



**Barkisland CE (VA) Primary School**  
**WE BELIEVE, WE NURTURE, WE SUCCEED!**

# Barkisland CE VA Primary School

## EQUALITY ACT 2010 COMPLIANCE DOCUMENT

Approved by:	Governing Body	Date:	July 2024
Policy to be reviewed:	At least annually		
Objectives to be reviewed:	At least every four years		
Report to be published:	At least annually through HT report and on website		

This document is to be viewed in conjunction with the school's other policies, such as: Behaviour, Gender, SEND, Uniform, British Values, Safer Recruitment, Disciplinary, Pupil Premium, Admissions, Anti-Bullying, Allegations.



## Overview and scope of policy

This document demonstrates how Barkisland CE (VA) Primary School (hereafter Barkisland School) complies with the requirements of the Equality Act 2010 and the Public Sector Equality Duty. Through compliance, we work to eliminate unlawful discrimination, harassment and victimisation. We will do this by ensuring equality of opportunity and fostering good relations for those who share a protected characteristic and those who do not. We consult and involve those in our wider school community who may be affected by inequality in the decisions we take to promote equality and eliminate discrimination. The Public Sector Equality Duty came into force in April 2011 (s.149 of the Equality Act 2010) and requires Barkisland School to have due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010, namely the three aims:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (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.

These will be achieved:

- (a) In relation to admissions (exception for Church Schools – see below)
- (b) In the way it provides education for pupils
- (c) In the way it provides pupils and adults access to benefits, facilities or services
- (d) Through policy-making
- (e) In its service provision
- (f) In relation to employment matters
- (g) In relation to goods and services which are contracted out, and to private and voluntary bodies which are carrying out public functions

It is the policy of Barkisland School to promote equality and diversity in all areas of our life and work. We will not tolerate discrimination on unlawful or unfair grounds. All will be treated with equity and given equal access to the curriculum and life of the school. All will have equal opportunity to benefit from all that we offer. Our intention is to develop an ethos in which all will thrive. Diversity and differences will be valued and respected by all and they will contribute to the richness of our school life and learning.

Our aim is to ensure that every child becomes an effective contributing member of the local community. To enable every child to gain maximum benefit from their education, the school will ensure that all (children and adults) are treated equally and given equal opportunity regardless of gender and gender reassignment, disability, age, maternity status, marriage status, sexual orientation, social class, racial origins, religious beliefs or cultural background.

Barkisland School will work hard to meet the individual needs of all. We will endeavour to anticipate the needs of our pupils, staff and other members of the school community, making reasonable adjustments to ensure that their needs are met to give them access to all aspects of the school's life.



Barkisland School recognises it has to make special efforts to ensure that all groups prosper including those with characteristics protected under the Equality Act 2010, specifically in relation to:

- Race
- Gender reassignment
- Disability
- Sexual Orientation
- Marriage status
- Maternity/pregnancy
- Religion
- Age
- Sex

and in addition:

- Pupil premium children
- Pupils with special educational needs
- Children looked after

There are exceptions relating to curriculum, collective worship and schools of a religious character which are detailed in this document.

Barkisland School's core values are embedded within the school ethos and support the school's vision of 'We Believe, We Nurture, We Succeed'. Through this vision and set of values we encourage all members of the school to nurture one another so that all may have equal access to the opportunities and experiences available without anyone feeling excluded or prohibited from taking part. This enables all to thrive and strive to succeed. The school's reward systems celebrate pupils who are respectful, inclusive and who work together, among other qualities.

Barkisland School bears responsibility for responding fairly to complaints of discrimination or bullying carried out by a pupil and, in line with the Equality Act 2010, must not treat such acts where they relate to a person's protected characteristic any differently to other forms of bullying or prejudice. The actions of pupils within the school, however, are outside the scope of this policy and of the Equality Act 2010 – discriminatory acts carried out by a pupil upon another pupil or by a pupil upon an adult are dealt with under the behaviour policy.

### **Who is responsible**

Any person acting on behalf of, or within the bounds of Barkisland School (including employees, SLT, Governors, visiting teachers, contractors, volunteers, etc), are liable for their own discriminatory actions. Through this policy, induction, training and monitoring, Barkisland School is taking all reasonable steps to prevent discriminatory action by any of its representatives. It is the responsibility of all stakeholders to familiarise themselves with this policy and to work towards equality and inclusion for all members of the school community. Any intentional infringement of the policy is treated as a serious matter and may result in the use of conciliation, mediation, competency or disciplinary procedures.

The Inclusion Manager will be responsible for the identification and assessment of the specific educational needs and a procedure will be put into place to ensure effective liaison with appropriate support agencies and outside agencies.

Responsibility for promoting and managing equality and diversity within the school rests with the Governing Body. The Headteacher is responsible for day-to-day management issues. The school will also work in partnership with others, for example, the Local Authority and HR advisors for personnel related issues.



