

The Equality Act 2010: Briefing Note October 2011

The Equality Act 2010: Introduction

Over the last four decades, discrimination legislation has helped to make Britain a more equal society. However, the legislation was complex and, despite progress in many areas, some persistent inequalities remain.

The main provisions of the Equality Act 2010 came into force on 01 October 2010. As different sections of the Act are gradually brought into force, the Act will replace existing equality legislation. It is intended to simplify and strengthen the previous legislation, providing a modern, single legal framework with clear, streamlined law that will be more effective at tackling disadvantage and discrimination.

The provisions in the Equality Act will come into force at different times to allow time for the people and organisations affected by the new laws to prepare for them. The Government is still considering how some provisions will be commenced so that the Act is implemented in an effective and proportionate way.

Protected characteristics

The Equality Act 2010 provides protection from unlawful discrimination and harassment to groups and individuals because of the following "Protected Characteristics":

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

The Act applies to:

- Services and Public Functions
- Premises
- Work
- Education
- Associations, including Political Parties

Key forms of discrimination

The main changes to how forms of discrimination apply to protected characteristics are summarised by ACAS in “The Equality Act 2010 - What’s new & what’s changed: at a glance”: [download a table showing the key changes](#).

In brief, the key forms of discrimination in the Equality Act 2010 are:

- **Direct discrimination:** Someone is treated less favourably than another person because of a protected characteristic (PC)
- **Associative discrimination:** Direct discrimination against someone because they associate with another person who possesses a PC
- **Discrimination by perception:** Direct discrimination against someone because the others think they possess a particular PC
- **Indirect discrimination:** Can occur when you have a rule or policy that applies to everyone but disadvantages a particular PC
- **Harassment:** Employees can now complain of behaviour they find offensive even if it is not directed at them
- **Harassment by a third party:** Employers are potentially liable for harassment of their staff by people they don’t employ
- **Victimisation:** Someone is treated badly because they have made/supported a complaint or grievance under the Act

Key Provisions of the Act

Provisions coming into force on 1 October 2010

- The basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations, and transport.
- Changing the definition of gender reassignment, by removing the requirement for medical supervision.
- Levelling up protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic, so providing new protection for people like carers.
- Clearer protection for breastfeeding mothers;
- Applying the European definition of indirect discrimination to all protected characteristics.
- Extending protection from indirect discrimination to disability.
- Introducing a new concept of “discrimination arising from disability”, to replace protection under previous legislation lost as a result of a legal judgment.
- Applying the detriment model to victimisation protection (aligning with the approach in employment law).
- Harmonising the thresholds for the duty to make reasonable adjustments for disabled people.
- Making it more difficult for disabled people to be unfairly screened out when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability or health.

- Allowing claims for direct gender pay discrimination where there is no actual comparator.
- Making pay secrecy clauses unenforceable.
- Extending protection in private clubs to sex, religion or belief, pregnancy and maternity, and gender reassignment.
- Introducing new powers for employment tribunals to make recommendations which benefit the wider workforce.
- Harmonising provisions allowing voluntary positive action.
- Voluntary gender pay gap information for private and voluntary sector

Provisions on whose implementation the Government is consulting

- The public sector Equality Duty (specific duties in Scotland)

Provisions the Government is still considering

- diversity reporting by political parties
- provisions about taxi accessibility
- prohibition on age discrimination in services and public functions
- civil partnerships on religious premises
- removing provision 3rd party harassment to all protected characteristics

Ministers are considering how to implement these remaining provisions in the best way for business and for others with rights and responsibilities under the Act. Their decisions will be announced in due course. It was made known on 17 November 2010 that a proposed socio-economic duty on public bodies would not be implemented.

Public Sector Duties

The current public sector duties covering Race, Disability and Gender will continue to apply. It is expected that in April 2011 the Act will also extend the scope of duties on the public sector and will introduce a Single Equality Duty on the public sector.

The new single Equality Duty will bring together the current race, disability and gender equality duties and extend the provision to include age, religion or belief, sexual orientation; and gender reassignment. It will require public bodies to have due regard to the need to

- eliminate discrimination, harassment and victimisation,
- advance equality of opportunity, and
- foster good relations.

The Scottish Government is consulting on proposals for new Scottish Specific Duties and intends that these should be proportionate, flexible, outcome focussed, and operate within a public authority's existing systems and frameworks. These should be announced in early 2012, but are likely to require public bodies to:

- Publish equality outcomes, based on evidence and involvement of equality groups
- Report on 'mainstreaming' - action to embed equality into day to day systems and practices
- Assess of the impact on equality of policies and practices, informed by evidence
- Gather and publish employee data
- Report on progress using existing public performance reporting systems

Enforcement

The Equality and Human Rights Commission (EHRC) has regulatory functions to ensure that individuals and businesses comply with the law. This is not limited to formal legal enforcement action, such as inquiries and investigations, but is supported by a range of activities such as the provision of advice, guidance and education; the encouragement of good practice; the raising of general public awareness and understanding of problems; assisting individuals with problems; targeted awareness-raising to enable and assist bodies to comply; intelligence gathering, research and monitoring of trends, and action to prevent non-compliance and unlawful acts.

Guidance

Further information and guidance is available from the websites of:

- The [Equality and Human Rights Commission](http://www.equalityhumanrights.com) (EHRC)
<http://www.equalityhumanrights.com>
- [The Government Equality Office](http://www.equalities.gov.uk/) (GEO)
<http://www.equalities.gov.uk/>
- [Advisory, Conciliation and Arbitration Service](http://www.acas.org.uk) (ACAS)
<http://www.acas.org.uk>

Rosemary Mackinnon, Equal Opportunities Officer
The Highland Council
Tel: 01463 70209
Email: rosemary.mackinnon@highland.gov.uk