

Appendix Eight

EQUALITIES LEGISLATION briefing by Rohan Collier

Attached is an equality legislation briefing which was given by Rohan Collier to members and officers in the Council.

The Disability Discrimination Act

What does the legislation cover?

The Disability Discrimination Act 1995 and Regulations include protection for disabled people in employment, goods, facilities, services, education and public transport. The Act also established the Disability Rights Commission. The purpose of the Commission is to provide advice and assistance, work to eliminate discrimination against disabled people, research into disability matters, carry out investigations and use legal powers where they believe that discrimination may be taking place. They are also responsible for review of the Act and publication of good practice guidelines and Codes of Practice. The Codes of Practice do not have legal status but can be used as evidence before an employment tribunal or court.

The Act covers all employers since October 2004, except the armed forces. The small employer exemption has been removed. Barristers, the police, partnerships and qualification bodies are now included in the Act.

What does the law mean by disability?

'...a person has a disability for the purposes of the Act if he has a physical or mental impairment, which has a substantial and long-term adverse effect on his ability to carry out day-to-day activities' [DDA, 1995, s.1(1)].

The Act does not list all different disabilities that are included. Sensory impairments such as sight and hearing, and learning disabilities are included according to DRC guidance. (DRC Guidance to the definition of disability) In the Disability Discrimination Act 2005, mental disabilities have been extended to include not just clinically well recognised mental disabilities, but also others. Progressive conditions will also be included from the point of diagnosis such as cancer, MS and HIV. (Equal Opportunities Review, May 2005).

Dependency on alcohol, nicotine or other substances is not a disability for the purpose of the Act. Whilst disfigurements are included in the Act, tattoos, body piercing, pyromania, kleptomania, exhibitionism, voyeurism and a tendency to abuse other persons are not included. (DRC Guidance to the definition of disability.)

According to the DRC 's guidance the present or past impairment must be substantial and have lasted or is likely to last at least 12 months or for the rest

of a person's life. Whether the condition is substantial or not is assessed before corrective action is taken through medicines and the use of aiding equipment etc. except in the case of sight impairment, when it is necessary to use glasses. The condition can be discontinuous. This is often the case with rheumatoid arthritis and epilepsy for example. However, seasonal allergic hay fever is excluded. (DRC guidance to the definition of disability). In establishing if a person has a disability as defined by law, it is necessary to assess the impact that an impairment has on every day activities. The impairment must adversely affect at least one of the listed day-to day activities.

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects,
- speech, hearing or eyesight;
- memory or ability to concentrate, learn or understand
- perception of the risk of physical danger (Sch 1, para 4(1) .

What are employers' responsibilities

DDA provides that employers have responsibilities not to discriminate against disabled people

- in the way they decide to offer employment
- in the terms they offer employment
- by refusing to offer disabled people employment
- in promotion, transfer, training and other benefits
- by dismissing them unfairly
- by subjecting them to other detriments (DDA,1995)

What does discrimination mean?

Discrimination can take several forms. These are:

- direct discrimination
- disability related discrimination
- failure to make reasonable adjustments
- harassment
- victimisation (DRC, Code of Practice, 2004).

Direct discrimination

Direct discrimination became law in October 2004. It defines discrimination as unfavourable treatment on grounds of a person's disability. Generally the reason for the discrimination tends to be the disability itself. The employer cannot justify this type of discrimination in law. (DRC, Code of Practice, 2004).

Direct discrimination is defined as:

'A person directly discriminates against a disabled person if, on the grounds of the disabled person's disability, he treats the disabled

person less favourably than he treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as or not materially different from, those of the disabled person.” [DDA,s.3A(5)]

Direct discrimination tends to stem from stereotypical assumptions about disabled people. This can be a prejudice about disabled people or a specific disability. The Code of Practice gives an example of a blind woman who is not offered a job with computers because the employer wrongly assumes that blind people cannot use computers. (DRC, Code of Practice, 2004)

A neutral reason for unfavourable treatment can also turn out to be a pretext for direct disability discrimination. This may not necessarily be conscious on the part of the discriminator. According to the Code, a good way of checking out if it is discrimination, is to question if a non-disabled person or a person with a different disability, would be treated in the same way. (DRC, Code of Practice, 2004)

Disability related discrimination

Another type of discrimination against disabled people is defined as unfavourable treatment related to a person’s disability.