## Types of Discrimination

There are 4 kinds of unlawful discriminatory behaviour:

1. *Direct discrimination* – when one person treats another less favourably because of a protected characteristic
2. *Indirect discrimination* – when a provision, criterion or practice is applied generally, but has the effect of putting people with a protected characteristic at a disadvantage (for example hosting parents evening on a Friday making it difficult for observant Jewish parents to attend)
3. *Harassment* – unwanted conduct, related to a relevant protected characteristic (specifically disability, race, sex or pregnancy/maternity), which has the purpose of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person (includes unpleasant and bullying behaviour and that which causes offence). Any claim of ‘harassment’ on grounds of religion/belief, sexual orientation or gender reassignment would be considered direct discrimination and not harassment
4. *Victimisation* – when a person is treated less favourably than they otherwise would have been because of something they have done (a protected act). This may include making an allegation of discrimination or supporting another person’s complaint. This ensures people do not fear retaliation for speaking up against discrimination. This extends to children being victimised because of a protected act carried out by a parent, carer or sibling.

Discrimination includes when a person is treated differently because of the characteristics of those associated with them (family members for example) or when there is the perception a person may share a protected characteristic (for example perceiving a person to be gay, whether that fact is known or not).

## Disability

Law on disability discrimination is treated differently, as it permits positive action to treat disabled people differently to those who are not disabled. This only works one way. Barkisland School will make reasonable adjustments to ensure people (adults and children) with disabilities are on a more level footing with those without disabilities, including by providing auxiliary aids and services. This aligns with our policy for children with special educational needs.

## Church School

Barkisland School is a Church of England School. As such, there are certain exceptions to the religion/belief provisions which allows the school to discriminate because of religion or belief in relation to admissions and in access to any benefit, facility or service. This exception does not permit less favorable treatment of a pupil because they do not, or no longer, belong to the school’s religion, nor does it permit discrimination on religious grounds in any other respects (such as excluding a pupil or refusing admittance because a pupil’s beliefs did not align with the rules of the school’s religion).

When Barkisland School is oversubscribed, the school is permitted to give priority in admissions to members of the Church of England faith. Refer to the Admissions Code for more information. Furthermore, there is provision to prioritise admission of pupils with different faiths where this would best reflect the diversity of the local population.



As a Church of England school, the displaying of and discussion surrounding objects, practices and celebrations relating to the Church of England faith is permitted at the exclusion of other faiths, although we do discuss and mark important celebrations of other religions within our Religious Education curriculum. Furthermore, the school is required to have a daily act of collective worship of a broadly Christian nature and is not acting unlawfully by not providing equivalent acts of worship for other faiths.

### **Teaching and curriculum**

The Equality Act 2010 explicitly excludes school curriculum, ensuring schools are free to include a full range of issues, ideas and materials without fear of legal challenge based on protected characteristic. We do, however, ensure the way issues are taught does not subject individual pupils to discrimination. Teachers will ensure that their planning, teaching and learning takes account of this policy and ensures that equality underpins all their work. A flexible approach will be used, involving a variety of forms of intervention such as in-class support, short-term individual withdrawal, monitoring and production of materials in subject areas and specific advice to subject staff.

Active contributions will be sought from parents and others to enrich teaching, learning and the curriculum.

Diversity, tolerance, discrimination, equality and fairness is discussed explicitly in all year groups through the PSHE curriculum and through whole school events such as Inclusivity Week. The PSHE Progression Map details specific learning outcomes in each year group relating to elements of the Equality Act and includes detail of topics in other subject areas that address equality, diversity and discrimination.

### **Uniform**

Barkisland School's uniform policy does not prohibit the wearing of religious attire and allows for reasonable adjustments for people with disabilities, for whom the standard uniform may not be suitable. The Governing Body is responsible to establishing the school's uniform policy and ensuring it does not allow for discrimination based on race, religion/belief, gender, disability, sex or sexual orientation.

### **Dress and appearance policy for staff**

The dress and appearance policy for staff sets out non-exhaustive guidelines in defining acceptable and unacceptable standards of dress and appearance in order that they portray positive role models. We also recognise that the staff represent a wide range of backgrounds, cultures, ages and tastes and naturally we want staff to exercise choice in the clothing they wear for work. Priority will, however, be given to health and safety when determining suitable dress and appearance. This policy does not remove our obligations to the Equality Act, particularly in relation to gender reassignment, race, religion, maternity/paternity status and disability.



## Objectives

Specific and measurable equality objectives, which help to further the three aims of the Equality Duty will be set and published at least every four years. These will be communicated via the Headteacher's Report.

