

# The Equality Act 2010 (Amendment) Regulations 2023 in force from 1 January 2024

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The purpose of the regulations is to reproduce in domestic law certain interpretive effects of retained EU law which, under the Retained EU Law (Revocation and Reform) Act 2023, would otherwise cease to apply in the UK after the end of 2023. This means that, in the areas covered by the regulations, the law will continue to have the same effect after the end of 2023 as it did before.

One of these areas is the concept of associative discrimination, as it extends to indirect discrimination.

Before the amendments came into force, section 19 of the 2010 Act required the person claiming indirect discrimination to have the relevant protected characteristic.

However, in the case of “CHEZ Razpredelenie Bulgaria” AD v Komisia za zashtita ot diskriminatsia (Case C-83/14) the European Court of Justice determined that the principle of equal treatment must mean that a person who does not have the relevant protected characteristic is also indirectly discriminated against in certain circumstances where they suffer together with persons who do have the relevant protected characteristic from a particular disadvantage arising from a discriminatory provision, criterion or practice.

*CHEZ* concerned a complainant who did not belong to the Roma ethnic group but was affected by the practices of the electricity company which supplied the district where she ran a shop, which was also known as the biggest Roma district of Dupnitsa in Bulgaria.

In considering whether the concept of associative discrimination could in principle apply to indirect discrimination, the Advocate General considered the hypothetical situation of a company nursery where the children of full-time employees, in contrast with children of part-time employees, are entitled to attend, and reasoned that this would be a case of *indirect* discrimination based on the sex of the employees if, as is often the case, the part-time employees are predominantly women, whilst the full-time employees are predominantly men.

Regulation 3 reproduces the effect of *CHEZ* by adding section 19A to the 2010 Act, to provide that a person without a relevant protected characteristic (B) is discriminated against where a PCP puts (or would put) persons with the relevant protected characteristic at a particular disadvantage when compared with persons who do not share the relevant protected characteristic; the PCP puts (or would put) B at substantively the same disadvantage as persons with the relevant protected characteristic; and the PCP is not a proportionate means of achieving a legitimate aim.

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