamental aspect of this teaching is that every person deserves to be treated as inestimably valuable; therefore all Catholic bodies should acknowledge their commitment to justice and equality.
- Each Catholic organisation and institution has a responsibility to safeguard and uphold the Catholic ethos and identity of its organisations and institutions.

As we take up the challenges to come, we must remain true to our faith, and we expect society and government to provide the freedom to enable us to do so.

As Catholics we are called to be a neighbour and friend to all men and women, as we struggle together to create a more just society. We must continue the recent and valuable work of Catholic organisations and institutions in applying legislative changes in the areas of human rights and equality, and we must do so in recognition of our moral obligation to respect the human dignity of every person in all that we do.

We hope that this Guidance for Catholics on equality law will help us as we strive to conform to both Catholic teaching and the civil law. The values upheld in this document should be reflected in our dealings with all people.

It is envisaged that in the vast majority of cases there will be no dispute arising from the Equality Act 2010. However if it becomes apparent that such a dispute may arise it is advised that relevant legal advice should be taken.

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<sup>3</sup> [http://www.charity.tribunals.gov.uk/documents/decisions/CatholicCareDecision\\_1609v2.pdf](http://www.charity.tribunals.gov.uk/documents/decisions/CatholicCareDecision_1609v2.pdf)



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## 1. HOW TO USE THIS DOCUMENT

### ***1.1. Look at the description of the protected characteristics***

1. The meaning of the protected characteristics is often different to what their title might initially suggest. As such it is worth looking through the descriptions provided in Chapter 4 to get a fuller understanding of their legal meaning.

### ***1.2. Look at the definitions of the prohibited behaviour***

2. There are four main types of prohibited behaviour within the Equality Act 2010; direct discrimination, indirect discrimination, harassment and victimisation.
3. These are discussed in Chapter 2, “Key Terms” and it is important to fully understand the meaning and ambit of these behaviours.

### ***1.3. Consider the religious exceptions and whether they might apply to you or your organisation***

4. These are contained in Chapter 5, “Specific Guidance”.
5. This guide is not a comprehensive examination of the exceptions for religious organisations, and the exceptions outlined in “Specific Guidance” are intended to give an overview of the provisions for religious organisations. As such it would be wise to seek independent legal advice to be clear as to whether you are or are not covered by these provisions.

### ***1.4. Consider your own policies, or how you have been affected by the policies of others***

6. If you are concerned that there is a chance that you are in breach of the provisions of the Equality Act 2010, or that the way that you are treated by someone else is a breach of those provisions seek legal advice.
7. There is a list of sources of advice contained in the appendix to this document.

### ***1.5. You may also find your questions answered in the frequently asked questions section.***

8. This can be found on the next page.

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## **Frequently asked questions**

### ***1.6. Can I refuse to let the Church Hall to some groups?***

9. The short answer is yes but there are several caveats to that statement. This is discussed in detail in section 5.9.
10. If the restriction is not based upon protected characteristics (see chapter 4) then it may not be prevented under the Equality Act. However care must be taken not to inadvertently indirectly discriminate (see section 2.5) against a protected group.

### ***1.7. Can I advertise for a Catholic organist or cleaner?***

11. It is highly unlikely that it will be lawful to advertise for a specific religious persuasion for this type of post, unless there is a specific reason why the cleaner or organist must be Catholic. There are, however, some exceptions to the general position of not being able to specify the religion of an employee, these are described in detail in sections 5.1 to 5.2.

### ***1.8. Is it legal to advertise only in the Catholic press?***

12. Although not specified as unlawful in itself, it could lead to accusations of indirect discrimination (see section 2.6) in some instances.
13. To take the example above of advertising for an organist or cleaner, if the posts were only advertised in the Catholic press then it could be seen as indirectly discriminating against non-Catholics. If however an advert were placed in a Catholic newspaper as well as a local secular paper then that should mean that everyone would have an equal opportunity to be aware of the job and therefore probably no indirect discrimination.
14. With regards to commercial advertising for goods and services similar considerations apply. Advertising in the Catholic press alongside mainstream or secular publications should mean there are no accusations of indirect discrimination.
15. In both cases it would be lawful to advertise only in the Catholic press as long as it was a proportionate means to a legitimate aim (see section 2.7).

### ***1.9. Are people allowed to disrupt services or Parish events?***

16. No they are not. People have a right to worship peacefully without suffering disruption. However whether the cause of the disruption is due to a disability on the part of the disruptive person or whether they are being disruptive for another reason such as disapproval of Catholic teaching might have an impact on the legal responsibilities in such a situation.

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17. If the disruptive person is disruptive because of an intellectual disability or mental health complaint then you may have a duty to make reasonable adjustments for them as they may be protected by the “disability” protected characteristic (see section 4.2). This does not mean that they must be accommodated no matter the difficulty or cost, only if the adjustment is “reasonable”.
18. If however the person is being disruptive without a medical reason then there is no requirement to treat them any differently than you would normally and they can be told to leave the church. It may also constitute a criminal offence on the part of the disruptor.

## ***1.10. Must I let anyone join a Parish organisation?***

19. This is regulated under the membership provisions in the Equality Act. More detail on this can be found in sections 5.4 to 5.6. It is likely that a parish organisation will be a “single characteristic organisation” (see section 5.5) and can therefore legally restrict membership to Catholics only.
20. Also bear in mind that an organisation made of less than 25 members is not regulated by the Equality Act and that therefore any restrictions the group feels are appropriate can be imposed without being regulated by the law.
21. One must also consider what grounds it is appropriate to exclude someone on, on a theological basis. Appropriate advice should be sought from the diocese on this matter before considering the legal implications.

## ***1.11. Can I provide social activities just for the Catholic community?***

22. This depends both on the type of services that are provided and the organisation that wishes to provide them. A charity with a specific charitable purpose to provide services to the Catholic community may be able to make use of an exception in the Equality Act (see section 5.8).
23. Any religious organisation may be able to restrict who services are provided to, as long as it is required under Catholic teaching. More details can be found in section 5.8.

## ***1.12. Do I have to provide disabled access to every part of the Church and Hall, including cellars and choir lofts, whatever the cost?***

24. There is a duty to make “reasonable adjustments” (see section 4.2) to ensure that disabled people are not discriminated against. As such an extravagantly high cost may mean that an adjustment is not reasonable. However every effort should be made to allow a disabled person to engage as fully as possible in the life of the church, and for them not to be excluded merely because of their disability.

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## ***1.13. Does Parish information have to be available in other languages or braille?***

25. As above there is a duty to make reasonable adjustments for disabled people, and this may include the provision of braille. Contact the diocese or one of the other organisations in the “Sources of Advice” section below to see if there are materials available.
26. The requirement to make reasonable adjustments also extends to those with intellectual disabilities, and as such provision of materials in pictorial form, or in other ways that are accessible may be appropriate. Contact your diocese to find out if there are any materials available.
27. There is no explicit requirement to provide materials in other languages, however it might be considered indirectly discriminatory against the protected characteristic of race (see section 4.6). Of course efforts must be made to accommodate our Catholic brothers and sisters in every way we can, regardless of language.

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## 2. KEY TERMS

### ***2.1. Human Rights***

29. Human rights are fundamental rights that each human being is intrinsically entitled to by virtue of their inherent human dignity.
30. The UK's human rights obligations are enforced domestically through the Human Rights Act 1998, and internationally through the European Convention on Human Rights and Fundamental Freedoms (ECHR).
31. The Human Rights Act requires that all domestic laws are to be read, so far as is reasonably possible, in accordance with the rights contained in the ECHR, or that if that is not possible they are declared not to be compliant with human rights.
32. The most important articles of the ECHR are set out in the appendix.

### ***2.2. Equality Act 2010***

33. The ECHR gives some protection from discrimination, but the primary protection in this country is provided by the Equality Act 2010.
34. The Equality Act brings together several existing pieces of equality legislation as well as introducing some new provisions. It also ensures that the UK complies with EU equality requirements.

### ***2.3. Protected characteristics***

35. The Equality Act sets out nine "protected characteristics." It is unlawful to discriminate on the basis of these characteristics in certain contexts, with certain limited exceptions. The protected characteristics are:
  - (a) Age,
  - (b) Disability,
  - (c) Gender reassignment,
  - (d) Marriage and civil partnership,
  - (e) Pregnancy and maternity,
  - (f) Race,
  - (g) Religion or belief,
  - (h) Sex,
  - (i) Sexual Orientation.

### ***2.4. Prohibited conduct***

36. The Equality Act sets out four main types of prohibited behaviour; direct discrimination, indirect discrimination, harassment and victimisation. This is

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behaviour that is unlawful in certain contexts, most importantly in employment, education and the provision of services.

## **2.5. Direct Discrimination**

37. Direct discrimination is treating a person less favourably than others because of a protected characteristic.<sup>4</sup> For example refusing to hire someone because of their race or gender would be directly discriminatory.
38. A person does not have to possess a protected characteristic in order to experience less favourable treatment because of that characteristic: a person might be associated with someone who has the characteristic ('discrimination by association') or the person might be wrongly perceived as having the characteristic ('discrimination by perception').
39. Direct discrimination is generally unlawful; however it may be lawful in certain limited circumstances. Those that are most relevant to Catholics and Catholic organisations will be examined later in this guide.

## **2.6. Indirect Discrimination**

40. 'Indirect Discrimination' may occur where a provision, criterion, or practice is applied that appears to treat everyone equally, but in fact has a disproportionate adverse impact on individuals with protected characteristics. For example, a rule dictating that applicants for a job must be clean shaven puts members of some religious groups at a disadvantage.

## **2.7. Proportionate means to a legitimate aim**

41. Many exemptions in the Equality Act require that any restriction based on a protected characteristic is a proportionate means towards achieving a legitimate aim. For example, indirect discrimination (but not direct discrimination) can be lawful if it is a proportionate means of achieving a legitimate aim.
42. In essence this means there must be a genuine need for a policy (a "legitimate aim"). If it is particularly disadvantageous to people with protected characteristics, it must be shown that there is not a less discriminatory alternative to achieving that legitimate aim, and that the benefit gained is more important than the discrimination caused ("a proportionate means"). Cost alone can never be a legitimate aim, although it could be part of a larger legitimate aim.
43. For example in a case taken to the European Court of Human Rights in 2013 it was stated that if preventing a worker wearing a crucifix on a chain in order to maintain health and safety in a hospital contributes to achieving a very

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<sup>4</sup> Equality Act 2010, s.13

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important benefit, whilst causing minor inconvenience to the wearer of the cross if other methods of keeping it on their person were allowed, the restriction would be acceptable. On the other hand if not allowing a small discreet crucifix to be visible whilst wearing a uniform provides a small benefit for the employer (a unified dress code) whilst infringing on a highly important right of the worker to express her religion, it is not acceptable.<sup>5</sup>

## **2.8. Harassment**

44. Harassment is unwanted conduct, related to a protected characteristic, which has the purpose or effect of violating a person's dignity or creating an intimidating hostile degrading humiliating or offensive environment for that person.<sup>6</sup>
45. Conduct that could constitute harassment might include insulting remarks about the individual's religion. On the other hand a Catholic could be accused of harassment of their non-Catholic colleagues if they engage in unwanted proselytisation on behalf of the Catholic faith.
46. All employees have the right to be free from harassment and and this includes the right not to be harassed because of their religion. Employers are therefore legally obliged to ensure that no employee suffers any form of harassment in the course of his or her employment, and should take action to address the situation whenever a person feels that he or she is being harassed. Catholic organisations should have a policy on both bullying and harassment.
47. If this conduct is brought to the attention of to the employer but nothing is done to stop it then the conduct could constitute unlawful harassment for which the employer could be liable (also known as being vicariously liable).
48. Employers should take seriously claims by individuals that they are encountering prejudice, discrimination or harassment in their work and must not dismiss these as over-sensitivity. An employee must not be penalised for raising these issues; such treatment could lead to the employer being liable for victimisation (see below).