Equality objectives	Measurement/Assessment
To continue to monitor the impact of the Christian vision upon flourishing of all pupils and staff. This is so as to inform decisions and shape the ongoing development as a Church school.	Pupil interviews to establish understanding, interpretation and impact on vision
To embed systems for seeking all pupils' opinions and enabling them to express their views without discrimination or exclusion. This is in order to empower pupils to be agents of change, both within the school community and beyond.	Public voice initiatives. Wider community impact.
To develop a more systematic approach to the teaching of Christianity as a multi-cultural world faith. This is so as to deepen pupils' understanding of differences and diversity within global Christian communities.	Religious education pupil voice – what are pupils' perceptions of different faiths and their communities?
To establish, when necessary, a funded Accessibility Action Plan to increase the extent to which those with disabilities can participate fully in the life, curriculum and extended schooling curricular activities.	Pupil engagement in activities such as school trips, extra-curricular activities, and pupil voice initiatives.
To improve the access and delivery of information to those with disadvantages that would normally be provided in writing, electronically or online to other members of the school community.	Information provided in various formats and made jargon-free.
To enhance knowledge and understanding of Equality Act among staff and Governing Body	Increased awareness among staff and Governing Body

## Monitoring and reporting

Monitoring, evaluation and review of the policy are carried out by the Leadership Team to ensure procedures and practices within school reflect the aims and objectives of this policy so that all pupils and adults can access school life and the curriculum equally. Results of assessment and monitoring are published in the Headteacher's Report. This document, along with any associated codes of practice and procedures, will be subject to regular review to ensure that the school's commitment to promoting and managing equality and diversity is actively pursued.

The school monitors information relating to:

- all groups of pupils
- attainment, achievements and progress
- incidents relating to pupils in school
- all activities that relate to staff recruitment and selection, and to career development and opportunities for promotion
- all engagements with the school by members of the community
- pupil participation, exclusions, rewards, sanctions, bullying and discriminatory behaviour, admissions and attendance etc.



- the content of the curriculum
- pupils' personal and social development and pastoral care
- staff recruitment, training and promotion
- any other useful data.

To ensure transparency, to assist in the performance of the Public Sector Equality Duty and in accordance with the Equality Act 2010 (Specific Duties) Regulations 2011, Barkisland School will publish the following information annually via the Headteacher's Report and on the school's website.

- equality objectives, at least every four years
- information to demonstrate compliance with the public sector Equality Duty, at least annually. Such information relates to people who are affected by our policies and practices and who share protected characteristics (staff, pupils, parents and other service users) and show how consideration has been given to the decisions made and services delivered affecting people who share different protected characteristics.

This details some or all of:

- the number of people with different protected characteristics who access and use services in different ways;
- formal and informal feedback from service users with different protected characteristics and results of consultations;
- complaints about discrimination and complaints from people with different protected characteristics;
- service outcomes for people with different protected characteristics.

Published information also includes details of any policies and programmes that have been put in place to address equality concerns in service delivery.

Information published will not breach the Data Protection Act 1998; must not identify individuals and where groups detailed are less than 10 people should be represented as <10 in order to prevent easy identification.

### **Outcomes**

This document makes a key contribution to the school's positive ethos, playing an important role in ensuring that all pupils and adults who share a protected characteristic are treated as favourably as those who do not, and that the school will make all the reasonable adjustments necessary to promote equity and community cohesion. Learners from all backgrounds will be treated as equal and valued members of the school community. The headteacher and Governing Body will assess the impact of this document.

## **EMPLOYMENT**

### **Recruitment and selection**

Good practice is pursued in the area of staff recruitment and selection to ensure equality of opportunity for all applicants. Job vacancies are advertised in line with Calderdale and National Policies. Reasonable adjustments should be made to ensure applicants with a disability are not at a disadvantage during the recruitment process.

We do not ask applicants to complete a generic health questionnaire, nor do we seek out past sickness records, as part of the application procedure. Any health questions necessary to ensure the applicant can carry out an intrinsic



function of the work post to which they have applied, or sight of past sickness records, may be requested after a conditional job offer has been made – any such questions are targeted, necessary and relevant.

In the event of a complaint of discrimination from either internal or external applicants for vacancies, the Governor or Headteacher leading the selection is expected to detail the criteria on which the selection decision was founded and demonstrate that the successful applicant was the one who most closely met the criteria.

### **Training, Development, Promotion and Career Progression**

It is the policy of Barkisland School to provide appropriate training and development for all its employees in line with the school's developmental needs and the performance management of its employees.

The needs of the job, individual ability and performance are the only appropriate criteria considered in an employee's annual Performance Management cycle. In addition, those responsible for undertaking PM interviews ensure that no employee has any reason to believe that unlawful discrimination has been an element in any decision. Similarly, those on part-time, temporary and fixed term contracts receive equal consideration, subject to appropriate opportunities arising.

INSET opportunities will be provided for staff, to raise awareness and provide practical examples of suitable curricular materials. Teaching and learning materials will be regularly monitored to ensure that they reflect our rich British culture, its history and its heritage and our rich cultural diversity.

### **Probation**

Where probationary requirements are applicable to an appointment, their implementation, including orientation, training, monitoring, guidance and recommendation for permanent appointment is managed fairly and without discrimination.

