**APPENDIX**

**Glossary, Legal Definitions and Examples**

**Glossary of Key Terms**

Caring Responsibilities

When a person is responsible for looking after somebody else, eg children or elderly relatives. Caring Responsibilities is not specifically covered by equality legislation, but is considered a Protected Characteristic by the University.

Discrimination

Treating somebody less favourably than others. Discrimination is usually unlawful, but legislation does allow discrimination in certain limited situations. See below for a more detailed definition of the different types of discrimination.

Evidence

Any information you use to decide whether a policy could be discriminatory or not. It could be quantitative data such as statistics or it could be qualitative data such as interviews. Evidence could be collected from sources inside or outside the university, and could include information you have researched yourself.

Equality Act 2010

This is the legislation which sets out organisations’ duties with regard to equality and discrimination. [A summary of the Act and guidance on it](https://equalityhumanrights.com/en/equality-act/equality-act-2010) can be found on the Equality and Human Rights Commission webpage.

Gender Recognition Act 2004

The legislation which sets out the right of trans people to change their legal gender and obtain a Gender Recognition Certificate (GRC). It is not lawful for the University to require a person to produce a GRC.

Impact

The effect that a policy or action will have on a person or a group. A positive impact is one which benefits them and a negative impact disadvantages them. A neutral impact is one which has an effect on them, but doesn’t either benefit or disadvantage them. If the policy has no effect on a person or group, there is no impact.

Part time working

A University colleague is a part time worker if their contracted hours are less than 100% Full Time Equivalent. Part time working is not a protected characteristic, but should be considered when carrying out an EIA.

Policy

For the purpose of an EIA, ‘policy’ refers to the full range of functions, activities and decisions for which the university is responsible.

Protected Characteristics

The Equality Act 2010 specifies that it is against the law to discriminate against someone because of:

* Age
* Disability
* Gender reassignment
* Marriage and civil partnership
* Pregnancy and maternity
* Race
* Religion or belief
* Sex
* Sexual orientation

These are known as the ‘protected characteristics’. There is further information and full definitions on the [Equality and Human Rights Commission website.](https://www.equalityhumanrights.com/en/equality-act/protected-characteristics)

The University also treats Caring Responsibilities as a protected characteristic, although this is not specified in law.

Reasonable Adjustments

Changes which must be made to remove or reduce a disadvantage to a disabled person because of their disability. Some reasonable adjustments are made for specific individuals, but the University also has an obligation to make anticipatory reasonable adjustments, to ensure that disabled people can fully participate and can access all facilities and services.

Screening

The process of deciding whether an EIA is needed for a particular policy.

Socio-economic background

This refers to a combination of an individual’s income, occupation, wealth and social background. It is sometimes referred to as social class. Socio-economic background is not a protected characteristic, but should be considered when carrying out an EIA.

**Legal Definitions and Examples**

**What is unlawful discrimination?**

The Equality Act 2010 identifies a number of different types of unlawful discrimination:

**Direct discrimination** (including discrimination based on perception or association) – when you treat somebody less favourably than you treat or would treat somebody else because of a protected characteristic.

* **For example**: A college rejects an application from a man for a childcare course as they do not think it is appropriate for a man to be working with children. This would be unlawful direct sex discrimination.

**Indirect discrimination** – when you apply a provision, criteria or practice in the same way for everybody, but this has the effect of putting people with a particular characteristic at a disadvantage.

* **For example**: A swimming pool policy states that only one-piece swimming costumes can be worn. A Muslim female student objects as her religion does not allow her to wear such costumes as they are not considered sufficiently modest. This may constitute unlawful indirect discrimination because of religion or belief.

**Discrimination arising from disability** – when you treat a disabled person unfavourably because of something connected with their disability and cannot justify it. Discrimination arising from disability will occur if the following three conditions are met:

1. you treat a disabled person unfavourably, putting them at a disadvantage, even if this was not your intention, and
2. this treatment is because of something connected with the disabled person’s disability (which could be the result, effect or outcome of that disability) such as an inability to walk unaided or disability-related behaviour, and
3. you cannot justify the treatment by showing that it is ‘a proportionate means of achieving a legitimate aim’.

* **For example:** A student who is known to have autism often speaks out of turn during tutorials as a result of his disability, which can create a disruptive atmosphere for the tutor and other students. Because of his behaviour, his tutor asks him not to attend tutorials, without considering whether any reasonable adjustments could be made. This is likely to be discrimination arising from disability unless the treatment can be justified.

**Pregnancy and maternity discrimination -** It is discrimination to treat anybody who is or has been pregnant, has given birth in the last 26 weeks or is breastfeeding a baby who is 26 weeks or younger less favourably. It is direct sex discrimination to treat a woman less favourably because she is breastfeeding a child who is more than 26 weeks old.

**Failure to make reasonable adjustments (for disabled people)** –education providers have an anticipatory duty to make reasonable adjustments for disabled students.

* **For example**: A lecturer is developing a new course and decides to include several short film clips. This is a decision which is apparently neutral. However, if the film clips do not have subtitles, Deaf students could be placed at a disadvantage compared with students who are not Deaf. This could amount to a failure to comply with the duty to make a reasonable adjustment.

Discrimination can occur whether it is intentional or not.

**What is a ‘proportionate means of achieving a legitimate aim’?**

To be legitimate, the aim of the provision, criteria or practice must be legal and non-discriminatory and represent a real objective consideration. In the context of higher education, examples of legitimate aims might include:

* Maintaining academic and other standards.
* Ensuring the health and safety and welfare of any person.
* Ensuring that education, benefits, facilities and services are targeted at those who most need them
* Ensuring the wellbeing or dignity of those using the provision
* Maintaining academic and other standards.

Even if the aim is legitimate, the means of achieving it must be proportionate. Proportionate means ‘appropriate and necessary’, but ‘necessary’ does not mean that the provision, criterion or practice is the only possible way of achieving the legitimate aim. Deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise, taking into account the relative importance and weight to be attached to relevant factors. The more serious the disadvantage caused by the discriminatory provision, criterion or practice, the more convincing the justification must be.

* **For example**: A gym holds a one hour women only session every week. This is discrimination on the grounds of sex. The session aims to allow women whose religion does not allow them to exercise with men to use the gym. This is a legitimate aim. As it is only one hour per week, it is likely to be deemed proportionate.

In a case involving disability, if you have not complied with your duty to make reasonable adjustments, it will be difficult for you to show that the treatment was proportionate.

* **For example**: A university with a ‘no-needles’ policy recognises the negative impact of the policy on diabetic students who need to inject insulin at regular intervals during the day. It decides to make a clear exception to the policy for people in this situation as an anticipatory reasonable adjustment. On this basis, the no-needles policy is likely to be justifiable as a proportionate means of achieving the legitimate aim of tackling drugs problems on campus.