## **2.9. Victimisation**

49. The legislation on victimisation protects people who try to enforce their rights under the Equality Act, or who support others who do so. As such no one should be afraid to stand up for their rights to be treated equally, and it is

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<sup>5</sup> *Eweida & others v UK* [2013] ECHR 37

<sup>6</sup> Equality Act 2010, ss.26(1)



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important that if someone does bring a complaint under the Equality Act they are treated fairly and not subjected to unfavourable treatment because of it.<sup>7</sup>

## **2.10. Positive Action**

50. Positive action allows an employer to overcome difficulties for those with protected characteristics, or to help and encourage those with protected characteristics to apply for positions where persons with the protected characteristic are under-represented.<sup>8</sup>
51. One of the most common examples of positive action is where an employer prefers candidates possessing protected characteristics in order to address under representation. In order for employers to take positive action in this situation they must satisfy a two part test; the applicant must qualify for positive action and the positive action must be for the correct aim.<sup>9</sup>
52. In order for the applicant to qualify they must have a protected characteristic (e.g. race), and it must be shown that people with that protected characteristic suffer a disadvantage connected to the characteristic, or that disproportionately few people possessing that characteristic take part in an activity.
53. It must then be shown that the applicant possessing the characteristic is at least as equally well-qualified as any rival candidates for the role who do not possess the protected characteristic. It is not lawful to prefer a less qualified applicant if they do not satisfy this criteria.
54. The aim of the positive action must be either to overcome the disadvantage or to encourage or enable the under-represented minority to take part in the activity and not for any other reason.
55. Positive action also makes possible the introduction of measures to ensure that those that could not fully participate in a given activity initially can do so, even if these measures may confer an additional benefit on that group of people. This could include, for example, the introduction of features in a building to make it easier for a disabled person to gain access to that building.
56. Positive action is not the same as positive discrimination. It is not allowed to treat those who are over-represented in a group less favourably than those who are under-represented.

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<sup>7</sup> Equality Act 2010, ss.27(1)-(2)

<sup>8</sup> Equality Act 2010, s.158

<sup>9</sup>

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## 3. PUBLIC SECTOR EQUALITY DUTY

57. Under the Equality Act 2010 any “public authority” has a duty 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.”<sup>10</sup>*

58. The Act then goes on to specify that public authorities in particular 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.”<sup>11</sup>*

59. This means that these public authorities have a much greater obligation under the Equality Act than private bodies. This can affect Catholics in a two main ways; in how public authorities are obliged to conduct their affairs with regard to Catholics and in how the Public Sector Equality Duty (PSED) affects contracts between Catholic organisations and public sector organisations for the provision of public services.

60. Different rules apply in England and in Wales. Although the specific duties organisations should comply with are too complex to be discussed within the scope of this guidance, both in England and in Wales individuals should be able to ask for a statement from a public organisation setting out key features about information relating to their PSED requirements.

61. It can be hard to define what constitutes a “public authority”. It includes all easily recognised public bodies such as local authorities, public hospitals, government departments, and the emergency services. However the definition also extends to so-called “hybrid” organisations which exhibit characteristics of public bodies, but which have non-public aspects also. For instance this could include a social housing trust in some cases.

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<sup>10</sup> Equality act 2010, s.149(1)

<sup>11</sup> Equality act 2010, s.149(3)

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62. Whether an organisation is considered public or not must be considered on a case by case basis. If your organisation is strongly influenced by a public authority, or does work that is normally carried out by a public authority it would be prudent to seek legal advice to decide whether the organisation was covered by the PSED.

## **3.1. PSED and Catholics**

63. Public authorities have the same obligations as other organisations not to subject anyone to direct or indirect discrimination, harassment or victimisation. However the PSED goes further than this and also requires that public authorities take active steps to advance equality of opportunity between persons who share a relevant protected religion or belief, and persons who do not share it, and to foster good relations between persons who share a relevant protected religion or belief and persons who do not share it. On certain occasions, therefore, public authorities subject to this duty may be under an obligation to seek to advance the equal opportunity of Catholics to access particular services, for example, or to seek to further good relations between Catholics and others..

## **3.2. PSED and the provision of public services**

64. In general Catholic organisations will not be regarded as ‘public authorities’ and will not therefore fall directly under the PSED obligations. However, Catholic organisations may fall under these obligations indirectly, through public contracts. Catholic organisations should, therefore, be aware of this when tendering to provide services for public authorities. Any contract that a public authority signs must comply with the PSED, and as such contractors are likely to be required to maintain standards similar in nature to the PSED.
65. Any organisation that feels that this may be inappropriate for them having regards to the nature of their organisation or for any other reason should seek appropriate legal advice on the matter before tendering for contracts from public authorities.
66. Of course, Catholic educational establishments *will* mostly be ‘public authorities’ for these purposes. However this guide is not intended to cover equality issues in the education sector. For advice on the PSED and how it relates to schools it is best to contact the local diocese or the Catholic Education Service (<http://www.catholiceducation.org.uk/>).

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## 4. THE PROTECTED CHARACTERISTICS

68. The protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation) are different and yet inter-related. Each characteristic has its own history and nuances; but there are also similarities in the experience of prejudice and inequality across these areas. It is vital that the characteristics are never conflated; each must be examined on its own merits.
69. However protected characteristics do not exist in a vacuum. In any given situation it is likely that the protected characteristics of one person will have to be weighed against the protected characteristics of another, and the context within which a person with the protected characteristic is affected will be important.

### 4.1. Age

70. In general it is unlawful to discriminate on the grounds of age, although it is legal to discriminate on the grounds of age in particular circumstances, for example in the provision of services when someone is under 18.<sup>12</sup> There are other specific exceptions which are outside the scope of this guidance, more information can be found on the Equality and Human Rights Commission website.<sup>13</sup>

### 4.2. Disability

71. A person is considered to be a person with a disability under the Act<sup>14</sup> if they have a physical or mental impairment that is more than minor or trivial (it is 'substantial')<sup>15</sup> and has, or is likely to, affect their ability to perform normal daily activities for 12 months or more (it is 'long term').<sup>16</sup>
72. The Equality Act requires employers and providers of goods and services to make 'reasonable adjustments'<sup>17</sup> to accommodate the needs of people with disabilities. This means that an employer must make sure that a person with disabilities has the same access, as far as is reasonable, to everything that is involved in getting and doing a job that a person without disabilities has. The Government may provide help for the extra costs incurred in order to make reasonable adjustments through the 'Access to Work' scheme.<sup>18</sup>

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<sup>12</sup> Equality Act 2010, s. 28(1)(a)

<sup>13</sup> <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

<sup>14</sup> Equality Act 2010, s.6

<sup>15</sup> Equality Act 2010, s.212(1)

<sup>16</sup> Equality Act 2010, Schedule 1, para 2(1)

<sup>17</sup> Equality Act 2010, ss.20-22

<sup>18</sup> <https://www.gov.uk/access-to-work>

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## 4.3. Gender Reassignment

73. A person is considered transsexual, and protected by this protected characteristic if:

*"...the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex."<sup>19</sup>*

74. The Gender Recognition Act 2004 allows people to have their birth certificates altered and makes it unlawful to disclose information about gender reassignment unless the person has given permission.<sup>20</sup> There is no requirement for transsexual persons to inform their employer of their gender reassignment in order to be protected under the Equality Act 2010.<sup>21</sup>

75. The law does not require a person to undergo a medical procedure to be recognised as a transsexual; however the Equality Act 2010 required that a person should have at least proposed to undergo gender reassignment (it does not require that such a proposal should be irrevocable).

76. Discrimination against a person outside of the exceptions contained in the Equality Act (see chapter 5) is prohibited once a person has been recognised in the acquired sex. There are, however, certain limited exceptions to this rule<sup>22</sup> but they are outside the scope of this guidance. Further advice on this can be found on the EHRC website.<sup>23</sup>

77. Transsexual people face many difficulties before, during and after transitioning to another gender. As such it is recommended to seek guidance on how to make the transitional process as easy as possible. This could include training for co-workers, as well as reference to medical and social advice.

## 4.4. Marriage and Civil Partnership

### Marriage:

78. Both opposite sex couples and same sex couples can become legally married following the coming into force of the Marriage (Same Sex Couples) Act 2013. It is predicted that the first same sex marriages will be performed in summer 2014.

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<sup>19</sup> Equality Act 2010, s.7

<sup>20</sup> Gender Recognition Act, s.22

<sup>21</sup> There are certain exceptions to these provisions but they are outside the scope of this guidance.

<sup>22</sup> Equality Act 2010, schedule 9, para 1(1) and (3)(a)

<sup>23</sup> <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

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79. The legal definition of marriage is now at odds with the Church's teaching on the meaning of marriage,<sup>24</sup> but there is no requirement for the Church to change its teaching on what marriage is. Catholic teaching does not allow a marriage between two people of the same gender, or between two people of a different gender where one (or both) of them has had their gender re-assigned.<sup>25</sup>
80. There are protections that prevent most individuals and religious organisations from being compelled to take part in same sex marriage ceremonies. These are discussed in sections 5.10 to 5.12.
81. Treating a same sex married couple less favourably than an opposite sex married couple will amount to direct discrimination. Therefore it is not possible to argue that such behaviour is a proportionate means to a legitimate aim (see section 2.7), and as such will be unlawful unless it falls within the exceptions outlined in Chapter 5.

## Civil Partnership:

82. Same sex couples can enter into civil partnerships with one another.<sup>26</sup> Civil partners generally have the same legal rights and responsibilities as married couples. It is unlawful to treat those in a civil partnership less favourably than those in a marriage, and vice versa.
83. Civil Partnership ceremonies may be conducted on religious premises<sup>27</sup> however the regulations allow for different premises to be approved for registration of civil partnerships from those approved for registration of civil marriages,<sup>28</sup> and for different provision to be made for different kinds of premises.
84. Nothing in the Civil Partnership Act 2004 obliges any religious organisation to host civil partnerships if they do not wish to.<sup>29</sup> Catholic Churches, as with same sex marriages, cannot be forced to host civil partnerships.
85. Treating those in civil partnerships less favourably than those in an opposite sex marriage has been held to constitute direct discrimination.<sup>30</sup> Therefore it is not possible to argue that such behaviour is a proportionate means to a legitimate aim (see section 2.7), and as such will be unlawful unless it falls within the exceptions outlined in Chapter 5.

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<sup>24</sup> "The narrow gate" Archbishop Vincent Nichols (2013), available at: <http://www.catholic-ew.org.uk/Home/News/Marriage-Same-Sex-Couples-Act2>

<sup>25</sup> Canon 1055 - 1165

<sup>26</sup> Civil Partnership Act 2004

<sup>27</sup> Equality Act 2010, s.202

<sup>28</sup> Civil Partnership Act 2004, s.6A(2A)

<sup>29</sup> Civil Partnership Act 2004, s.6A(3A)

<sup>30</sup> Bull & Anor v Hall & Anor [2013] UKSC 73

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## **4.5. Pregnancy and Maternity**

86. This protected characteristic covers the condition of being pregnant and the subsequent period after birth. The Equality Act provides protection regarding both employment and the provision of services.<sup>31</sup>
87. Maternity discrimination protection with regard to the provision of services lasts during the pregnancy and for 26 weeks after giving birth.<sup>32</sup> The Equality Act explicitly includes treating a woman unfavourably because she is breastfeeding as an example of discrimination.<sup>33</sup>
88. Maternity law within employment is a complex subject, and is largely outside the scope of this guidance. Guidance on this issue can be found on the Equality and Human Rights Commission website.<sup>34</sup>

## **4.6. Race**

89. The definition of race is quite broad, covering any reference to colour, nationality, and ethnic or national origins.<sup>35</sup> The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.<sup>36</sup>
90. Although there are provisions within the Equality Act for caste to be included within the protected characteristic of race, at the time of writing caste is not covered by the protected characteristic of race.<sup>37</sup> The government has announced a consultation on the matter.<sup>38</sup>

## **4.7. Religion or Belief**

91. Religion is defined as any religion and a reference to religion includes a reference to a lack of religion, and belief as any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.<sup>39</sup> This meaning is consistent with the ECHR.<sup>40</sup> Catholicism is a 'religion' for the purposes of the Equality Act 2010 and the ECHR.
92. 'Religious belief' goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same

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<sup>31</sup> Equality Act 2010, ss.17-18

<sup>32</sup> Equality Act 2010, s.17(3)

<sup>33</sup> Equality Act 2010, s.17(4)

<sup>34</sup> <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

<sup>35</sup> Equality Act 2010, s.9

<sup>36</sup> Equality Act 2010, s.9

<sup>37</sup> Equality Act 2010, s.9 (5)

<sup>38</sup> <https://www.gov.uk/government/news/caste-discrimination-consultation-programme-timetable-announced>

<sup>39</sup> Equality Act 2010, s.10(1)-(2)

<sup>40</sup> European Convention of Human rights and Fundamental Freedoms, Article 9 (freedom of thought, conscience and religion)

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religion. A belief which is not a religious belief may be a philosophical belief, for example Humanism and Atheism. A belief need not include faith or worship of a God or Gods, but must affect how a person lives their life or perceives the world.