### **Dismissal and redundancies**

School employees who have been delegated responsibility for identifying members of staff for dismissal on the grounds of redundancy do not unlawfully discriminate on any grounds as detailed in this policy.

### **Grievance**

The school ensures that any grievance relating to discrimination is treated seriously and promptly. A member of staff who believes that they have been discriminated against can pursue the matter by raising a complaint, in accordance with the grievance procedure.

### **Religious character**

As a voluntary-aided church school, we may apply religious criteria when recruiting or dismissing any member of teaching staff, giving consideration to whether religious opinions are aligned with the faith of the school, whether a person attends religious worship, or whether they give/are willing to give religious education in accordance with the faith of the church school. These criterion may not be applied for non-teaching posts unless it is a genuine occupational requirement.





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### **Selection and admission of pupils**

The school's admissions policy does not discriminate on the grounds of gender, race, social background or disability. As a Church School, exceptions to protection from discrimination on religious/belief grounds exist within our admissions policy and are briefly detailed above.

### **Pupil progress**

The school will expect all children to make good progress in all areas of the curriculum. Bespoke provision will be catered for where necessary. Extra-curricular activities and leadership opportunities are crucial elements of a pupil's development and access is ensured for all pupils without prejudice or discrimination.

## APPENDIX A

### Chapter 1 Special issues for some protected characteristics

- 1.1 Chapter 1 covers all protected characteristics apart from disability, which is covered separately in Chapter 2. It outlines general concepts applicable to all or most characteristics and specific exceptions where they apply. It also provides some definitions of protected characteristics and the interaction between some of those characteristics.
- 1.2 The Act does not contain significant changes in the law with regard to the majority of discrimination legislation applicable to schools. Schools that already employ non-discriminatory practices and adhere to government guide lines should already be acting within the spirit and letter of the Act and should need to make only minor adjustments, if any. However, it may be useful to review the school's compliance in the light of this guidance.

#### Gender reassignment

- 1.3 Protection from discrimination because of gender reassignment in schools is new for pupils in the Equality Act, although school staff are already protected. This means that for the first time it will be unlawful for schools to treat pupils less favourably because of their gender reassignment and that schools will have to factor in gender reassignment when considering their obligations under the Equality Duty.
- 1.4 Gender reassignment is defined in the Equality Act as applying to anyone who is undergoing, has undergone or is proposing to undergo a process (or part of a process) of reassigning their sex by changing physiological or other attributes. This definition means that in order to be protected under the Act, a pupil will not necessarily have to be undertaking a medical procedure to change their sex but must be taking steps to live in the opposite gender, or proposing to do so.  
A glossary of terminology related to the transgender field can be found on the [Gender Identity Research and Education Society website](#).
- 1.5 The protection against discrimination because of gender reassignment now matches the protection because of sexual orientation in schools. That is protection from direct and indirect discrimination and victimisation, which includes discrimination based on perception and on association. Schools need to make sure that all gender variant pupils, or the children of transgender parents, are not singled out for different and less favourable treatment from that given to other pupils. They should check that there are no practices which could result in unfair, less favourable treatment of such pupils. For example, it would be unlawful discrimination for a teacher to single out a pupil undergoing gender reassignment and embarrass him in front of the class because of this characteristic.
- 1.6 It is relatively rare for pupils – particularly very young pupils – to want to undergo gender reassignment, but when a pupil does so a number of issues will arise which will need to be sensitively handled. There is evidence that the number of such cases is increasing and schools should aim to address any issues early on and in a proactive way. Further guidance is available from the GIRES website. In addition, a partnership of bodies in Cornwall have produced a useful [guidance document for schools and families](#).

#### Race

- 1.7 The definition of race includes colour, nationality and ethnic or national origins.
- 1.8 Schools need to make sure that pupils of all races are not singled out for different and less favourable treatment from that given to other pupils. Schools should check that there are no practices which could result in unfair, less favourable treatment of such pupils. For example, it would be unlawful for a selective school to impose a higher standard for admission to applicants from an ethnic minority background, or for a school to impose stricter disciplinary penalties on African Caribbean boys than they do in similar circumstances to children from other backgrounds.



## Segregating pupils by race or ethnicity

- 1.9 Segregation of pupils by race is always direct discrimination. It would thus be unlawful for a school to put children into sets, or into different sports in PE classes, according to their ethnicity. This stipulation in the Act is to make it clear that claims that segregated treatment is “separate but equal” cannot be sustained where race is concerned. It does not mean that schools cannot take positive action to deal with particular disadvantages affecting children of one racial or ethnic group, where this can be shown to be a proportionate way of dealing with such issues.

## Race Equality Duty

- 1.10 Schools previously had a statutory duty which required them to take proactive steps to tackle racial discrimination, and promote equality of opportunity and good race relations. Under the Equality Act, this has been replaced by the general equality duty and the specific duties.

