

ANGUS COUNCIL SUPPLEMENTARY CONDITIONS OF CONTRACT

SC 01 - Contract Performance Guarantee Insurance

For contracts equal to or exceeding £2,000,000 in value the Contractor shall, within 28 days of the date of the award of the Contract, obtain and provide to the Employer a Performance Bond for the proper performance of the Contract in a sum equal to not less than 10% of the value of the Contract.

The Performance Bond shall be provided by a Bank or Insurance Company to be approved by the Employer and the Performance Bond shall be in the form included in the tender documents.

If required by the Employer the Contractor shall, within 28 days of the date of the award of the Contract, obtain and provide to the Employer a Parent Company Financial Guarantee in the form included in the tender documents.

The Contractor shall not be given possession of the site until the Performance Bond and, if required, Parent Company Financial Guarantee has been properly executed and is in the hands of the Employer and if the Contractor shall have failed to provide the Performance Bond and, if required, Parent Company Financial Guarantee within 28 days of the date of the award of the Contract or within such further period as may be permitted by the Employer, the Employer shall be entitled to terminate the Contract by giving seven days' notice to the Contractor.

In the event of termination under this Supplementary Condition, the Contractor shall pay to the Employer all costs incurred by the Employer in connection with the obtaining of new tenders and the Employer shall not be liable for any claim or demand from the Contractor in respect of anything already done or furnished in connection with the Contract or in respect of any matter or thing in connection with the Contract whatsoever.

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SC 02 – Prohibition of live electrical working

Under no circumstance will live electrical working be permitted on or near any systems and equipment on any project. Safe and proper Electrical Isolation procedures including testing to prove dead and “locking off” must be designed, put in to effect and maintained at all times and must only be carried out by qualified personnel, who have the necessary knowledge, skills and experience.

All risk assessments, method statements and all other relevant documentation i.e. permit to work systems must be in place, signed and approved, prior to any works commencing.

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SC 03 - Unsafe Operations

In the event that Officers or Safety Personnel employed by the Employer become aware of what they would consider to be an unsafe operation which carries potential danger to the Contractor's employees or any other persons or property, the Employer's employees or the public at large during the execution of the Works they may notify the Contractor of such unsafe operation.

For the purposes of this clause the following definitions apply:

Safety Personnel	Persons employed by the Employer who may visit the Works to carry out safety audits, health and safety inspections and accident investigations.
Officer	Persons employed by the Employer who will visit the Works. These persons may be architects, quantity surveyors, engineers, clerks of works etc.

The Contractor should note that persons termed Safety Personnel are authorised by the Employer to enter all buildings and sites owned, leased, operated, rented or to any extent in the control of the Employer, to inspect any documentation required to be kept by health and safety legislation and all parts of the building/site to monitor conformity with health and safety requirements. The Contractor must provide all necessary access facilities for such inspections by Safety Personnel.

Notification to the Contractor of identified unsafe working operations will normally be made through the following procedure. The Officer or Safety Personnel:

- ◇ may notify the operative of the likely danger
- ◇ will notify the Contractor's site manager
- ◇ will record the notification both in the site log and on an "Unsafe Operation" proforma issued by the department (Example copy attached as Appendix VI)
- ◇ will record the notification in the project health and safety file
- ◇ will record the notification in the Contractor's performance record. This record will be taken into account in determining whether the Employer will employ the Contractor on further projects and in extreme circumstances may result in the Contractor being removed from the Employer's Standing List of Contractors. In the event that the Employer is requested by another person or body to provide a reference for the Contractor this information will be taken into account in the provision of such reference
- ◇ will forward a copy of the notification to the Employer's Safety Personnel
- ◇ may forward a copy of the notification to the Health & Safety Executive. This notification may be made at the same time as notification to the Contractor's site manager, depending on the severity of the event

In the event that the Contractor fails to take the necessary actions to eliminate any notified unsafe working operation the Architect/ Contract Administrator may take such actions as he deems necessary to safeguard any persons. It should be noted that any resultant cost incurred by the Contractor will be borne by the Contractor and the Employer will not be responsible for any costs arising from actions considered necessary to avoid danger or death to any persons employed on, visiting or in the location of the Works.

Further, and without prejudice to the foregoing, notification of unsafe working operations shall be within the sole discretion of the Employer and failure to notify such events shall not in any way infer any approval on the part of the Employer in respect of the Contractor's operating methods or practices nor shall it free or relieve the Contractor from any obligation otherwise incumbent upon it.