93. For a philosophical belief to be protected under the Act:
- (a) The belief must be genuinely held.
  - (b) It must be a belief and not an opinion or viewpoint based on the present state of information available.
  - (c) It must be a belief as to a weighty and substantial aspect of human life and behaviour.
  - (d) It must attain a certain level of cogency, seriousness, cohesion and importance.
  - (e) It must be worthy of respect in a democratic society, not be incompatible with human dignity and not conflict with the fundamental rights of others.<sup>41</sup>
94. The legislation allows faith communities to continue practicing their faith freely and to engage in a range of religious, educational and charitable activities. The Catholic community has traditionally been engaged in many activities, in parishes, schools and a variety of charitable organisations. Some of these are aimed primarily at Catholics and others are offered to the whole community. The provision of services or activities for its own members by the Catholic community or any other faith community is not to be equated with religious discrimination. This is addressed in greater detail in the guidance on employment and the provision of services in chapter 5.
95. While people have a right to hold a particular religion or belief under Article 9 of the European Convention on Human Rights, the manifestation or expression of that religion or belief is not an absolute right, and may in certain circumstances be restricted. For example, it may need to be balanced against other Convention rights such as the right to respect for private and family life (Article 8) or the right to freedom of expression (Article 10).
96. A practice or manifestation may be protected if it is sufficiently connected to the religion, even if it is not a mandatory requirement of the religion or belief.<sup>42</sup> Manifestations of a religion or belief could therefore include treating certain days as days for worship or rest; following a certain dress code; following a particular diet (for example not eating meat on a Friday); carrying out or avoiding certain practices; or wearing a religious symbol. There is not always a clear link between holding a religion or belief and the manifestation of that religion or belief.

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<sup>41</sup> *Grainger Plc v. Nicholson* [2010] ICR 360 [24]

<sup>42</sup> *Eweida and Others v The United Kingdom* [2013] ECHR 37



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97. On the whole the legislation allows space for faith communities to carry out activities for their own members, but this may be a matter that will require continued negotiation with public authorities.

## **4.8. Sex**

98. Sex is a protected characteristic and refers to a male or female person. Save for very limited exceptions it is unlawful to treat a person of either sex less favourably than a person of the other sex.<sup>43</sup>

## **4.9. Sexual Orientation**

*"Sexual orientation means a person's sexual orientation towards—*

- (a) persons of the same sex,*
- (b) persons of the opposite sex, or*
- (c) persons of either sex."<sup>44</sup>*

99. Sexual orientation relates to how people feel as well as their actions. Sexual orientation discrimination includes discrimination against a person because that person is of a particular sexual orientation, or because they manifest that sexual orientation.

100. Gender reassignment is a separate protected characteristic and it is unrelated to sexual orientation. While there may be issues of overlap in certain cases, it is important to consider separately whether discrimination has occurred for each characteristic.

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<sup>43</sup> Equality Act 2010, s.11

<sup>44</sup> Equality Act 2010, s.12

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## 5. SPECIFIC GUIDANCE

102. In general it is unlawful to perform any prohibited conduct (see section 2.4) when employing anyone, deciding whom to admit as a member of your organisation, and in the provision of goods or services.
103. Catholic organisations should publicly set out their requirements for who they employ or provide services to. Usually this will take the form of an Equality Policy, which will shape and reflect the ethos and practice of the organisation. Once this policy has been made it is vital that it is applied fairly and impartially to all. Although there are exceptions to the general provisions of the Equality Act for religious organisations they may not apply if an organisation uses them to penalise a particular protected group.
104. For example, it might be permissible (if the requirements in this chapter are met) for a Catholic lay organisation to specify that it will only employ those who conform to Catholic teaching on sexual morality. However this means that all unmarried people in a sexual relationship must be excluded, not just same-sex couples.

### **Catholic educational establishments**

105. Due to the many intersecting pieces of equality, human rights and education law that govern the educational sector the situation in educational establishments is very different to other areas of employment and service provision.
106. Because of this complexity if you are seeking guidance on the effect of the Equality Law on an educational establishment, it is suggested that you read the guidance of the Catholic Education Service on the matter (<http://www.catholiceducation.org.uk/>) or contact your local diocese.

### **Employment**

#### **5.1. Employers**

107. The Catholic Church and Catholic organisations that employ staff, in general, have the same legal rights and obligations as other employers. There are some additional rights and exemptions for religious organisations contained in the Equality Act 2010; however the courts have indicated that these will be interpreted narrowly. These exceptions are discussed later on in this chapter.
108. The employment provisions of the Equality Act 2010 do not apply to volunteers. However recent legal developments have blurred the distinction between workers and volunteers and as such it would be sensible to apply the same

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tests and procedures to both employees and volunteers in order to avoid any allegations of unlawful discrimination.

109. The Act makes it clear that discrimination of all kinds is forbidden, as was discussed in sections 2.4 to 2.9. Particular care should be taken not to discriminate inadvertently by adopting decisions that adversely affect certain groups in society.
110. It is unlawful for an employer to harass employees or victimise them because they have complained about discrimination, helped someone else to complain, or have done anything to uphold their own or someone else's equality law rights. More details on this kind of behaviour can be found in section 2.9.
111. Every applicant and employee has a right to his or her private life and family life, and all Catholic employers must respect that right. At the same time, Catholic organisations and institutions will have expectations of their employees, and they should state explicitly what these are. A basic contractual element in any employment relationship is mutual trust and confidence.
112. Candidates for appointment should be fully informed about the expectations of the organisation, and they should be given the chance to discuss these before offers are made officially or in writing. This is particularly important in relation to employment in leadership and pastoral roles. Any such expectations should, of course, be applied in a consistent and non-discriminatory way, and reference should be made to them in the contract of employment.
113. It is important that special attention is paid to recruitment and advertising in order to ensure that potential candidates have a reasonable opportunity to learn of vacancies. To ensure fairness in this area recruitment by word of mouth only should be avoided as much as possible and communication of vacancies should facilitate applications from a suitably diverse selection of people. Failure properly to advertise vacancies could lead to accusations of indirect discrimination.
114. For example advertising a post only in a Catholic newspaper could lead to accusations of indirect discrimination against members of other or no faith. This is because they would be unlikely to find out about the job opportunity. As such if a job is advertised in a local newspaper as well as a Catholic newspaper then all applicants will have an opportunity to find out about the job opportunity. Of course the scale and scope of the advertisements will vary depending on the role, but if it is limited to catholic publications or to a poster inside a church consider whether this is a "proportionate means to a legitimate end."<sup>45</sup>
115. In shortlisting, interviewing and appointing potential employees, those responsible for the process should be aware of the selection criteria contained

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<sup>45</sup> See section 2.6 on indirect discrimination.

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in the job description and agreed person specification to help ensure that any potential unfairness is minimised. Of course every effort should be made to ensure these criteria are applied consistently to all candidates. Where appropriate, those making an appointment should be given guidance concerning the possible effects of stereotypes, prejudices, and misunderstandings on the selection process. It may also be appropriate to consider the composition of selection panels in order to ensure the avoidance of bias.

## **5.2. Employment within Religious Organisations**

### Restrictions to the religion or belief of the applicant

116. An organisation with an ethos based on religion or belief may discriminate on the grounds of religion or belief. In order to restrict the role to a Catholic (for example) it must be shown that the religious ethos of the organisation makes it an “occupational requirement” to be and that the restriction is a proportionate means to a legitimate end (see the “Key Terms” section for more on this concept).<sup>46</sup>
117. This provision is interpreted quite strictly and an employer would have to demonstrate a good reason why the “occupational requirement” was imposed with reference to the nature of the job. For example if a Catholic charity is seeking to employ an accountant it may be difficult to justify employing a Catholic accountant since the role most likely does not require any specific knowledge of Catholic theology. However if the charity is looking for a media relations officer or a Chief Executive, restricting the post to a Catholic is likely to be legitimate “having regard to the nature and context of the work”. The more senior the post is, the more reasonable it may be to appoint a Catholic to the post. Of course each post should be examined separately to see if it is genuinely required that the applicant is Catholic. This is an issue that is especially different area in educational law, and the guidance above does not apply in that context.
118. The requirement must be a “proportionate means of achieving a legitimate aim”. More information on this concept can be found in the “Key Terms” chapter at section 2.7.
119. As stated previously any restriction must be implemented in a completely consistent and unbiased way.

### Restrictions to other protected characteristics of the applicant

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<sup>46</sup> Equality Act 2010, Schedule 9, para 3.

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120. A religious employer may be able to impose further restrictions on who is to be employed to fill a certain post. The following restrictions can be imposed through this section:

- "(a) a requirement to be of a particular sex;*
- (b) a requirement not to be a transsexual person;*
- (c) a requirement not to be married or a civil partner;*
- (d) a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner;*
- (e) a requirement relating to circumstances in which a marriage or civil partnership came to an end;*
- (f) a requirement related to sexual orientation."*<sup>47</sup>

121. Those restrictions can only be imposed if it can be shown that:

- (a) the employment is for the purposes of an organised religion, and
- (b) the requirement is necessary either to avoid conflicting with the strongly held belief of a large number of the religion's followers or to comply with religious doctrine.<sup>48</sup>

An employer must satisfy both parts of the test before being able to apply the restrictions mentioned in the previous paragraph.

122. First the employment must be for the "purposes of an organised religion." The phrase "for the purposes of an organised religion" has a restrictive meaning, and applies to the post itself and not to the organisation in which the post is to be held. Therefore all the duties, responsibilities and expectations of the post must be considered in order to decide whether it can be said that the employment is for the purposes of an organised religion.

123. Second, the restriction must be imposed for one of two reasons:

- (a) To comply with the requirements of religious doctrine, or
- (b) To avoid conflicting with the deeply held beliefs of a large number of the religion's followers.

124. In essence reason (a) means that if Catholic doctrine requires a restriction be placed on a certain post or in certain types of employment then this part of the test will be satisfied.<sup>49</sup> Catholic doctrine can be defined by reference to the Catechism, Papal Encyclicals, etc.

125. In relation to reason (b) it is unclear how the "significant number of the religion's followers" in relation to the Catholic Church would be defined or assessed, or

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<sup>47</sup> Equality Act 2010, Schedule 9, para 2(4)

<sup>48</sup> Equality Act 2010, Schedule 9, para 2 (1)

<sup>49</sup> Equality Act 2010, Schedule 9, para 2(5)

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how it would be determined what their strongly held religious beliefs are. As such it may not be safe to rely upon this limb of the test, and instead to rely upon reason (a), if it applies.

