

## GUIDANCE NOTE

### WHAT IS INDIRECT DISCRIMINATION?

Most people understand direct discrimination. Indirect discrimination occurs where the effect of certain requirements, conditions or practices imposed by an employer or education provider has an adverse impact disproportionately on one group or other. Indirect discrimination generally occurs when a rule or condition, which is applied equally to everyone, can be met by a considerably smaller proportion of people from a particular group, the rule is to their disadvantage, and it cannot be justified on other grounds.

The law applies to employers and providers of education or training.

**Racial group** means a group of people defined by their race, colour, nationality (including citizenship) ethnic or national origins.

**Victimisation** means treating someone less favourably because they have made a complaint of discrimination (a "protected act"), or are thought to have done so; or because they have supported someone else who has made a complaint of discrimination.

**Vicarious liability** is the legal basis whereby an institution may become legally liable for the acts of its employees or agents. This can apply even where the institution had no knowledge of the acts and where, if it had been aware, it would disapprove or have disapproved of the acts in question.

*Examples :*

- The number of people from a racial group or of one sex that can meet the job criteria is considerably smaller than the rest of the population owing to unnecessary and unjustifiable criteria in relation to language ability, age, length of experience.
- The criteria cannot actually be justified by the employer as a real requirement of the job. So a candidate who cannot meet the criteria could still do the job as well as anyone else. This might include part time workers or job sharers where the criterion imposed is the ability to work full- time.
- A policy or practice creates a substantial disadvantage for a disabled person. There is a requirement to adjust the policy for the individual and anticipate the needs of disabled people in general.

Direct discrimination can be less favourable treatment, which includes harassment or bullying. Comparably similar legal definitions of indirect discrimination and harassment apply in respect of sexual orientation, religion, age, gender and disability.

## **More examples**

### **Discrimination against women**

#### **Direct and indirect discrimination against women**

1. - (1) In any circumstances relevant for the purposes of any provision of this Act, other than a provision to which subsection (2) applies, a person discriminates against a woman if -

(a) on the ground of her sex he treats her less favourably than he treats or would treat a man, or

(b) he applies to her a requirement or condition which he applies or would apply equally to a man but -

(i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it, and

(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and

(iii) which is to her detriment because she cannot comply with it.

#### **The Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001**

### **Harassment against disabled people**

#### **Meaning of "harassment"**

(1) For the purposes of this Part, a person subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, he engages in unwanted conduct which has the purpose or effect of -

(a) violating the disabled person's dignity, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

### **The Disability Discrimination Act 1995 (Amendment) Regulations 2003**

### **New definition of indirect discrimination**

Previously, indirect discrimination has occurred when somebody applied a 'condition or requirement' which appeared to affect everyone equally but which in fact put people from a particular racial group at a disadvantage. The new definition (among other changes) replaces the phrase 'condition or requirement' with 'provision, criterion or practice' so far as racial groups based on the relevant grounds are concerned. This means that, in addition to the existing 'formal' practices, more 'informal' practices are now more likely to be covered by the Act and there will be more circumstances in which claims of indirect discrimination can be brought.

### **Statutory prohibition of harassment**

Previously, racial harassment has not been explicitly mentioned by the Race Relations Act, although courts and tribunals have considered harassment to be a form of unlawful direct discrimination. Now, the Act states that harassment on the relevant grounds is unlawful. Harassment occurs when someone's actions or words, based on the relevant grounds, are unwelcome and violate another person's dignity or create an environment that is intimidating, hostile, degrading, humiliating or offensive. This provision means that the law is clearer and that it will be of greater assistance to those who suffer harassment.

### **(Guidance notes on the Race Relations Act 1976 (Amendment) Regulations 2003-Home Office)**

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