

The Equality Act 2010: Briefing Note (updated October 2012)

The Equality Act 2010: Introduction

Over the last five decades anti-discrimination law has helped to make Britain a more equal society. However, despite progress in many areas, some persistent inequalities remain.

The main provisions of the new Equality Act came into force on 1 October 2010. The Equality Act replaces and combines over 100 separate pieces of equality legislation into one single Act that provides a legal framework to protect the rights of individuals and advance equality of opportunity for all.

The Act aims 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.

Provisions in the Equality Act have 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, victimisation and harassment to groups and individuals because of the following nine '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)
- **Indirect discrimination:** Can occur where a rule or policy applies to everyone but disadvantages a particular 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
- **Harassment:** Employees can complain of behaviour they find offensive even if it is not directed at them
- **Victimisation:** Someone is treated badly because they have made/supported a complaint or grievance under the Act

Key Provisions of the Act

Key provisions now in force:

- 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.
- Harmonising provisions allowing voluntary positive action
- Provisions relating to auxiliary aids in schools
- Voluntary gender pay gap information for private and voluntary sector
- Age discrimination ban gives new protection to ensure older and younger people get fair treatment in the provision of goods, facilities and services from October 2012 (already applied to age discrimination in the workplace).

In addition, there are a number of provisions in the Act that the Government has decided not to take forward, or will repeal, or are still considering:

Provisions that the government has decided not to take forward:

- Public sector duty regarding socio-economic inequalities
- Mandatory gender pay gap information
- Combined discrimination: dual characteristics.

Provisions that the Government has decided to repeal:

- employer liability for third-party harassment
- wider powers for employment tribunals to make action recommendations
- the statutory questionnaire procedure

Provisions that the Government is still considering:

- diversity reporting by political parties
- provisions about taxi accessibility

Ministers are considering how to implement these remaining provisions in the best way for those with rights and responsibilities under the Act.

Public Sector Duties

The General Duty:

From April 2011 the Act extended the scope of duties on the public sector and introduced a single Equality Duty on the public sector. This replaced previous public sector duties covering Race, Disability and Gender only.

This duty (also known as the General Duty) requires public bodies to give due regard in all their activities to the need to:

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

Specific Duties:

From 27 May 2012, the Scottish Government's introduced new regulations, which place specific equality duties on named public authorities in Scotland.

These duties are designed to help public authorities develop better policies and practices, improve transparency and accountability, and deliver better outcomes for everyone in Scotland. Each listed authority is required to:

- report on mainstreaming the equality duty
- publish equality outcomes and report progress
- assess and review policies and practices
- gather and use employee information
- publish gender pay gap information
- publish statements on equal pay
- consider award criteria and conditions in relation to public procurement
- publish in a manner that is accessible.

Enforcement

The Equality and Human Rights Commission (EHRC) has regulatory functions to ensure that individuals and businesses comply with the law. Their focus is on formal legal enforcement action, such as inquiries and investigations, as the provision of guidance. The Commission has a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the nine protected characteristics.

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>

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