126. It is important that any religious organisation contemplating imposing restrictions on who can apply for a post considers the reasons for doing so very carefully, whether the restrictions are necessary, and whether the restrictions can be justified having regard to the nature of the job. It is good practice to record these restrictions and the reasons for them in case the recruitment process is later questioned, and the restrictions should be reviewed regularly to see if they are still necessary. As stated previously any restriction must be implemented in a completely consistent and unbiased way.

## **5.3. Employees**

127. A Catholic employee has the same rights as any other employee. If an employee has a disagreement with his or her employer or fellow employees, then they should try to resolve this disagreement politely and respectfully. However if a Catholic employee considers that they are being asked to do something that conflicts with their religious obligations then it is sensible to take advice from a spiritual advisor before raising the issue with the employer.

128. As Catholics we are expected to act with an informed conscience. If a Catholic has doubts about something that they are required to do as part of their employment, it is therefore sensible to seek proper religious guidance about the teachings of the Church and the Church's religious requirements. It is possible that a discussion with a spiritual advisor may reassure the individual that that the task may not conflict with the Catholic faith.

129. If, following consultation with a spiritual advisor, the employee still feels that they are being discriminated against then the employee should seek appropriate legal advice.

130. Catholic employees should not be treated differently from any other employee as regards time off for religious observance, religious holidays etc. If it is alleged that a Catholic employee is being treated differently from others then clear evidence will be required to show discrimination.

## **Membership of Catholic Organisations and Associations**

### **5.4. Membership arrangements in general**

131. The provisions of the Equality Act apply to any organisation that regulates membership according to its own rules and which has 25 members or more.<sup>50</sup>

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<sup>50</sup> Equality Act 2010, s.107(2)

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As such most organised groups are forbidden from taking any discriminatory action with regards to membership.

132. In general it is unlawful to discriminate directly or indirectly on the basis of any of the protected characteristics (apart from marriage and civil partnership) when determining membership criteria. There are certain general exceptions to this rule, for example on the grounds of health and safety in certain specific areas,<sup>51</sup> more details of which can be found on the EHRC website.<sup>52</sup>

## **5.5. Membership of 'single characteristic associations'**

133. The Equality Act allows associations to restrict their membership to people who share a particular "protected characteristic".<sup>53</sup> It is therefore not unlawful for a Christian lay organisation to restrict its membership to practicing Catholics or for an association of priests to restrict its membership to Catholic Priests.

## **5.6. Membership of Religious Organisations**

134. Religious organisations are allowed to restrict their membership on the grounds of religion or belief, for example by allowing a Catholic organisation to admit only Catholic members.
135. In order to restrict the membership on the grounds of religion and belief it must be shown that either the purpose of the organisation is such that the restriction is necessary, or because offence would be caused to members of the religion by admitting members outside of the restrictions imposed.<sup>54</sup>
136. In the context of Catholic organisations, the purpose that may restrict who may be a member may well be based on Catholic doctrine (although of course there may be many other reasons). This means that if Catholic doctrine requires certain restrictions then this part of the test will be satisfied. Catholic doctrine can be defined by reference to the Catechism, Papal Encyclicals, etc.
137. In relation to the second potential reason (that offence would be caused to members of the religion if membership was not restricted on those grounds) it is unclear how this would be determined. As such it may not be safe to rely upon this limb of the test, and instead to rely upon the reason in the previous paragraph if it applies.
138. This applies to religious organisations only. An organisation is religious if it exists for any of the following reasons:

***"(a) to practise a religion or belief,***

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<sup>51</sup> Equality Act 2010, schedule 16, para 2

<sup>52</sup> <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

<sup>53</sup> Equality Act 2010, Schedule 16, para 1

<sup>54</sup> Equality Act 2010, Schedule 23, para 2

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- (b) to advance a religion or belief,*
- (c) to teach the practice or principles of a religion or belief,*
- (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or*
- (e) to foster or maintain good relations between persons of different religions or beliefs.”<sup>55</sup>*

139. This covers a wide range of organisations and would apply to Catholic Dioceses, Religious Orders, and Catholic lay associations.
140. If you consider that an organisation should fall within the definition, then it is helpful to ensure that the constitutions states clearly and unambiguously, if it is accurate to do so, that it is a Catholic organisation which exists to practice, support, or teach the Catholic faith. It would also be sensible (legally and spiritually) for the organisation to appoint a Chaplain and begin each meeting with a prayer. This will not automatically mean that your organisation will be found to be religious, but it may be valuable supporting evidence to that effect.
141. An organisation cannot be religious if its main purpose is commercial.<sup>56</sup> This does not prevent a religious organisation from carrying out some commercial activities, provided they are not the main purpose of the organisation. For example, a Monastery may let out rooms to pilgrims as one of its activities without becoming a commercial organisation; however an ordinary religious bookshop is likely to be carrying out a “commercial activity” even though the primary motive of the proprietors is not making money.
142. An organisation must be cautious if it is considering forming a subsidiary because the subsidiary could be classified as “commercial” meaning it would not be covered by the exception. If a subsidiary has been established by a religious organisation it may be necessary to re-evaluate whether it would be necessary to impose similar restrictions on it as on the parent organisation.

## **Provision of services by Catholic Organisations**

### **5.7. General**

143. Before discussing exceptions for service providers it must be made clear that in this context “service” does not refer to religious services, for example Mass. Instead it refers to the provision of goods and services, such as the sale of goods (like foodstuffs) or services (such as a hotel or B&B). Religious ceremonies are not subject to regulation under equality law and it is entirely a

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<sup>55</sup> Equality Act 2010, Schedule 23, para 2(1)

<sup>56</sup> Equality Act 2010, Schedule 23, para 2(2)



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matter for the religious denomination in question how those ceremonies take place and who can be admitted.

144. Service providers are covered by the Equality Act. They are prohibited from discriminating against, victimising or harassing those who wish to use their services<sup>57</sup> (see sections 2.4 to 2.9).<sup>58</sup> It will only be permitted to discriminate in the provision of services if one of the exceptions below applies.

## **5.8. Provision of services by Religious Charities and Organisations**

145. Catholic charities may be able to restrict the provision of their services only to Catholics, or only in ways that do not run contrary to the teachings of the Church by using two exceptions contained within the Equality Act.
146. The first exception relates to restrictions based on the provision of services based upon the charitable instrument of a charity. Many religious bodies are charities and therefore may be able to this provision.<sup>59</sup>
147. In order to restrict the provision of services under this exception a charity must show that it is acting in accordance with the charitable instrument, and that the restrictions are either a proportionate means of achieving a legitimate aim, or that they prevent or compensate for a disadvantage linked to one of the protected characteristics.
148. The charitable instrument is the document establishing or governing the charity, which sets out the charity's purposes, how its income can be spent, and generally how the charity will operate. This is generally the charity's constitution and the charity must act in furtherance of the instrument. It is therefore desirable for every Catholic charity to include something along the following lines in their constitutions:

***"In carrying out its objects the Charity should not be involved in or support any activity which is contrary to the teachings of the Catholic Church"***

149. This is not a failsafe precaution, and it would be prudent to seek legal advice if it is considered that the services being provided, or the way in which they were being provided, could be seen as discriminatory.
150. A restriction must be imposed for one of two reasons. The first is that the restriction is a proportionate means of achieving a legitimate aim. More information on what constitutes a proportionate means of achieving a legitimate aim can be found in the key terms section (see section 2.7), although a

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<sup>57</sup> There are some exceptions to when the prohibition on harassment and victimisation is removed, however these exceptions are outside the scope of this guidance.

<sup>58</sup> Equality Act 2010, s.29

<sup>59</sup> Equality Act 2010, s.193

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legitimate aim for a charity will likely be different to a legitimate aim for a business.

151. The second reason a restriction may also be imposed is as a way of overcoming difficulties caused by a protected characteristic. This could consist of, for example, offering specialist training to people with disabilities to help them cope in the workplace more easily, or a scheme encouraging Catholics to take part in activities in which they are typically underrepresented.
152. Another restriction can be used by any religious organisation regardless of whether they are a charity. This allows organisations to restrict the services they offer on the basis of religion or belief, the way they use or let their property, and participation in their activities.
153. An organisation is religious if it exists for any of the following reasons:
- "(a) to practise a religion or belief,*
  - (b) to advance a religion or belief,*
  - (c) to teach the practice or principles of a religion or belief,*
  - (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or*
  - (e) to foster or maintain good relations between persons of different religions or beliefs."*<sup>60</sup>
154. As with restrictions on membership (see section 5.6), any restrictions imposed on service delivery must be necessary either because the purpose of the organisation is such that the restriction is necessary, or because offence would be caused to members of the religion in question by not restricting the provision of services on the basis of religion or belief.
155. For Catholic organisations the "purpose" mentioned in the previous paragraph may well be based on catholic doctrine (although of course there may be many other reasons). This means that if Catholic doctrine requires certain restrictions then this part of the test will be satisfied. Catholic doctrine can be defined by reference to the Catechism, Papal Encyclicals, etc.
156. In relation to the second potential reason (that offence would be caused to members of the religion if membership was not restricted on those grounds) it is unclear how this would be determined. As such it may not be safe to rely upon this limb of the test, and instead to rely upon the reason in the previous paragraph if it applies.

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<sup>60</sup> Equality Act 2010, Schedule 23, para 2(1)

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157. If persons are acting on behalf of the organisation then they may use the same exceptions as the organisation itself.<sup>61</sup> For example an estate agent acting for a religious organisation selling premises belonging to the organisation would be able to discriminate on the grounds of religion or belief when deciding on whom to sell to, if the organisation could discriminate in that way.
158. As stated previously any restriction must be implemented in a completely consistent and unbiased way.

## **5.9. Religious Premises**

159. All parish properties that are owned by the Diocesan Trust can only be used for purposes which are consistent with the charitable objects of the Diocesan Trust, namely for the “advancement of the Roman Catholic religion.” That does not mean that Parish premises can only be used by Catholic Organisations or events but it does mean that premises cannot be used for any purpose which is incompatible with Catholic teaching. As stated previously any restriction must be implemented in a completely consistent and unbiased way.
160. If an enquiry is received from a group or an individual about hiring parish property, it should be made clear from the outset that diocesan premises can only be used for purposes that are compatible with the teaching of the Catholic Church. This can be done by providing the enquirer with a copy of the standard licence or hiring agreement, which should contain a clause similar to the following:
- “The Premises are to be let out on the basis that they will not be used for any purpose which is contrary to the teachings of the Catholic Church or which could cause offence. At all times the Catholic nature of the Premises must be respected. Any breach or potential breach of this provision will mean that the use of the Premises is withdrawn.”***
161. Even if it is thought that the premises will not be used for purposes contrary to the teaching of the Catholic Church it would be wise to include the group’s stated purpose for the letting within the licence or hiring agreement. If the premises are then used for any other purpose, the group’s right to use the premises may be able to be terminated for breach of contract.
162. If there is concern that the potential use of the premises by any group (or individual) may not be in accordance with Catholic teaching, the group should be asked for written confirmation of the intended use of the premises and the nature, constitution (if any) and purposes of the organisation. The matter should then be referred to the Diocese.

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<sup>61</sup> Equality Act 2010, Schedule 23, para 2

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163. Regardless of whether the premises are used by a group on a regular basis or for only once, an agreement or refusal to let the premises should always be in writing and records should be kept.

## **Same sex marriage**

NB: This will be fully referenced to the EHRC guidance on same sex marriage once a finalised copy is published by the EHRC.

For the time being all information in this section is consistent with the draft guidance that was sent out for consultation by the EHRC.

164. The Marriage (Same Sex Couples) Act 2013 introduced legally recognised marriages between same sex couples, and allowed those such marriages to take place both in a registry office and in the religious premises of those religions that opt into performing same sex marriage.
165. Protections were built into the Act to prevent religious organisations from being compelled to provide same sex marriages if they chose not to, and to prevent individuals from being compelled to attend or take part in a same sex marriage.