## Religion or belief

- 1.11 The Equality Act defines “religion” as being any religion, and “belief” as any religious or philosophical belief. A lack of religion or a lack of belief are also protected characteristics. These definitions are fairly broad and the concepts of religion and belief therefore must be construed in accordance with Article 9 of the European Convention on Human Rights and with existing case law. This means that to benefit from protection under the Act, a religion or belief must have a clear structure and belief system, and should have a certain level of cogency, seriousness and cohesion, and not be incompatible with human dignity.
- 1.12 “Religion” will include for example all the major faith groups and “belief” will include non-religious worldviews such as humanism. Religion will also include denominations or sects within a religion, such as Catholicism or Protestantism within Christianity. It is not however intended to include political beliefs such as Communism or support for any particular political party.
- 1.13 Lack of religion or belief is also included in the definition of “religion or belief”. This means it will be unlawful to discriminate against someone on the grounds that they do not adhere, or sufficiently adhere, to a particular religion or belief (even one shared by the discriminator), or indeed any religion or belief at all – such as, for example, an atheist.
- 1.14 Discrimination because of religion or belief means treating a person less favourably than another person is or would be treated, because of their religion or belief, or the religion or belief they are perceived to have, their lack of religion or belief, or the religion or belief, or lack of it, of someone else with whom they are associated.
- 1.15 The Equality Act makes it clear that unlawful religious discrimination can include discrimination against another person of the same religion or belief as the discriminator. This is to ensure that any potential discrimination between, e.g. Orthodox and Reform Jews, or Shia and Sunni Muslims, would also be unlawful. So if a Muslim pupil is not chosen for a part in a school play because it is thought to be inappropriate for a girl of that faith, that will be discrimination even if the decision was taken by a Muslim teacher. Nor could a Muslim teacher choose one Muslim pupil over another for a part in the play because he thinks the chosen pupil is a more observant member of his faith and should be rewarded.
- 1.16 The definition of discrimination on grounds of religion or belief does not address discrimination on any other ground (such as race, sex or sexual orientation). The Act does not allow a teacher to discriminate against a pupil because of his own personal religious views about homosexuality or the role of women for example.

## Sex/gender

- 1.17 Schools need to make sure that pupils of one sex are not singled out for different and less favourable treatment from that given to other pupils. They should check that there are no practices which could result in unfair, less favourable treatment of boys or girls. For example, it would be unlawful for a school to require girls to learn needlework while giving boys the choice between needlework and woodwork classes.



## Gender Equality Duty

- 1.18 Schools previously had a statutory duty to promote gender equality and have a gender equality scheme in place. Under the Equality Act, this has been replaced by the general equality duty and the specific duties.

## Single sex classes

- 1.19 Whilst there is no express exemption in the same way that there is for same-sex schools, it is not necessarily unlawful to have some single-sex classes in a mixed school, provided that this does not give children in such classes an unfair advantage or disadvantage when compared to children of the other sex in other classes. For example, it would be lawful to teach sex education to single-sex classes, as long as the classes were provided to both boys and girls, but unlawful to provide remedial classes just for boys who needed help with reading without doing the same for girls in a similar position. A positive action initiative specifically to help boys in such a position would not necessarily be unlawful but the school would need to be able to show that this was a proportionate way of dealing with a specific disadvantage experienced by boys and connected to their gender. It would not be proportionate simply to refuse help to girls with reading difficulties in order to help boys as a group catch up with the higher average attainment of girls. Pupils undergoing gender reassignment should be allowed to attend the single sex class that accords with the gender role in which they identify.

## Single sex sport

- 1.20 Although the Equality Act forbids discrimination in access to benefits, facilities and services; the Act does contain an exception which permits single-sex sports. It applies to participation in any sport or game, or other activity of a competitive nature, where the physical strength, stamina or physique of the average woman (or girl) would put her at a disadvantage in competition with the average man (or boy). But while this exception might permit a mixed school to have a boys-only football team, the school would still have to allow girls equal opportunities to participate in comparable sporting activities. The judgment on whether girls would be at a physical disadvantage needs to take into account the particular group in question, so it is much less likely to justify segregated sports for younger children. Where separate teams exist, it would be unlawful discrimination for a school to treat one group less favourably – for example by providing the boys' hockey or cricket team with much better resources than the girls'.

## Pregnancy and maternity

- 1.21 Protection for pupils from discrimination because of pregnancy and maternity in schools is covered in the Equality Act. This means it is unlawful for schools to treat a pupil less favourably because she becomes pregnant or has recently had a baby, or because she is breastfeeding. Schools will also have to factor in pregnancy and maternity when considering their obligations under the Equality Duty.
- 1.22 Local authorities have a duty under Section 19 of the Education Act 1996 to arrange suitable full-time education for any pupils of compulsory school age who would not otherwise receive such an education. This could include pupils of compulsory school age who become pregnant or who are parents. In particular, where pupils are unable to attend their previous school, the local authority would need to consider whether this duty is applied. 'Suitable education' should meet the individual needs of the pupil and must take account of their age, ability, aptitude and individual needs including any special educational needs they may have. Local authorities must have regard to statutory guidance on alternative provision and the ensuring a good education for children unable to attend school because of health needs. This guidance is available on [www.GOV.UK](http://www.GOV.UK).