Disability related discrimination is defined as:

‘...an employer discriminates against a disabled person if:-

- (a) for a reason which relates to the disabled person’s disability he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and*
- (b) he cannot show that the treatment is justified [DDA, s.3A(1)]*

This is a wider concept and the discrimination may not be because of the disability itself. An example from the Code is a woman who was dismissed because she took three periods of leave because she had MS. The employer did not know that she had MS. The reason for the unfavourable treatment was her attendance record rather than her disability. (DRC, Code of practice, 2004).

The employer may be able to justify disability related discrimination under certain circumstances. (DRC, Code of Practice, 2004).

An employer also discriminates if he fails to make reasonable adjustments.

What are reasonable adjustments?

The DDA provides that an employer has a duty to make reasonable adjustments where ‘a provision, criterion or practice applied by the employer or on behalf of the employer places a disabled person at a substantial disadvantage compared with people who are not disabled.’ This includes ‘any physical feature of premises occupied by the employer’, (p.69, DRC, Code of practice, 2004).

The Code gives an example of a man with dyslexia, who can write good letters but finds it stressful to do so with short deadlines. He is given more time for a test during recruitment. (DRC, Code of Practice, 2004).

Who can advise on adjustments?

Help is available from a number of sources.

- It is important to consult with disabled people themselves
- It is also important to seek expert advice about a person's capabilities, changes to buildings and equipment and other working arrangements. Disability advisers at the local job centre, disability organisations and occupational health specialists can usually give advice. For example when someone has been away for a long time a staged return may be appropriate. (DRC, Code of Practice, 2004)

Examples of reasonable adjustments from the Code of Practice

- 'making adjustments to premises'
- 'allocating some of a disabled person's duties to another person'
- 'transferring a person to fill an existing vacancy'
- 'altering a person's hours of working and training'
- 'assigning the person to a different place of work or training'
- 'allowing the person to be absent during working or training hours for rehabilitation, assessment or treatment'
- 'giving, or arranging for, training or mentoring (whether for the disabled person or any other person)'
- 'acquiring or modifying equipment'
- 'modifying instructions or reference manuals'
- 'modifying procedures for testing or assessment'
- 'providing a reader or interpreter'
- 'providing supervision or other support'
- 'conducting a proper assessment of what reasonable adjustments may be required'
- 'permitting flexible working'
- 'allowing a disabled employee to take a period of disability leave'
- 'participating in supported employment schemes, such as 'Work Step'
- 'employing a support worker to assist a disabled employee'
- 'modifying disciplinary and grievance procedures'
- 'adjusting redundancy selection criteria'
- 'modifying performance related pay arrangements (p.78-84, DRC, Code of Practice, 2004).'

When is it reasonable to make an adjustment?

An employer must consider reasonable adjustments to overcome any disadvantage that a disabled person might face. The DDA states a number of factors that should be considered when deciding. These are:

- how effective the adjustment would be in preventing the disadvantage
- the practicality of making the adjustment
- financial and other costs of the adjustment and the extent of any disruption it would cause.

- the employer's financial and other resources
- the availability of financial and other assistance to the employer to make the adjustment (DRC Code of Practice, 2004)

Can discrimination be justified?

Most conduct, which is potentially unlawful, such as direct discrimination, victimisation, harassment, instructions or pressure to discriminate and aiding an unlawful act cannot be justified. A failure to comply with the duty to make reasonable adjustments can also not be justified. It is a question, whether it is **reasonable** for the employer to make the adjustment. (DRC, Code of Practice, 2004).'

It is only disability-related discrimination that can be justified in certain limited circumstances. Disability related discrimination can only be justified if the reason is both material to the circumstances of the case and substantial. If adjustments were made but the disability related reason still remained, it would be justified not to make any adjustments. The Code gives an example of a man, who has severe back pain and cannot bend his back and who is rejected for a job as a carpet fitter. In this case the disability related discrimination can be justified. (DRC, Code of Practice, 2004).

Stereotypical health and safety concerns should be avoided. A disabled person's own views should be considered. (DRC, Code of Practice, 2004).