### ***5.10. Protections for individuals***

166. Specific provisions were built into the act to prevent people from being forced to attend same sex marriages by the law. The first was that an extra clause was inserted into the Equality Act 2010 that specifically states that refusing to attend a same sex marriage is not a breach of the Equality Act. In any event refusing to attend a same sex wedding could only possibly be a breach of the Equality Act if the person refusing to attend was providing a service or if the wedding was in some way related to their employment.
167. There is also specific protection for religious ministers. The government's view is that no individual minister can be compelled to take part in a ceremony even if the authority for their religion has opted into providing same sex marriages. However the Equality and Human Rights Commission is of the opinion that a minister might be compelled to either perform the service or resign if it was insisted upon by the religious organisation to which they belonged.
168. Chaplains employed by a secular organisation will still have legal protection to allow them to share their religious views on same sex marriage within the area they work. A decision on a chaplain's employment status should not be taken on the basis of their stance on same sex marriage, as this could lead to a claim for religious discrimination.
169. This protection for individuals does not extend to registrars. A "conscience clause" that would have allowed registrars to object to providing marriages to same sex couples on the grounds of a sincerely held belief were rejected

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during the course of the Marriage (Same Sex Couples) Act through Parliament. As such it up to individual authorities to decide how accommodating to their individual registrar's beliefs they want to be.

## **5.11. *Protections for religious organisations***

170. Religious organisations have very strong protections written into the marriage (Same Sex Couples) Act 2013. Combined with protection under article 9 of the European Convention of Human Rights (right to freedom of thought, conscience and religion) this makes it almost incomprehensible that a successful legal challenge could be brought against a religious organisation for refusing to provide same sex marriages.

## **5.12. *Educational establishments***

171. There is potential for the Marriage (Same Sex Couples) Act 2013 to affect schools, however this is not dealt with in this guidance. For further assistance on this please contact your local diocese or the Catholic Education Service.

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## 6. APPENDICES

### **Sources of Advice**

#### **6.1. Educational establishments**

As stated earlier, if you want to know how equality law will affect an educational establishment then it is advised that you contact the Catholic Education Service (<http://www.catholiceducation.org.uk/>) or your local diocese for advice.

#### **6.2. Employers**

If you are an employer a good place to start is ACAS, an independent organisation set up by the government to improve employment relations. ACAS provides a free equality and diversity advisory service that will provide useful advice on how to make your workplace compliant with equality law. More details can be found on [this page: http://www.acas.org.uk/index.aspx?articleid=2034](http://www.acas.org.uk/index.aspx?articleid=2034). You can also get advice from the [ACAS website \(http://www.acas.org.uk/\)](http://www.acas.org.uk/) and from the free helpline by calling 08457 47 47 47.

Another source of useful guidance on all aspects of equality and human rights law in relation to the workplace is the Equality and Human Rights Commission website, which has published a series of guides explaining the impact of the Equality Act 2010. These can be found [here: http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/](http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/).

Although it is often very costly, if the advice from the sources above is not adequate for your particular situation it may also be wise to contact an independent legal adviser as well for advice on how equality law will affect your workplace. Of course this may not be appropriate or feasible in your situation. You can find a solicitor by entering your address on [this page: http://www.lawsociety.org.uk/find-a-solicitor/](http://www.lawsociety.org.uk/find-a-solicitor/).

It is very important that if a formal complaint is raised by an employee that you address their concerns in the appropriate manner. If at all possible it is best for everyone involved to reach an amicable solution without resorting to formal grievance procedures. However if this is not possible advice should be sought from ACAS and/or in the form of independent legal advice as soon as possible.

#### **6.3. Employees**

If an employee feels that they have been discriminated against at work, or been harassed or victimised because they have a protected characteristic (see section 2.3), then it is best to seek legal advice as quickly as possible. This is because there are very strict time limits for bringing a case to an employment tribunal, in most cases 3 months from the date of the incident in question.

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If at all possible an amicable resolution between employer and employee that resolves the situation to everyone's satisfaction is by far the best option. However if such a resolution is not possible then the employee should seek advice.

Often employees will be able to seek advice by contacting their trade unions. Procedures will differ between each union.

[ACAS](http://www.acas.org.uk/), an independent organisation set up by the government to improve employment relations, can provide advice on the situation. Information can be found on their website (<http://www.acas.org.uk/>) or by calling the free helpline on 08457 47 47 47.

You can also get advice from your local Citizens Advice Bureau (CAB), or from another local law clinic. You can find information on employment rights on <http://www.adviceguide.org.uk>, and can search for your local CAB by entering your postcode at this page:

[http://www.adviceguide.org.uk/england/about\\_this\\_site/get\\_advice.htm](http://www.adviceguide.org.uk/england/about_this_site/get_advice.htm).

Another source of useful guidance on all aspects of equality and human rights law in relation to the workplace is the Equality and Human Rights Commission website, which has published a series of guides explaining the impact of the Equality Act 2010. These can be found [here](http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/): <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

It may also be appropriate to seek advice from an independent legal adviser such as a solicitor, especially if considering taking your case to an employment tribunal. This can be very expensive, however. A list of solicitors in your area should be available from your local CAB office, or by entering your postcode on [this page](http://www.lawsociety.org.uk/find-a-solicitor/): <http://www.lawsociety.org.uk/find-a-solicitor/>.

If you wish to make a formal complaint, it is important you know the appropriate way to do this and your rights in the process. Seek advice from your union, ACAS, CAB (or other local law clinic), and/or from an independent legal adviser.

## **6.4. Service Providers**

There is specific guidance published by the Equality and Human rights Commission to help ensure service providers comply with equality law whilst providing services. The guidance can be found on [this page](http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/):

<http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

In the event of a dispute between a service provider and a service user on the grounds of equality law it is important to seek independent legal advice. You can find a local solicitor by entering your address on [this page](http://www.lawsociety.org.uk/find-a-solicitor/):

<http://www.lawsociety.org.uk/find-a-solicitor/>.

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## **6.5. Service Users**

Advice on consumer issues can be found by ringing the Citizens Advice consumer helpline 08454 04 05 06. This has replaced Consumer Direct as the official government funded consumer advice service.

You can also seek advice by going to your local Citizens Advice Bureau (CAB) or other local law clinic. You can find your local CAB by entering your postcode on [this page](http://www.adviceguide.org.uk/england/about_this_site/get_advice.htm): [http://www.adviceguide.org.uk/england/about\\_this\\_site/get\\_advice.htm](http://www.adviceguide.org.uk/england/about_this_site/get_advice.htm).

There is also guidance published by the Equality and Human Rights Commission to help service users understand their rights when accessing services. The guidance can be found on [this page](http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/): <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

If the options above do not give you sufficient advice it may also be useful to contact an independent legal adviser. A list of solicitors in your area can be found at your local CAB office, or you can enter your address on [this page](http://www.lawsociety.org.uk/find-a-solicitor/): <http://www.lawsociety.org.uk/find-a-solicitor/>

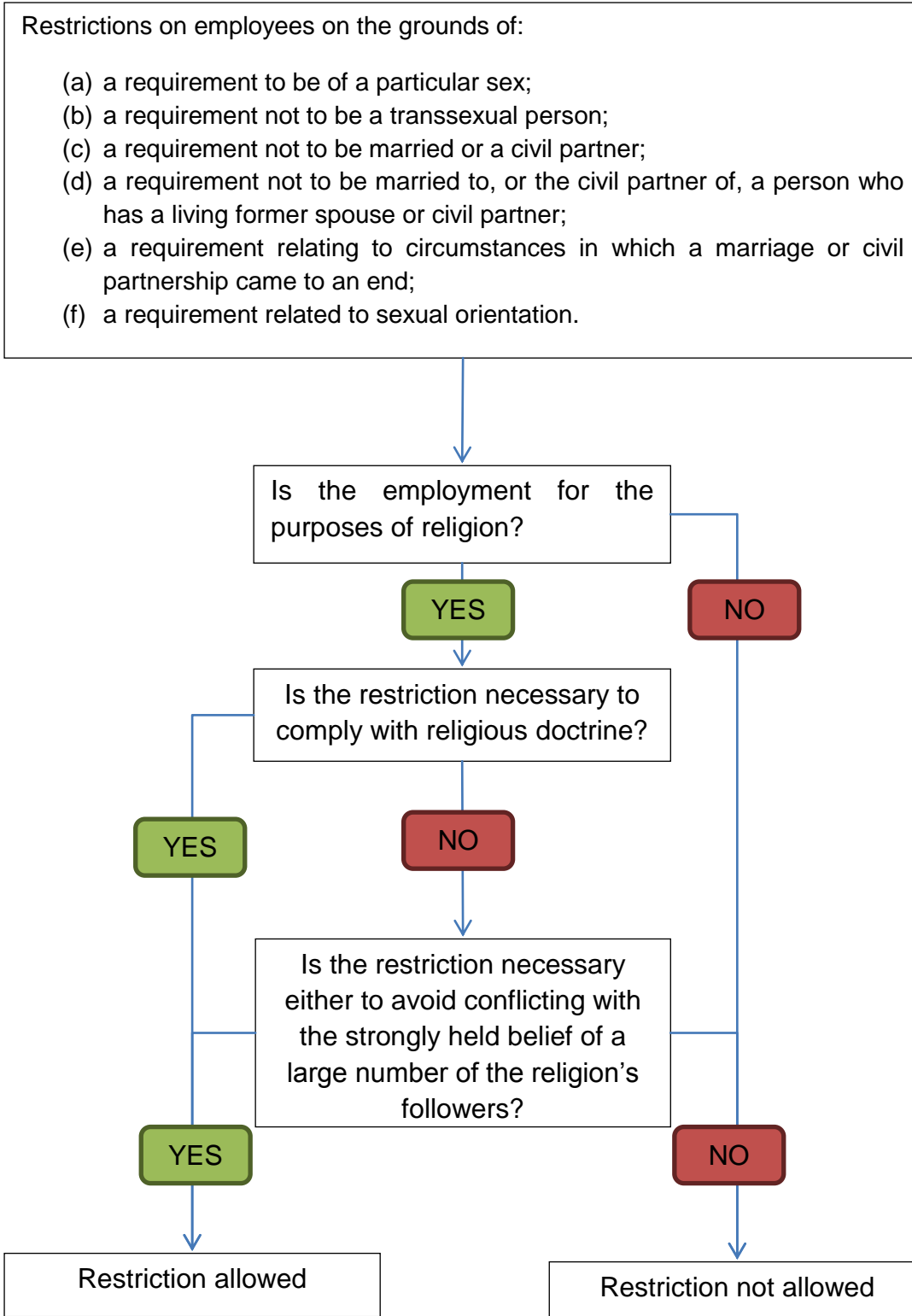
## **6.6. Further sources of advice**

Catholic Education Service	<a href="http://www.catholiceducation.org.uk">www.catholiceducation.org.uk</a>
Catholic Church in England and Wales	<a href="http://www.catholicchurch.org.uk">www.catholicchurch.org.uk</a>
Catholic Bishops Conference	<a href="http://www.cbcew.org.uk">www.cbcew.org.uk</a>
Catholic Deaf Association	<a href="http://www.cda-uk.com">www.cda-uk.com</a>
Royal National Institute for the Deaf	<a href="http://www.actiononhearingloss.org.uk">www.actiononhearingloss.org.uk</a>
Association of Blind Catholics	<a href="http://www.blindcatholics.org.uk">www.blindcatholics.org.uk</a>
Royal National Institute for the Blind	<a href="http://www.rnib.org.uk">www.rnib.org.uk</a>
Equality and Human Rights Commission	<a href="http://www.equalityhumanrights.com">www.equalityhumanrights.com</a>
Thomas More Legal Centre	<a href="http://www.thomasmorelegal.org.uk">www.thomasmorelegal.org.uk</a>
Religion Law Website	<a href="http://www.religionlaw.co.uk">www.religionlaw.co.uk</a>
Catholic Medical Association	<a href="http://www.catholicmedicalassociation.org.uk">www.catholicmedicalassociation.org.uk</a>
Association of Catholic Nurses	<a href="http://www.catholicnurses.org.uk">www.catholicnurses.org.uk</a>
Catholic Union	<a href="http://www.catholicunion.org">www.catholicunion.org</a>