## Sexual orientation and marriage and civil partnership



- 1.23 Schools need to make sure that all gay, lesbian or bi-sexual pupils, or the children of gay, lesbian or bi-sexual parents, are not singled out for different and less favourable treatment from that given to other pupils. They should check that there are no practices which could result in unfair, less favourable treatment of such pupils. For example, it would be unlawful for a school to refuse to let a gay pupil become a prefect because of his sexual orientation.
- 1.24 Maintained secondary schools have a legal requirement to teach about the 'nature of marriage' when they are delivering sex education. Many academies (including free schools) also teach about this topic, and when they do so, they must have regard to the Secretary of State's guidance on sex and relationship education. Schools must accurately state the facts about marriage of same sex couples under the law of England and Wales, in a way that is appropriate to the age and level of understanding and awareness of the pupils.
- 1.25 Teaching about marriage must be done in a sensitive, reasonable, respectful and balanced way. Teachers are subject to professional requirements, the school curriculum, school policies, and anti-discrimination duties towards colleagues and pupils.
- 1.26 No school, or individual teacher, is under a duty to support, promote or endorse marriage of same sex couples. Teaching should be based on facts and should enable pupils to develop an understanding of how the law applies to different relationships. Teachers must have regard to statutory guidance on sex and relationship education, and to meet duties under equality and human rights law.

## Sexual orientation and religion or belief

- 1.27 There is a relationship between protection because of sexual orientation and protection of religious freedom. Protection in the area of discrimination on grounds of religion or belief and the right to manifest one's religion or belief is set out earlier in this chapter (1.11 – 1.16).
- 1.28 Many people's views on sexual orientation/sexual activity are themselves grounded in religious belief. Some schools with a religious character have concerns that they may be prevented from teaching in line with their religious ethos. Teachers have expressed concerns that they may be subject to legal action if they do not voice positive views on same sex relationships, whether or not this view accords with their faith. There are also concerns that schools with a religious character may teach and act in ways unacceptable to lesbian, gay and bisexual pupils and parents when same sex relationships are discussed because there are no express provisions to prevent this occurring.
- 1.29 Schools with a religious character, like all schools, have a responsibility for the welfare of the children in their care and to adhere to curriculum guidance. It is not the intention of the Equality Act to undermine their position as long as they continue to uphold their responsibilities in these areas. If their beliefs are explained in an appropriate way in an educational context that takes into account existing guidance on the delivery of Sex and Relationships Education (SRE) and Religious Education (RE), then schools should not be acting unlawfully.
- 1.30 However, if a school conveyed its belief in a way that involved haranguing, harassing or berating a particular pupil or group of pupils then this would be unacceptable in any circumstances and is likely to constitute unlawful discrimination.
- 1.31 Where individual teachers are concerned, having a view about something does not amount to discrimination. So it should not be unlawful for a teacher in any school to express personal views on sexual orientation provided that it is done in an appropriate manner and context (for example when responding to questions from pupils, or in an RE or Personal, Social, Health and Economic education (PSHE) lesson). However, it should be remembered that school teachers are in a very influential position and their actions and responsibilities are bound by much wider duties than this legislation. A teacher's ability to express his or her views should not extend to allowing them to discriminate against others.

## Chapter 2 - Disability



- 2.1 The disability provisions in this Act are different from those for other protected characteristics in a number of ways.
- 2.2 The overriding principle of equality legislation is generally one of equal treatment - i.e. that you must treat a black person no less well than a white person, or a man as favourably as a woman. However, the provisions relating to disability discrimination are different in that you may, and often must, treat a disabled person more favourably than a person who is not disabled and may have to make changes to your practices to ensure, as far as is reasonably possible, that a disabled person can benefit from what you offer to the same extent that a person without that disability can. So in a school setting the general principle is that you have to treat male and female, black and white, gay and straight pupils equally - but you may be required to treat disabled pupils differently. Discrimination is also defined rather differently in relation to disability

## Provisions relating to disability

- 2.3 The disability provisions in the Equality Act mainly replicate those in the former Disability Discrimination Act (DDA). There are some minor differences as follows:
  - 2.3.1 Unlike the DDA the Equality Act does not list the types of day to day activities which a disabled person must demonstrate that they cannot carry out, thus making the definition of disability less restrictive for disabled people to meet.
  - 2.3.2 Failure to make a reasonable adjustment can no longer be defended as justified. The fact that it must be reasonable provides the necessary test.
  - 2.3.3 Direct discrimination against a disabled person can no longer be defended as justified – bringing it into line with the definition of direct discrimination generally.
  - 2.3.4 From September 2012 schools and local authorities have a duty to supply auxiliary aids and services as reasonable adjustments where these are not being supplied through Special Educational Needs (SEN) statements or from other sources. In practice this will already be being done in many cases.