Victimisation

Victimisation is unlawful under the DDA. Victimisation is when a person is treated less favourably because the person has

- 'brought or given evidence or information in connection with proceedings under the Act (whether or not the proceedings are later withdrawn)'
- alleged someone has contravened the Act (whether or not the allegation is later dropped)...'. (DRC, Code of Practice, 2004).

A disabled or a non-disabled person can bring a case of victimisation.

Harassment

Harassment has become included in the DDA as a form of discrimination. The Act says that

*'harassment occurs where for a reason which relates to a person's disability, another person engages in unwanted conduct which has the effect of:
violating the disabled persons dignity
creating an intimidating, hostile, degrading, humiliating or offensive environment for him'. [DDA s. 3 b(2)]*

Positive Action

The Disability Discrimination Act 2005 received Royal Assent in April 2005. It prohibits disability discrimination by public organisations and introduces a new

positive duty to promote equality of opportunity for disabled people. It also strengthens the duty not to publish discriminatory advertisements, which will include publishers such as newspapers. Public Authorities will have to produce a Disability Equality Scheme by Dec 2006 that mainstreams disability equality into policies and functions.

What is the responsibility of service providers?

The responsibilities of service providers are not to discriminate against disabled people. A service provider discriminates if he treats a disabled person less favourably for a reason related to the person's disability and the reason cannot be justified or if he fails to make reasonable adjustments and he cannot show that the failure is justified.

An employer may discriminate

- by refusing to provide disabled people with a service which they provide to other members of the public
- in the standard or manner in which they provide the service to disabled people
- in the terms in which they provide the service to disabled people
- by failing to make reasonable adjustments in the way services are provided
- by failing to make adjustments to physical features and premises (DRC Code of Practice)

An example from the Code mentions, that a supermarket has a duty not just to provide car parking spaces close to the building for disabled people but also a carry-to-car service for all disabled people not just orange badge holders. (DRC Code of Practice)

All organisations that provide goods, facilities and services are covered by the Act regardless of size.

Race Relations Act 1976 (RRA, 1976) amended 2000 and 2003.

The Race Relations Act was modelled on the Sex Discrimination Act 1975 and largely contains parallel provisions. Britain was the first country in the European Union with legislation against race discrimination and it was quite radical in its time. It covers most areas of employment, including recruitment, promotion, transfer, training, dismissal and other benefits or detriments. It also includes education, housing, provision of goods facilities and services, planning, the police, unlawful advertisements and pressure or instructions to discriminate. (RRA,1976) The Act also set up the Commission of Racial Equality (CRE) with similar responsibilities to the DRC.

What does discrimination mean?

Discrimination takes place when a person is treated less favourably on 'racial grounds' Racial grounds include 'colour, race, nationality or national and ethnic origin. [RRA,1976]

The Act includes four types of discrimination;

- direct discrimination
- indirect discrimination
- victimisation
- harassment

Direct discrimination

Direct discrimination takes place when:

*' A person discriminates against another... if-
(a) on racial grounds he treats that other less favourably than he treats or would treat other persons;'* [RRA 1976, s1(1)(a)].

To prove discrimination the complainant has to show that they were treated less favourably compared to a person of a different racial group. The comparison can be with a real or hypothetical person. It is irrelevant whether the person intended to discriminate or not. Direct discrimination is often based on racial prejudice and stereotypes. The racial grounds do not need to be the only grounds for the unfavourable treatment. Racist abuse and harassment are examples of direct discrimination.

Indirect discrimination

Indirect discrimination may fall into two categories. The reason is that the popularly named Race Directive from Europe defined racial grounds more narrowly than the existing domestic law, not including nationality and colour. This difference led to anomalies in British law. Britain has therefore indirect discrimination based on grounds of colour and nationality and indirect discrimination based on grounds of race, ethnic and national origin. The Race Relations (Amendment) Regulations 2003 incorporated the new European provisions in the RRA on grounds of race, ethnic and national origin excluding colour and nationality.