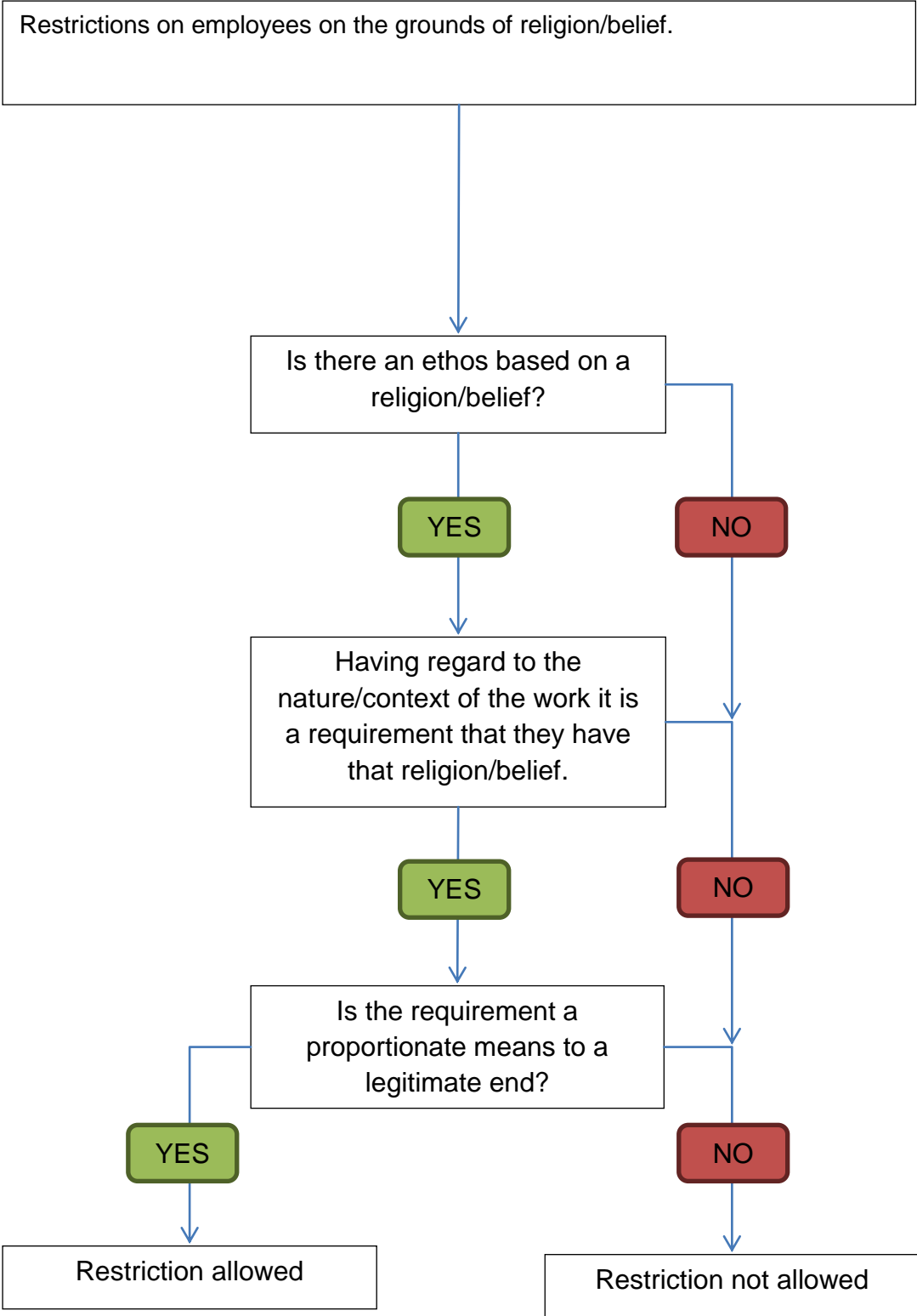


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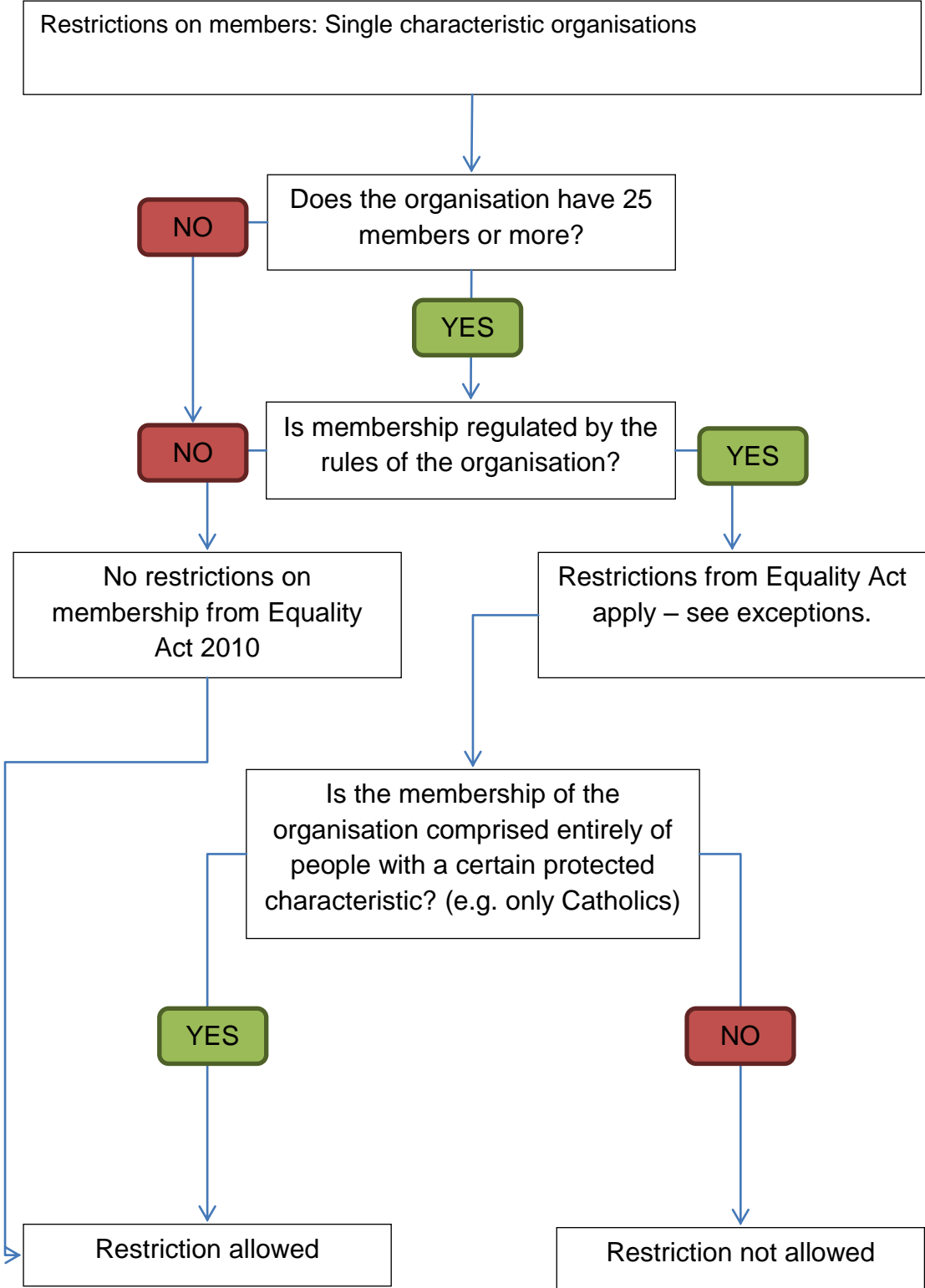
## Explanatory Flowcharts