## Definition of disability

- 2.4 The Act defines disability as when a person has a ‘physical or mental impairment which has a substantial and long term adverse effect on that person’s ability to carry out normal day to day activities.’ Some specified medical conditions, HIV, multiple sclerosis and cancer are all considered as disabilities, regardless of their effect.
- 2.5 The Act sets out details of matters that may be relevant when determining whether a person meets the definition of disability. Long term is defined as lasting, or likely to last, for at least 12 months.

## Unlawful behaviour with regard to disabled pupils

- 2.6 The rather different and more complex provisions that apply in the case of disability are set out here.

### Direct discrimination

- 2.6 A school must not treat a disabled pupil less favourably simply because that pupil is disabled – for example by having an admission bar on disabled applicants.
- 2.7 A change for schools in this Act is that there can no longer be justification for direct discrimination in any circumstances. Under the DDA schools could justify some direct discrimination – if was a proportionate means of meeting a legitimate aim. What the change means is that if a school discriminates against a person purely because of his or her disability (even if they are trying to achieve a legitimate aim) then it would be unlawful discrimination as there can be no justification for their actions.

### Indirect discrimination



- 2.8 A school must not do something which applies to all pupils but which is more likely to have an adverse effect on disabled pupils only – for example having a rule that all pupils must demonstrate physical fitness levels before being admitted to the school – unless they can show that it is done for a legitimate reason, and is a proportionate way of achieving that legitimate aim.

### Discrimination arising from disability

- 2.9 A school must not discriminate against a disabled pupil because of something that is a consequence of their disability – for example by not allowing a disabled pupil on crutches outside at break time because it would take too long for her to get out and back. Like indirect discrimination, discrimination arising from disability can potentially be justified.

### Harassment

- 2.10 A school must not harass a pupil because of his disability – for example, a teacher shouting at the pupil because the disability means that he is constantly struggling with class-work or unable to concentrate.

### Disability Equality Duty

- 2.11 Schools previously had a statutory duty which required them to take proactive steps to tackle disability discrimination, and promote equality of opportunity for disabled pupils. Under the Equality Act, this has been replaced by the general equality duty and the specific duties.

### Reasonable adjustments and when they have to be made

- 2.12 The duty to make reasonable adjustments applies only to disabled people. For schools the duty is summarised as follows:
- 2.12.1 Where something a school does places a disabled pupil at a disadvantage compared to other pupils then the school must take reasonable steps to try and avoid that disadvantage.
- 2.12.2 Schools will be expected to provide an auxiliary aid or service for a disabled pupil when it would be reasonable to do so and if such an aid would alleviate any substantial disadvantage that the pupil faces in comparison to non-disabled pupils.

Schools are not subject to the requirement of reasonable adjustment duty concerned with make alterations to physical features because this is already considered as part of their planning duties.

### Auxiliary aids and services

- 2.13 The duty to provide auxiliary aids as part of the reasonable adjustment duty is a change for all schools from September 2012 and also extends to maintaining local authorities.
- 2.14 Many disabled children will have a SEN and may need auxiliary aids which are necessary as part of their SEN provision; in some circumstances as part of a formal SEN statement. These aids may be provided in the school under the SEN route, in which case there will be no need for the school to provide those aids as part of their reasonable adjustment duty.
- 2.15 Schools will have to consider whether to provide auxiliary aids as a reasonable adjustment for disabled children. This will particularly be the case where a disabled child does not have an SEN statement or where the statement does not provide the auxiliary aid or service.
- 2.16 There should be no assumption, however, that if an auxiliary aid is not provided under the SEN regime then it must be provided as a reasonable adjustment. Similarly, whilst schools and LAs are under the same reasonable

adjustment duty, there should be no assumption that where it is unreasonable for a school to provide an auxiliary aid or service, for example on cost grounds, it would then be reasonable for the local authority to provide it. All decisions would depend on the facts of each individual case. The nature of the aid or service, and perhaps also the existence of local arrangements between schools and local authorities, will help to determine what would be reasonable for the school or the LA to provide. For example, where there is a centrally organised visual or hearing impairment service it may be reasonable for the local authority to provide more expensive aids or support through that service but not reasonable for an individual school to have to provide them.