Indirect discrimination on grounds of colour and nationality

- applying a requirement or condition equally to all persons
- but a considerably smaller proportion of one racial group is able to comply with the condition or requirement
- the condition or requirement cannot be justified on non-racial grounds
- and it causes a detriment to the racial group who is unable to comply with it
(RRA, 1976)

You have to show, often using statistical evidence that a considerably smaller proportion of people of a different colour or nationality are able to comply with the imposed requirement or condition. You also need to prove that they suffer detriment as a result, and that the requirement or condition cannot be justified on non-racial grounds. For example a rule that employees or pupils are not allowed to wear headgear would discriminate against Sikh boys wearing a turban. (CRE web site)

Indirect discrimination on grounds of race ethnic and national origin

The Race Relations (Amendment) Regulations 2003 introduced new criteria for indirect discrimination i.e. 'provision, criterion and practice' instead of 'requirement and condition'. You need to prove that by imposing a 'provision, criterion or practice' generally, people of a particular race, ethnic or national origin are placed at a disadvantage. You also need to prove that it cannot be shown to be 'a proportionate means of achieving a legitimate aim.' This is a less demanding criterion and requires less emphasis on statistical data. [Race Relations (Amendment) Regulations 2003.]

Victimisation

This is the third form of discrimination included in the RRA, (1976). Anyone who is treated less favourably than somebody else because they have been involved in enforcing the Race Relations Act by bringing proceedings, giving evidence or information is protected under the legislation.

Racial Harassment

The Race Relations Act (Amendment) Regulations (2003) introduced harassment as a freestanding form of discrimination.

'(1)A person subjects another to harassment...where on the grounds of race or ethnic or ethnic or national origins, he engages in unwanted conduct which has the purpose or effect of-
(a)violating that other person's dignity; or
(b)creating an intimidating, hostile, degrading, humiliating or offensive environment for him' [Race Relations (Amendment) regulation s. 3A]

Harassment on grounds of colour and nationality will continue to be regarded as direct discrimination of the RRA 1976 as was the case before the introduction of the Race Relations (Amendment) Regulations, 2003.

Positive Action – Positive Discrimination

There is provision in the RRA for positive action in a few areas such as training and advertising to encourage and develop under-represented racial groups. Positive discrimination is unlawful under British law except in a few areas called Genuine Occupational Qualifications/Requirements. (RRA,1976) Qualifications were changed to Requirements following the introduction of the Race Relations (Amendment) Regulations 2003.

Genuine Occupational Qualifications (GOQ)

GOQs apply for reasons of 'authenticity' and when providing 'personal services promoting the welfare' of a particular racial group. (RRA, 1976 s.5). Actors in drama performances, waiters in Chinese restaurants and certain welfare posts may fall into this category. The section applies to colour and nationality. (RRA)

Genuine Occupational Requirements (GOR)

This section applies when 'being of a particular race or particular ethnic or national origins is a genuine and determining occupational requirement' To satisfy this section the requirement must be for a particular post. It must also 'be proportionate' to the need to apply that requirement [s. 4 Race Relations (Amendment) Regulations 2003]. For example, it may be a GOR to be an Asian woman for the manager of an Asian women's refuge. (CRE website).

The duty to promote race equality

The death of Stephen Lawrence in 1993 led to the 'Stephen Lawrence Inquiry report' by Macpherson (1999). The inquiry showed that racism could not be attached exclusively to any particular individual, but was inherent in the culture of organisations (Macpherson, 1999).

'Institutional racism' was defined in the report as:

'a collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.' (Macpherson, 1999).

The Race Relations (Amendment) Act 2000.

Against the background of the Stephen Lawrence Inquiry report by Macpherson (1999), many public organisations started to deal with institutional discrimination. The report influenced the development of the Race Relations (Amendment) Act 2000. RRAA, 2000.

The RRAA 2000 gave Public Authorities the general duty to:

*(a)' eliminate unlawful racial discrimination; and
(b) promote equality of opportunity and good relations between persons of different racial groups.'* [(RRA 1976 sec.71.(1 (a)(b))

Listed public Authorities were given a duty to publish a Race Equality Scheme by May 2002 showing their arrangements for eliminating discrimination on grounds of race and promoting equal opportunities and good race relations.

Goods, Facilities and Services

It is unlawful for anyone to discriminate when providing services to the public on grounds of race. Examples are shops, banks, financial services, hotels,

theatres, cinemas, bars, pubs restaurants etc. (CRE website –The Scope of Race Relations Act)

Education

The RRA applies to educational establishments. It is unlawful to discriminate in the way educational establishments admits, treats, excludes pupils and makes decisions about special needs on grounds of race. (CRE website – The Scope of Race Relations Act)

Housing

It is unlawful for anyone selling, letting or managing properties to discriminate on grounds of race. (CRE website –The Scope of Race Relations Act)

Police

It is unlawful for the police to carry out any of its functions in a discriminatory way. This includes stop and search, arresting people detaining people, controlling demonstrations etc. (CRE website –The Scope of Race Relations Act)

Sex Discrimination Act (SDA1975) Amended 1999, 2001, 2005

What does the legislation cover?