The Employer accepts no liability for any loss, injury or damage occasioned to the Contractor, or to any third party, whether arising directly or indirectly as a result of the Employer's notification or non-notification of unsafe working operations.

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SC 04 - Warranties and Design

Each of the Contractor's Designed Portions of the Works must be listed in Tender Appendix 1; together with full details of the party responsible for designing each of the Portions. This includes the Contractor, where he is carrying out the design work and each Design Sub-Contractor and each Design Sub-consultant.

The Contractor's Designed Portions are to be designed and constructed in such a manner as to be totally fit for the purpose for which these Works are intended to be used and of entirely satisfactory quality, based on principles acceptable to the Employer for design and construction.

All design work shall be entrusted to suitably qualified professional persons with adequate and appropriate experience.

The Contractor will be responsible for providing, in respect of his Designed Portions and for obtaining and providing, from each Design Sub-Contractor and Design Sub-Consultant, in respect of their Designed Portions; the collateral warranties described in Appendix I, Part 2.

Variable clauses applicable to the above Warranty Agreements and amendments thereto are listed in Appendix V.

If the Contractor shall have failed to provide and obtain the necessary Warranty Agreements, or necessary Statutory Approvals relative to the Contractor's Designed Portions, on or before the date for completion of the works the Employer may withhold or deduct sums up to the value of 10% of the relevant Contractor Designed Portion works until such time as a Warranty Agreement, acceptable to the Employer, is executed.

The above requirement shall apply in respect of all Purchasers, Tenants and Funders known and identified at Acceptance stage.

Where further Purchasers, Tenants or Funders are identified, after Acceptance stage, the Contractor will be required to arrange such further Warranties to be entered into within 14 days from receipt of the Employer's notice in writing of such further requirement.

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SC 05 - Professional Indemnity Insurance

Where the Contractor is responsible for designing Contractor's Designed Portions he will be required to hold and maintain a current Professional Indemnity Insurance policy. All Design Sub-Consultants and Design Sub-Contractors will also be required to hold and maintain current Professional Indemnity Insurance policies.

The limit for each and every claim is to be at least that stated in the Contract Particulars or, where the company's declared gross fee income earned on UK schemes in their last financial year exceeds £1,000,000, at least twice that gross fee income up to a maximum cover of £5,000,000 (unless the company has required a greater amount).

The Contractor must hold and maintain such insurance for the period stated in Appendix I Contract Particulars; from the date of the Employer's Certificate of Practical Completion of the Works and the Contractor is responsible for ensuring that all Design Sub-Consultants and Design Sub-Contractors employed comply with the same requirement.

The Contractor must submit, with the tender, certificates of the Contractor's own Professional Indemnity Insurance together with certificates for each Design Sub-Consultant and Design Sub-Contractor, as confirmation of current, valid Professional Indemnity Insurance. Each certificate of cover must be provided by the respective company's insurance broker and provided prior to commencement of any design works.

At any time the Employer may request documentary evidence that such insurance is in place and being maintained and the Contractor may be required to produce for inspection by the Employer the relevant policy or policies and the premium receipts therefor.

If the Contractor defaults in this requirement and fails to take out and maintain the required insurances or any Design Sub-Consultant or Design Sub-Contractor defaults in this requirement the Employer may insure against any liability or expense which the Employer may incur arising out of such default and a sum or sums equivalent to the amounts paid or payable in respect of such premiums may be deducted by the Employer from any monies due or to become due to the Contractor or such amount may be recoverable by the Employer from the Contractor as a debt.

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SC 06 - Human Rights Act

Where, in terms of this Contract, the Contractor is deemed to be a public authority in terms of Section 6(3)(b) of the Human Rights Act 1998 ("the 1998 Act") the Contractor shall, at all times, strictly comply with the requirements of the 1998 Act together with subsequent amendment or re-enactment thereof and of all secondary legislation made under the 1998 Act, or any subsequent amendment thereto or re-enactment thereof.

The Contractor shall take all reasonable steps to ensure the observance of this Condition by all servants, employees or agents of the Contractor and all Sub-Contractors employed by the Contractor.

The Contractor shall indemnify the Employer against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Employer may incur arising out of a breach of this condition by the Contractor.

The Employer will monitor the Contractor's compliance with the 1998 Act at periodic intervals during the performance of the Contract.