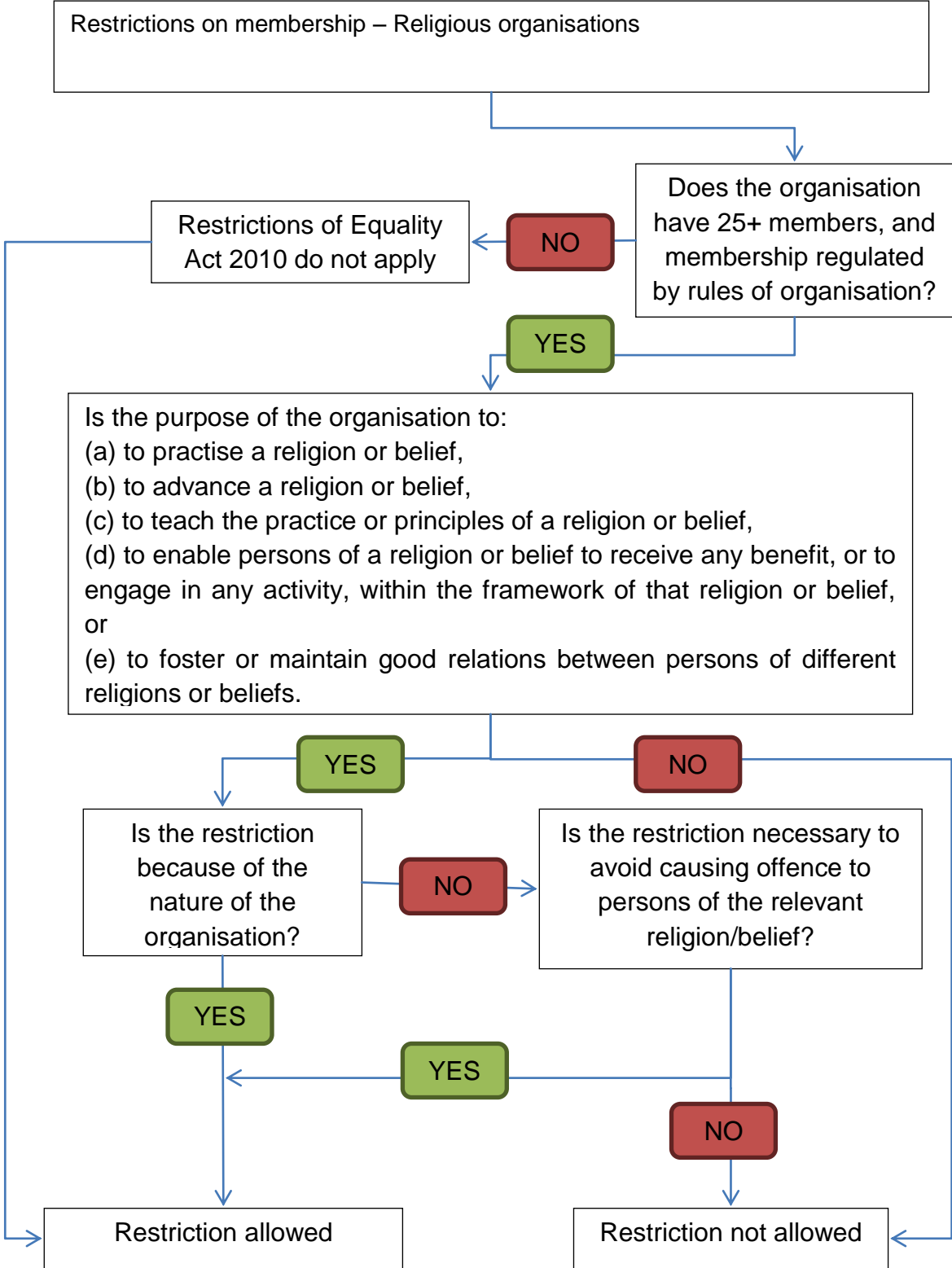
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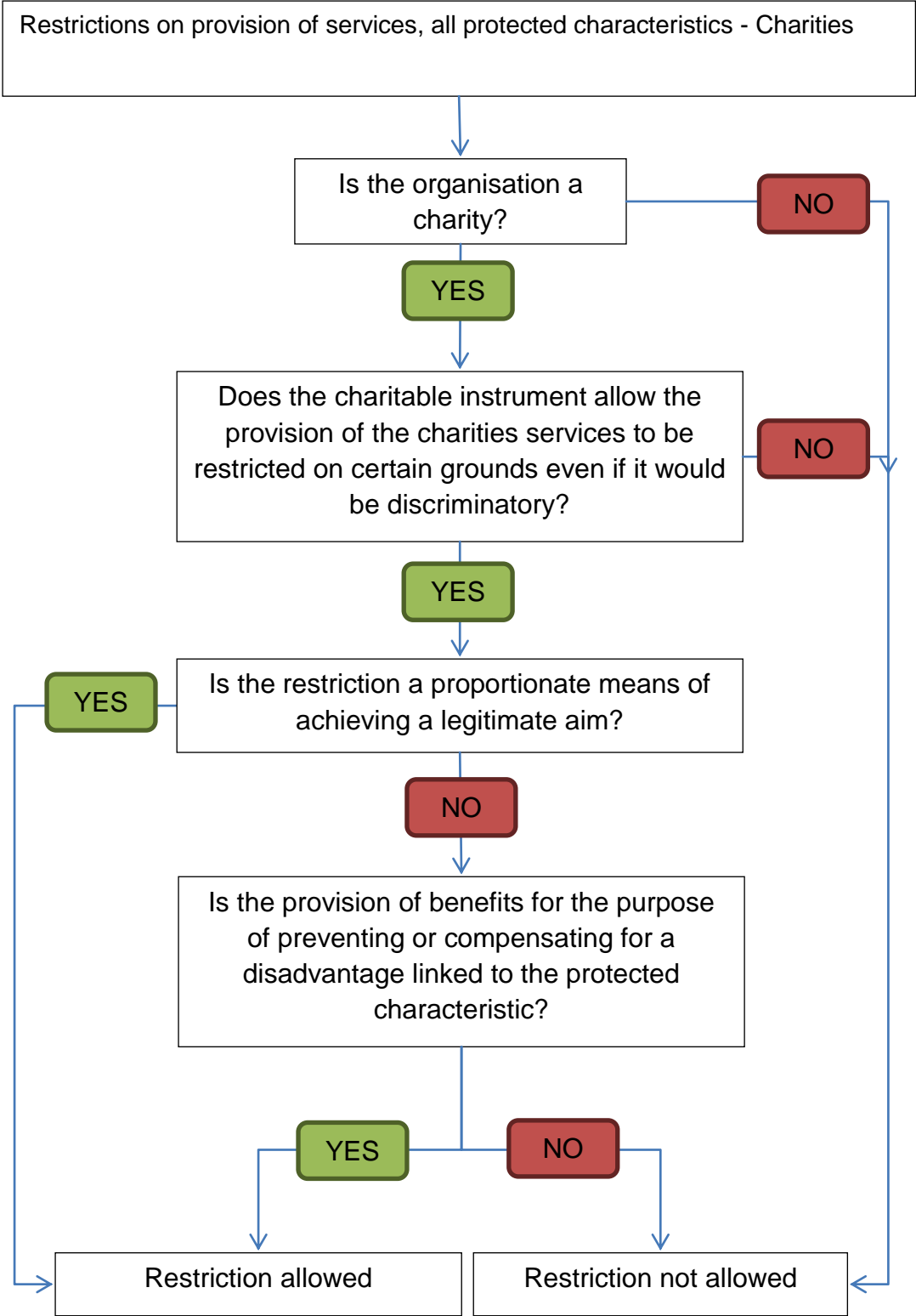
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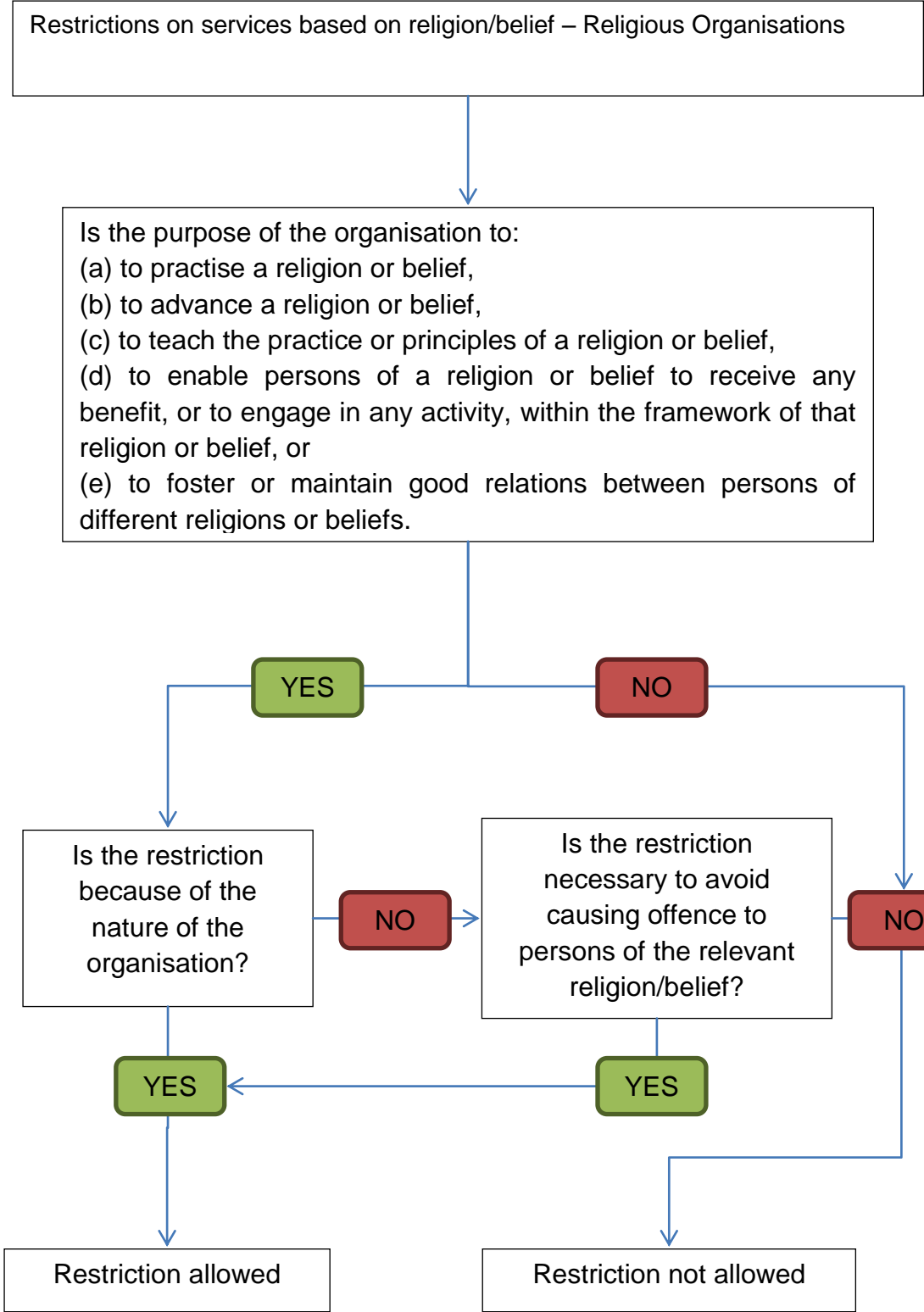
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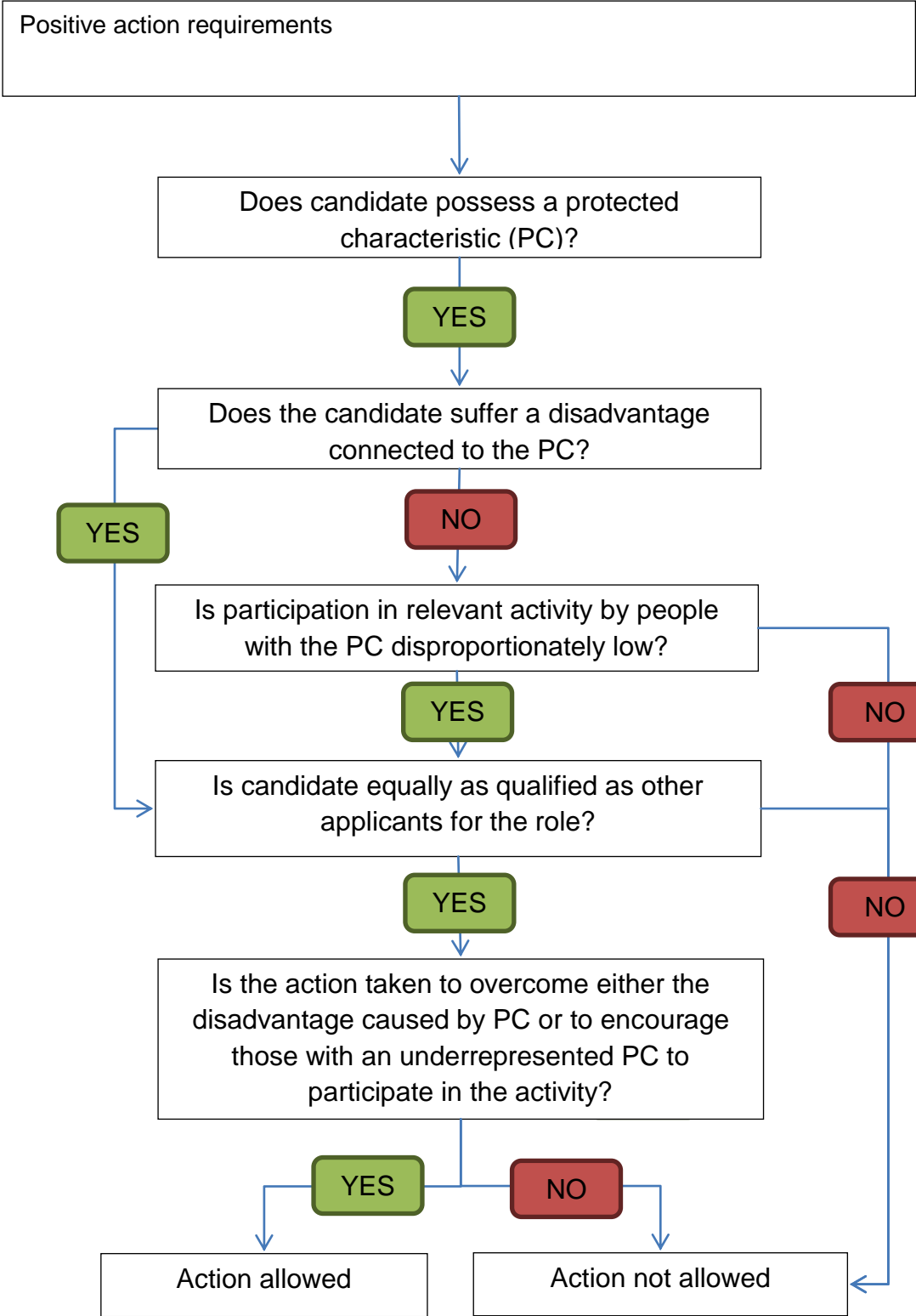
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## Excerpts from the Equality Act 2010

The full contents of the act can be found at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>

### *The 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.

#### 7. Gender reassignment



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- (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 purpose of reassigning the person's sex by changing physiological or other attributes of sex.
- (2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.
- (3) In relation to the protected characteristic of gender reassignment—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;
  - (b) a reference to persons who share a protected characteristic is a reference to transsexual persons.