The Sex Discrimination Act covers discrimination on grounds of gender and marriage. It covers most areas of employment, including who should be offered or refused employment, promotion, transfer, training, dismissal and other benefits or detriments. It also includes education, provision of goods facilities and services and the disposal and management of premises. It also set up the Equal opportunities Commission (EOC), which has similar powers to the CRE and the DRC (SDA, 1975).

What does discrimination mean?

It is unlawful to discriminate on grounds of sex and marriage. The Act covers discrimination against men as well as women and all ages. The Act has been extended to include discrimination on the grounds of gender reassignment following the implementation of the Sex Discrimination (Gender Reassignment) Regulations 1999.

Sex discrimination can take several forms:

- direct discrimination
- indirect discrimination
- victimisation
- harassment
- pregnancy discrimination

Direct discrimination

Unlawful discrimination takes place when on grounds of sex or marriage a woman or a man is treated less favourably than a person of the opposite sex

or a person who is not married (SDA). The comparator can be a real or hypothetical person of the opposite sex.

Harassment is a form of direct discrimination

In the 2005 Amendment, harassment is defined:

‘A person subjects a woman to harassment if-

- (a) on the ground of her sex, he engages in unwanted conduct that has the purpose or effect of violating her dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her
- (b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
- (c) on the grounds of her rejection of or submission to unwanted conduct he treats her less favourably.’

Discrimination against pregnant women is a form of direct discrimination in the new Employment Equality (Sex Discrimination) Regulations 2005 amending the SDA.

Indirect Discrimination

To prove indirect discrimination three steps have to be considered.

- A provision, criterion or practice is applied equally to men and women
- Women (or men) are placed at a particular disadvantage compared to the opposite sex
- It cannot be shown to be a proportionate means of achieving a legitimate aim. (Amended SDA)

There is now less emphasis on using statistical evidence. Statistics can be used to prove disadvantage but ‘evidence can also come from experts or other witnesses’ (Consultative Document on Draft Regulations)

Victimisation- (as RRA 1976)

Positive Action –Positive Discrimination

In the SDA (1975) there are comparable sections to the RRA (1976) with provisions for training and advertising to promote gender equality through positive action. This applies where there has been an under representation of that gender in the last twelve months. However selection for posts must be on merit.

Positive discrimination is unlawful in British legislation except in a few limited circumstances called Genuine Occupational Qualification. (Requirement in future legislation) GOQs include personal services, services where presence of the opposite sex could cause embarrassment, for example if people are in a state of undress, dramatic performances etc. It would also include when a

person of a specified gender will promote the welfare of vulnerable individuals of that gender. (SDA)

Provision of goods, facilities and services

Services to the public must in general be provided without discrimination on grounds of sex. This includes sports facilities, banking and personal services etc. (EOC website). There are some exceptions:

- When charities are providing benefits to one sex only
- When people are competing in sports and women are at a disadvantage compared to the average man for reasons of physical strength, physiology or stamina.
- In insurances when an assessment of risk is involved (SDA)

Education

Co-educational establishments, schools, colleges and universities must not discriminate on grounds of sex in the way they treat and admit students. (SDA)

Equal Pay Act (Eqpa 1970) with Amendments and Regulations

This Act is concerned with sex discrimination on grounds of pay. Pay includes not just salary but also redundancy pay, occupational pensions, severance pay, sick pay and paid leave. The purpose of the Act is to close the pay gap between men and women. The legislation requires an actual comparator rather than a hypothetical one. It compares men and women in;

- Like work
- Work rated as equivalent
- Work of equal value (EqPA,1970)

It is unlawful to pay one gender more than another in jobs that are the same, broadly similar or of equal value according to job evaluations. The Act becomes particularly important when constructing pay scales, undertaking job evaluations and carrying out pay audits.