SC 07 - Freedom of Information (Scotland) Act 2002

Anyone will have a right to receive information held by the Employer under the Freedom of Information (Scotland) Act 2002 ("the Act"), with effect from January 2005. As part of the Employer's duties under the Act, the Employer must disclose information, which forms part of the tender or Contract, to anyone who requests it; unless an exemption applies. Before releasing any information, the Employer will consult the tenderer or Contractor and have regard to the tenderer's or Contractor's comments or objections, but the ultimate decision, as to whether the information falls within one of the exemptions or not, rests with the Employer as holder of the information.

No term of the Contract, whether express or implied, shall preclude the Employer from making public, under the Act, and any codes applicable from time to time relating to access to public authorities' information, details of all matters relating to the Contract, unless such details constitute a trade secret; the disclosure of such details would or would be likely to prejudice substantially the commercial interest of any person (including, but not limited to, the Contractor or the Employer) or such details fall within such other exemption as may be applicable at the discretion of the Employer, in terms of the Act. The Contractor will facilitate the Employer's compliance with the Employer's obligations under these provisions and comply with any request from the Employer for that purpose.

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SC 08 – Required Memberships and Registrations

The Control of Asbestos Regulations 2012

Where the Works include the removal or disposal of asbestos-containing materials the Contractor must hold a current and valid Licence in accordance with the above Regulation and a copy of the Contractor's Licence must be submitted with the tender.

Gas Installations and Repairs

In accordance with the Gas Safety (Installation and Use) Regulations 1998 all gas installation and repair works must be carried out by contractors who are registered members of the Gas Safe Register. In addition all gas fitting operatives must have been assessed, tested and hold current certificates of competence in the appropriate area of gas work to be carried out.

PRIOR to carrying out any works, or arranging for any works to be carried out on gas installations, the contractor MUST provide documentary proof of registration to the Contract Administrator, together with current, valid certificates of competence, operative numbers and insurance appropriate to the type and nature of work; in respect of all operatives who are to be engaged on the works. Failure to provide such proof will be considered a material breach of contract and will be treated accordingly. Such failure will also be notified to the Health and Safety Executive.

In this regard any contractor not so registered who submits a tender for Plumbing or Heating Works shall, if successful, employ a registered contractor with appropriately certified operatives to carry out any gas installation or repair work.

See Schedule of Clause Headings and Details of Amendments and Modifications to the Standard Conditions.

Electrical Installations and Repairs

Electrical Installations and Repairs - The Contractor must be currently enrolled with the National Inspection Council for Electrical Installation Contracting (NICEIC) or be a current member of the Electrical Contractors' Association of Scotland (SELECT) (or European equivalent of either organisation) for these works and the Contractor's registration/membership number must be inserted in Tender Appendix I, under "Registration/ Membership Number", as confirmation of same.

Security Systems Installations and Repairs

The Contractor must be a fully subscribed current member of The National Supervisory Council for Security Systems (NACOSS) for these works must be registered members of the organisations indicated and the Contractor's registration number must be inserted in Tender Appendix I under "Registered Nr" as confirmation of same.

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SC 09 - Working Platforms

Tenderers are expressly directed to note the HSE publication "Health and Safety in Construction" [HSG150 (rev)], which details the various methods of working at height and in particular the statement that ladders should be primarily used for access and only be used as workplaces to do light work of short duration.

The Employer's interpretation of this statement is that ladders are not considered to be an acceptable working platform and accordingly the use of ladders as working platforms will not normally be permitted. Any exception to this must be agreed in writing by the Contract Administrator prior to commencing any work of this nature.

Tenderers particular attention is drawn to the completion of Method Statements regarding identified risks for pre-tender Health & Safety Plans.

Use of stepladders is acceptable as working platforms up to single storey height, as long as they are fitted with handrails. Otherwise ladders may only be used for access, inspection and survey purposes.

Supplementary Clause SC10 – Data Protection

GDPR Compliance Provisions

GDPR DEFINITIONS:

Contractor means the Contractor/Supplier.

Contractor Personnel means all directors, officers, employees, agents, consultants and contractors of the contractor and/or of any sub-contractor of the contractor engaged in the performance of its obligations under this agreement

Data Protection Legislation means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller; Processor; Data Subject; Personal Data; Personal Data; Breach and Data Protection Officer take the meanings given in the GDPR.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Access Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018 means the Data Protection Act 2018

GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679)

LED means the Law Enforcement Directive (Directive (EU) 2016/680)

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it.

Sub-processor means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

1. DATA PROTECTION

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Appendix XI (where applicable) of the Preliminaries and may not be determined by the Contractor.