## 8. Marriage and civil partnership

- (1) A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.
- (2) In relation to the protected characteristic of marriage and civil partnership—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner;
  - (b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.

## 9. Race

- (1) Race includes—
  - (a) colour;
  - (b) nationality;
  - (c) ethnic or national origins.
- (2) In relation to the protected characteristic of race—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
  - (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.
- (3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.
- (4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.
- (5) A Minister of the Crown may by order—
  - (a) amend this section so as to provide for caste to be an aspect of race;
  - (b) amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances.
- (6) The power under section 207(4)(b), in its application to subsection (5), includes power to amend this Act.

## 10. Religion or belief

- (1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
- (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
- (3) In relation to the protected characteristic of religion or belief—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

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(b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

## 11. Sex

- (1) In relation to the protected characteristic of sex—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;
  - (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.

## 12. Sexual orientation

- (1) Sexual orientation means a person's sexual orientation towards—
  - (a) persons of the same sex,
  - (b) persons of the opposite sex, or
  - (c) persons of either sex.
- (2) In relation to the protected characteristic of sexual orientation—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation;
  - (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same sexual orientation.

## ***Prohibited conduct***

### 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
- ...

### 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.

### 26. Harassment

- (1) A person (A) harasses another (B) if—
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of—
    - (c) (i) violating B's dignity, or
    - (d) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if—
  - (a) A engages in unwanted conduct of a sexual nature, and

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- (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if—
- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
  - (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

...

## 27. Victimisation

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
- (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
  - (c) Each of the following is a protected act—
  - (d) bringing proceedings under this Act;
  - (e) giving evidence or information in connection with proceedings under this Act;
  - (f) doing any other thing for the purposes of or in connection with this Act;
  - (g) making an allegation (whether or not express) that A or another person has contravened this Act.
- (2) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (3) This section applies only where the person subjected to a detriment is an individual.
- (4) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

## ***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.

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- (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.

## **Positive Action**

### 158. Positive action: general

- (1) This section applies if a person (P) reasonably thinks that—
  - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,
  - (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
  - (c) participation in an activity by persons who share a protected characteristic is disproportionately low.
- (2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of—
  - (a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,
  - (b) meeting those needs, or
  - (c) enabling or encouraging persons who share the protected characteristic to participate in that activity.
- (3) Regulations may specify action, or descriptions of action, to which subsection (2) does not apply.
- (4) This section does not apply to—
  - (a) action within section 159(3), or
  - (b) anything that is permitted by virtue of section 104.
- (5) If section 104(7) is repealed by virtue of section 105, this section will not apply to anything that would have been so permitted but for the repeal.
- (6) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

### 159. Positive action: recruitment and promotion

- (1) This section applies if a person (P) reasonably thinks that—
  - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or
  - (b) participation in an activity by persons who share a protected characteristic is disproportionately low.
- (2) Part 5 (work) does not prohibit P from taking action within subsection (3) with the aim of enabling or encouraging persons who share the protected characteristic to—
  - (a) overcome or minimise that disadvantage, or
  - (b) participate in that activity.
- (3) That action is treating a person (A) more favourably in connection with recruitment or promotion than another person (B) because A has the protected characteristic but B does not.
- (4) But subsection (2) applies only if—
  - (a) A is as qualified as B to be recruited or promoted,

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- (b) P does not have a policy of treating persons who share the protected characteristic more favourably in connection with recruitment or promotion than persons who do not share it, and
- (c) taking the action in question is a proportionate means of achieving the aim referred to in subsection (2).

## **Charitable exceptions**

### 193. Charities

- (1) A person does not contravene this Act only by restricting the provision of benefits to persons who share a protected characteristic if—
  - (a) the person acts in pursuance of a charitable instrument, and
  - (b) the provision of the benefits is within subsection (2).
- (2) The provision of benefits is within this subsection if it is—
  - (a) a proportionate means of achieving a legitimate aim, or
  - (b) for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic.

## **Work Exceptions**

### Schedule 9

#### 2. Religious requirements relating to sex, marriage etc., sexual orientation

- (1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to employment a requirement to which subparagraph (4) applies if A shows that—
  - (a) the employment is for the purposes of an organised religion,
  - (b) the application of the requirement engages the compliance or non-conflict principle, and
  - (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).
- (2) The provisions are—
  - (a) section 39(1)(a) or (c) or (2)(b) or (c);
  - (b) section 49(3)(a) or (c) or (6)(b) or (c);
  - (c) section 50(3)(a) or (c) or (6)(b) or (c);
  - (d) section 51(1).
- (3) A person does not contravene section 53(1) or (2)(a) or (b) by applying in relation to a relevant qualification (within the meaning of that section) a requirement to which subparagraph (4) applies if the person shows that—
  - (a) the qualification is for the purposes of employment mentioned in subparagraph (1)(a), and
  - (b) the application of the requirement engages the compliance or non-conflict principle.
- (4) This sub-paragraph applies to—
  - (a) a requirement to be of a particular sex;
  - (b) a requirement not to be a transsexual person;
  - (c) a requirement not to be married or a civil partner;
  - (d) a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner;
  - (e) a requirement relating to circumstances in which a marriage or civil partnership came to an end;
  - (f) a requirement related to sexual orientation.

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- (5) The application of a requirement engages the compliance principle if the requirement is applied so as to comply with the doctrines of the religion.
- (6) The application of a requirement engages the non-conflict principle if, because of the nature or context of the employment, the requirement is applied so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.
- (7) A reference to employment includes a reference to an appointment to a personal or public office.
- (8) In the case of a requirement within sub-paragraph (4)(a), sub-paragraph (1) has effect as if in paragraph (c) the words from "(or" to the end were omitted.

## ***Single Characteristic Organisation***

Schedule 16

### 1. Single characteristic associations

- (1) An association does not contravene section 101(1) by restricting membership to persons who share a protected characteristic.
- (2) An association that restricts membership to persons who share a protected characteristic does not breach section 101(3) by restricting the access by associates to a benefit, facility or service to such persons as share the characteristic.
- (3) An association that restricts membership to persons who share a protected characteristic does not breach section 102(1) by inviting as guests, or by permitting to be invited as guests, only such persons as share the characteristic.
- (4) Sub-paragraphs (1) to (3), so far as relating to race, do not apply in relation to colour.
- (5) This paragraph does not apply to an association that is a registered political party.

## ***Religious Organisations***

Schedule 23

### 2. Organisations relating to religion or belief

- (1) This paragraph applies to an organisation the purpose of which is—
  - (a) to practise a religion or belief,
  - (b) to advance a religion or belief,
  - (c) to teach the practice or principles of a religion or belief,
  - (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or
  - (e) to foster or maintain good relations between persons of different religions or beliefs.
- (2) This paragraph does not apply to an organisation whose sole or main purpose is commercial.
- (3) The organisation does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—
  - (a) membership of the organisation;
  - (b) participation in activities undertaken by the organisation or on its behalf or under its auspices;
  - (c) the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices;
  - (d) the use or disposal of premises owned or controlled by the organisation.

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- (4) A person does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by doing anything mentioned in subparagraph (3) on behalf of or under the auspices of the organisation.
- (5) A minister does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—
  - (a) participation in activities carried on in the performance of the minister's functions in connection with or in respect of the organisation;
  - (b) the provision of goods, facilities or services in the course of activities carried on in the performance of the minister's functions in connection with or in respect of the organisation.
- (6) Sub-paragraphs (3) to (5) permit a restriction relating to religion or belief only if it is imposed—
  - (a) because of the purpose of the organisation, or
  - (b) to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.
- (7) Sub-paragraphs (3) to (5) permit a restriction relating to sexual orientation only if it is imposed—
  - (a) because it is necessary to comply with the doctrine of the organisation, or
  - (b) to avoid conflict with strongly held convictions within subparagraph (9).
- (8) In subparagraph (5), the reference to a minister is a reference to a minister of religion, or other person, who—
  - (a) performs functions in connection with a religion or belief to which the organisation relates, and
  - (b) holds an office or appointment in, or is accredited, approved or recognised for the purposes of the organisation.
- (9) The strongly held convictions are—
  - (a) in the case of a religion, the strongly held religious convictions of a significant number of the religion's followers;
  - (b) in the case of a belief, the strongly held convictions relating to the belief of a significant number of the belief's followers.
- (10) This paragraph does not permit anything which is prohibited by section 29, so far as relating to sexual orientation, if it is done—
  - (a) on behalf of a public authority, and
  - (b) under the terms of a contract between the organisation and the public authority.
- (11) In the application of this paragraph in relation to sexual orientation, subparagraph (1)(e) must be ignored.
- (12) In the application of this paragraph in relation to sexual orientation, in subparagraph (3)(d), "disposal" does not include disposal of an interest in premises by way of sale if the interest being disposed of is—
  - (a) the entirety of the organisation's interest in the premises, or
  - (b) the entirety of the interest in respect of which the organisation has power of disposal.
- (13) In this paragraph—
  - (a) "disposal" is to be construed in accordance with section 38;
  - (b) "public authority" has the meaning given in section 150(1).

## 3. Other requirements relating to religion or belief

- (1) A person (A) with an ethos based on religion or belief does not contravene a provision mentioned in paragraph 1(2) by applying in relation to work a requirement to be of a particular religion or belief if A shows that, having regard to that ethos and to the nature or context of the work—

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- (a) it is an occupational requirement,
- (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).



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## **Main articles of the European Convention on Human Rights**

A full version of the ECHR can be found on the ECHR website:

[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

### ARTICLE 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### ARTICLE 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

### ARTICLE 10

1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

### ARTICLE 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. this article shall not prevent the imposition of

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lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

## ARTICLE 12

1. Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

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## Provisions from the Human Rights Act 1998

A full copy of the Act can be found at: <http://www.legislation.gov.uk/ukpga/1998/42/contents>

### 2. Interpretation of Convention rights.

(1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any—

(a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,

(b) opinion of the Commission given in a report adopted under Article 31 of the Convention,

(c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or

(d) decision of the Committee of Ministers taken under Article 46 of the Convention, whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

(2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.

(3) In this section “rules” means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section—

(a) by F3. . . [F4the Lord Chancellor or] the Secretary of State, in relation to any proceedings outside Scotland;

(b) by the Secretary of State, in relation to proceedings in Scotland; or

(c) by a Northern Ireland department, in relation to proceedings before a tribunal in Northern Ireland—

(i) which deals with transferred matters; and

(ii) for which no rules made under paragraph (a) are in force.

### 3. Interpretation of legislation.

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section—

(a) applies to primary legislation and subordinate legislation whenever enacted;

(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and

(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

### 4. Declaration of incompatibility.

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(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

(3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with a Convention right.

(4) If the court is satisfied—

(a) that the provision is incompatible with a Convention right, and

(b) that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility, it may make a declaration of that incompatibility.

(5) In this section “court” means—

(a) the Supreme Court

(b) the Judicial Committee of the Privy Council;

(c) the [F6 Court Martial Appeal Court] ;

(d) in Scotland, the High Court of Justiciary sitting otherwise than as a trial court or the Court of Session;

(e) in England and Wales or Northern Ireland, the High Court or the Court of Appeal.

(f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Vice-Chancellor or a puisne judge of the High Court.

(6) A declaration under this section (“a declaration of incompatibility”)—

(a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and

(b) is not binding on the parties to the proceedings in which it is made.

...

## 6. Acts of public authorities.

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if—

(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.

(3) In this section “public authority” includes—

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(a) a court or tribunal, and

(b) any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

(5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.

(6) “An act” includes a failure to act but does not include a failure to—

(a) introduce in, or lay before, Parliament a proposal for legislation; or

(b) make any primary legislation or remedial order.