Gender Recognition Act 2004

This will give transsexual people legal recognition in their acquired gender. If they meet certain criteria they will receive a full gender recognition certificate from a Gender Recognition Panel. It will allow transsexuals to marry in their new gender and have a replacement birth certificate. (Equal Opportunities Review, Jan 2005)

Civil Partnerships Act, 2004

This gives lesbian and gay couples the right to register their relationships with similar rights and responsibilities as married couples. It also gives them the right to benefit from their partners' pensions. (Equal Opportunities Review, Jan 2005)

The Employment Equality (Sexual Orientation) Regulations 2003

The new Regulations outlaw discrimination on the grounds of sexual orientation in employment including recruitment, training, pay, promotion, dismissal and references.

People of the same sex, people of opposite sex, or people of both sexes are protected by the law, which means that lesbians, gay men, bisexuals and heterosexuals are included. (DTI publication, 2003)

The law includes direct discrimination, indirect discrimination, harassment and victimisation. The law also protects people, who rightly or wrongly, are assumed to be of a particular sexual orientation. (DTI publication, 2003)

The Equality Bill, currently going through Parliament will extend the Regulations on Sexual Orientation to service delivery.

The Employment Equality (Religion or Belief) Regulations 2003

The new Regulations outlaw discrimination on the grounds of religion or belief in employment and vocational training including recruitment, training, pay, promotion, dismissal and references. (DTI publications, 2003)

The law includes direct discrimination, indirect discrimination, harassment and victimisation. People, who are discriminated against because they associate with people from a particular religion are also protected. (DTI publications, 2003)

The Equality Bill, currently going through Parliament will extend the Regulations on Religion and Belief to service delivery.

Age Discrimination

Regulations against age discrimination will be in force from October 2006. The government has announced its plans on age discrimination.

It is likely that employers will be able to

- set a default retirement age of 65
- give employees the right to request an extension, which employers will have a duty to consider.

- Employers may be allowed to justify earlier retirement ages if they can show it is necessary (Equal Opportunities Review, January 2005)

After five years the government will review the provisions. (Equal Opportunities Review, January 2005)

Burden of Proof

It is for the applicant to make out a prima facie case of discrimination. The burden of proof then shifts to the employer. It is then for the employer to demonstrate that the conduct was not unlawful. If the employer does not respond or is unable to refute the allegations there will be a presumption of liability.

Liability

The employer is vicariously liable for the acts of employees. There is a defence in most discrimination legislation that states, that it shall be a defence for a person, if it can be proved that all reasonably practicable steps were taken to prevent the employee from doing the unlawful acts.

If the employer has an equal opportunities policy, good policies and procedures and arranges training for the staff in equality, diversity and anti-discriminatory practice it will help the employers' defence.

Human Rights Act (HRA1998)

The HRA (1998) brought the European Convention of Human Rights into UK Law. The Act gave public authorities a duty to comply with the Convention wherever possible unless they are prevented from doing so by other statutes. (Equal Opportunities Review, Jan/Feb 2001).

The main rights listed in the Act are:

- Right to life
- Prohibition on torture
- Prohibition on slavery and forced labour
- Right to liberty and security
- Right to a fair trial
- No punishment without law
- Right to respect for private and family life
- Freedom of thought, conscience and religion
- Right to freedom of expression
- Freedom of assembly and association
- Right to marry and found a family.
- Prohibition on discrimination. (liberty website)

In addition there are some protocols. The main ones are:

- Protection of property

- Right to education
- Right to free elections (liberty website)

Individuals can complain if a public authority has breached the HRA

Some rights are absolute and a breach cannot be justified under any circumstances, such as the right not to be tortured. (Equal Opportunities Review, Jan/Feb 2001).

Some rights are limited such as Article 14, the right to enjoy other Convention rights and freedoms 'without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property birth or other status.' It is not a freestanding right not to be discriminated against. The right only arises when securing other right under the Act. ' (Equal Opportunities Review, Jan/Feb 2001).

Some rights are also qualified because they may interfere with other rights. For example if there is a legitimate reason for the qualification or the limitation is necessary in a 'democratic society and proportionate' (p.23) This can be 'in the interest of national security, public safety, the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the rights and freedoms of others' (p23). The right to family life for example may sometimes be qualified or limited for some of those reasons. (Equal Opportunities Review, Jan/Feb 2001).

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