1.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

1.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment that the Customer may require to be undertaken in accordance with the Data Protection Legislation. Such assistance may, at the discretion of the Customer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with the Customer's instructions and/or Appendix XI of the Preliminaries (where applicable), unless The Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensure that:

(i) the Contractor Personnel do not process Personal Data except in accordance with Appendix XI of the Preliminaries (where applicable)

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

(aa) are aware of and comply with the Contractor duties under this clause;

(bb) are subject to appropriate confidentiality undertakings with The Contractor or any Sub-processor;

(cc) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and

(dd) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Contractor shall notify the Customer immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.

1.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following any Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Customer determines that the processing is not occasional;
- (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) notify the Customer in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.11 such that they apply to the Sub-processor; and
- (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

1.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract Variation).

1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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SC 11 – The Control of Asbestos Regulations 2012

Whether or not asbestos-containing materials have been identified as being part of the Works or in the vicinity of the Works the Contractor must:

Inspect and sign the local asbestos register. In the case of occupied non-Housing properties this will normally be held at a central location within the property (normally Reception) and for Housing properties at the local ACCESS office.

Consultants and contractors shall be directed to the location of the local asbestos register for buildings, which are not normally occupied.

Where asbestos-containing materials are to be removed and disposed of as part of the Works, and/ or the Works are carried out in close proximity to asbestos-containing materials, the Contractor must:

Submit, with the tender, a copy of a valid and current License in terms of The Control of Asbestos Regulations 2012

Submit, with the tender a completed Method Statement detailing proposals for dealing with the hazard. Please refer to the Risk Assessment sheets as part of the Pre-contract Health & Safety Plan.

Immediately upon acceptance of Tender, submit to the Health and Safety Executive a method statement and plan of work, for their approval. All costs involved in obtaining such approval will be deemed to be included in the Tender amount. At the same time as submitting these documents to the Health and Safety Executive the Contractor must also submit a copy of this information to the Employer.

Tenders submitted will be deemed to include for all costs necessary for executing the Works, taking account of all appropriate Health & Safety requirements.

Nothing contained in this document shall overrule, set aside or in any way alter the Contractor's statutory liability to carry out the Works in accordance with all current Health & Safety legislation.

Further, and without prejudice to the foregoing, notification of failure to comply with the requirements contained herein shall be within the sole discretion of the Employer and failure to notify non-compliance shall not in any way infer any approval on the part of the Employer in respect of the Contractor's operating methods or practices nor shall it free or relieve the Contractor from any obligation otherwise incumbent upon it.

The Employer accepts no liability for any loss, injury or damage occasioned to the Contractor, or to any third party, whether arising directly or indirectly as a result of the Employer's notification or non-notification of failure to comply with these requirements.

The Contractor shall not be given possession of the site until the necessary approvals have been obtained from the Health and Safety Executive and, paperwork confirming same, is in the hands of the Employer. If the Contractor shall have failed to provide the required paperwork within 28 days of the date of the award of the Contract or within such further period as may be permitted by the Employer, the Employer shall be entitled to terminate the Contract by giving seven days' notice to the Contractor.

In the event of termination under this Supplementary Condition, the Contractor shall pay to the Employer all costs incurred by the Employer in connection with the obtaining of new tenders and the Employer shall not be liable for any claim or demand from the Contractor in respect of anything already done or furnished in connection with the Contract or in respect of any matter or thing in connection with the Contract whatsoever.

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In the event that the Contractor discovers, or suspects, the existence of asbestos-containing materials, not previously identified, the Contractor must cease work immediately and notify the Contract Administrator. Thereafter the Contractor will be required to co-operate whilst samples of materials are taken and analysed. Once the results of any analysis are known the Contract Administrator will instruct the Contractor on the appropriate course of action.

SC 12 - Race Relations Act

Angus Council has a Statutory Duty under the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, to have due regard to the need to eliminate unlawful discrimination, promote equality of opportunity and good relations between persons of different racial groups.

The Council is committed to ensuring that racial equality is achieved in all aspects of its functions and services and requires all Contractors to comply with the provisions of the Race Relations Act 1976 and Race Relations (Amendment) Act 2000.

SC 13 – Equality Act

In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Equality Act, the Council may from time to time require the Contractor to complete a questionnaire and/or provide information to the Council on the extent and quality of the Contractor's equalities and diversity policies and practice.

The Contractor shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation contrary to the Equality Act 2010.