- 2.17 The term “auxiliary aids” found in the Equality Act 2010 covers both auxiliary aids and services but there is no legal definition for what constitutes auxiliary aids and services. Considering the everyday meaning of the words, is, however, helpful. Legal cases have referred to the Oxford English Dictionary definition of auxiliary as “helpful, assistant, affording aid, rendering assistance, giving support or succour” and that auxiliary aids and services “are things or persons which help.” Examples of what may be considered an auxiliary aid could be; hearing loops; adaptive keyboards and special software. However the key test is reasonableness and what may be reasonable for one school to provide may not be reasonable for another given the circumstances of each case.
- 2.18 Some disabled children will have a need for auxiliary aids which are not directly related to their educational needs or their participation in school life, for example, things which are generally necessary for all aspects of their life, such as hearing aids. It is likely to be held that it would be unreasonable for a school to be expected to provide these auxiliary aids.

## Making reasonable adjustments

- 2.19 The EHRC has published guidance on the auxiliary aids duty which includes advice on when it would be reasonable for schools to have to make adjustments and what factors a school should take into account in its assessment of whether or not it would be reasonable to make any particular adjustment. The guidance is available at <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/>.
- 2.20 A minor change for schools is that a failure to make a reasonable adjustment cannot now be justified, whereas under the previous disability discrimination legislation it could be. However this change should not have any practical effect due to the application of the reasonableness test – i.e. if an adjustment is reasonable then it should be made and there can be no justification for why it is not made. Schools will not be expected to make adjustments that are not reasonable.
- 2.21 In addition to having a duty to consider reasonable adjustments for particular individual disabled pupils, schools will also have to consider potential adjustments which may be needed for disabled pupils generally as it is likely that any school will have a disabled pupil at some point. However, schools are not obliged to anticipate and make adjustments for every imaginable disability and need only consider general reasonable adjustments - e.g. being prepared to produce large font papers for pupils with a visual impairment even though there are no such pupils currently admitted to the school. Such a strategic and wider view of the school’s approach to planning for disabled pupils will also link closely with its planning duties.
- 2.22 The Act does not set out what would be a reasonable adjustment or a list of factors to consider in determining what is reasonable. It will be for schools to consider the reasonableness of adjustments based on the circumstances of each case. However, factors a school may consider when assessing the reasonableness of an adjustment may include the financial or other resources required for the adjustment, its effectiveness, its effect on other pupils, health and safety requirements, and whether aids have been made available through the Special Educational Needs route).
- 2.23 Cost will inevitably play a major part in determining what is reasonable and it is more likely to be reasonable for a school with substantial financial resources to have to make an adjustment with a significant cost, than for a school with fewer resources. For example, a small rural primary school may not be able to provide specialised IT equipment for any disabled pupils who may need it and it may not be reasonable for the school to provide that equipment. On the other hand, a much larger school might reasonably be expected to provide it.
- 2.24 Often, though, effective and practicable adjustments for disabled pupils will involve little or no cost or disruption and are therefore very likely to be reasonable for a school to have to make.





- 2.25 Schools generally will try to ensure that disabled pupils can play as full a part as possible in school life and the reasonable adjustments duty will help support that. However, there will be times when adjustments cannot be made because to do so would have a detrimental effect on other pupils and would therefore not be reasonable – for example, if a school put on a geology field trip which necessarily involved climbing and walking over rough ground and after fully considering alternatives to accommodate a disabled pupil in a wheelchair who could not take part it determined that there was no viable alternative or way of enabling the disabled pupil to participate or be involved, it would not have to cancel the trip as originally planned. This is unlikely to constitute direct discrimination or failure to make a reasonable adjustment
- 2.26 The reasonable adjustments duties on schools are intended to complement the accessibility planning duties (covered in 2.27-2.30) and the existing SEN statement provisions which are part of education legislation, under which local authorities have to provide auxiliary aids to pupils with a statement of special educational need.

### Schools' duties around accessibility for disabled pupils

- 2.27 Schools and LAs need to carry out accessibility planning for disabled pupils. These are the same duties as previously existed under the DDA and have been replicated in the Equality Act 2010.
- 2.28 Schools must implement accessibility plans which are aimed at:
- 2.28.1 increasing the extent to which disabled pupils can participate in the curriculum;
  - 2.28.2 improving the physical environment of schools to enable disabled pupils to take better advantage of education, benefits, facilities and services provided; and
  - 2.28.3 improving the availability of accessible information to disabled pupils.
- 2.29 Schools will also need to have regard to the need to provide adequate resources for implementing plans and must regularly review them. An accessibility plan may be a freestanding document but may also be published as part of another document such as the school development plan.
- 2.30 OFSTED inspections may include a school's accessibility plan as part of their review.

### Local authorities' duties around accessibility for disabled pupils

- 2.31 LAs must, for the schools for which they are responsible, prepare accessibility strategies based on the same principle as the access plans for schools.
- 2.32 Guidance on the planning duties, which offers advice to schools and LAs on how to develop plans and strategies and gives examples on approach, was published in 2002 and can be accessed on [The National Archives](#).
- 2.33 Further guidance on this and all other areas of disability in schools is available in the "Implementing Disability Discrimination Act in Schools and Early Years Settings" pack, which although it refers to the repealed DDA, contains helpful advice for schools in the area of disability and is available from [The National Archives](#).