

The Equality Act 2010: What you need to know about the new anti-discrimination law

The Equality Act 2010 ('the Act') received Royal Assent in April 2010. The Act (which was sometimes referred to as 'the Single Equality Bill'), will eventually replace the more than 100 existing laws, regulations and statutory instruments which make up British anti-discrimination law.

The Act harmonises and in some cases extends protection from discrimination. It continues the proactive approach taken by the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006, which placed duties on public sector bodies to promote race, disability, and gender equality. Thus, the Act retains this focus on taking active steps to tackle discrimination and promote equality, and extends it to other protected grounds.

The Equality Act 2010 will undergo a phased implementation. Most of the provisions will come into force in October 2010. However, several very significant elements of the law will not come into force before April 2011 or April 2012, to allow organisations time to prepare for their implementation. These will be discussed further below.

Key Changes to Equality Law from October 2010

From October 2010, people will be protected from discrimination in employment and in the provision of goods, services and facilities on the basis of the following 'protected characteristics':

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

In addition, there is protection from discrimination in employment on grounds of age. Protection from discrimination on grounds of age will be extended to include the provision of goods, services and facilities at a later point. Provisionally, this is expected to happen in April 2012.

In the Equality Act, discrimination can take the form of:

- Direct discrimination – when someone is treated less favourably than another person because of a protected characteristic
- Indirect discrimination – when a rule, policy or practice applies to everyone but particularly disadvantages people who share a protected characteristic.¹
- Discrimination arising from disability – when a disabled person is treated unfavourably because of something connected with their disability and this unfavourable treatment cannot be justified.²
- Harassment – unwanted conduct that has the purpose or effect of violating a person's dignity, or which creates an intimidating or hostile, degrading, humiliating or offensive environment for that person.³
- Victimisation – occurs when someone is treated badly because they have done something in relation to the Equality Act, such as making a complaint, raising a grievance, etc.

In some limited cases, indirect discrimination or discrimination arising from disability can be justified using a test of 'objective justification', which means that the rule, policy, practice or treatment is a proportionate (reasonable) means to achieving a legitimate end.

Changes to the definition of some protected characteristics

There have been changes to the definition of disability and gender reassignment.

Disability is now defined as a physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out normal day to day activities. The older definition of disability in the Disability Discrimination Act was similar, but made reference to impairment affecting a particular 'capacity', such as mobility, speech, hearing, etc. This is no longer required, which makes the definition of disability more flexible and makes it more likely that it will apply in a broader range of cases, particularly in relation to mental health. Some people, including those with cancer, multiple sclerosis and HIV/AIDS are still automatically protected from the point of diagnosis. People with severe disfigurement will be protected without having to show that the disfigurement has a substantial adverse effect on day to day activities.

Gender reassignment is now defined as applying to a person who is proposing to undergo, is undergoing or has undergone a process to change their sex. Under the new law, the person no longer has to show that they are under medical supervision.

Improved protection for disabled people

Under the Disability Discrimination Act, disabled people were protected on grounds of their disability, but in practice this protection was eroded by case law. The Equality Act 2010

¹ Does not apply to pregnancy or maternity, but provisions which place pregnant women or new mothers at a disadvantage would be considered to be indirect discrimination on grounds of sex.

² Applies only to disability.

³ Does not apply to sexual orientation or religion or belief, but actions which may be construed as harassment on these grounds would be likely to be considered indirect discrimination.

restores and clarifies this protection, and also extends protection from indirect discrimination to disabled people.

People who experience discrimination because of their association with a disabled person are now protected under the law. This means that carers have improved protection in both employment and in access to facilities and services.

More details are available in the Disability Quick Start Guide, published by the Government Equalities Office.

Assumption and association

People are protected from discrimination if they have a protected characteristic, but also if they are *assumed* to have it (even if the assumption is incorrect) or if they *associate* with someone who has it. 'Association' protects carers from discrimination. Previously, people were protected from discrimination on the basis of assumption or association in relation to some characteristics but not others – now this extends to all the protected characteristics.

Reasonable adjustments

Both employers and service providers are required to make reasonable adjustments to meet the needs of disabled people. Reasonable adjustments may take the form of changes to policy, processes or the built environment or to providing auxiliary aids or services. If a building cannot be made accessible through reasonable adjustments, providing the service at a different venue may be a reasonable adjustment.

Reasonable adjustments are required wherever disabled people (employees, potential employees, customers/service users or potential customers/service users) would otherwise be at a substantial (non-trivial) disadvantage compared with non-disabled people.

What is 'reasonable' will depend upon consideration of all the circumstances, including the cost of the adjustment, the effectiveness and potential benefit it might bring to the individual and to others, the organisation's resources and the practicality of the changes.

The Equality Act 2010 extends the requirement for reasonable adjustments by requiring service providers to take an anticipatory approach to reasonable adjustments. This means taking proactive steps to identify and address barriers to the access and inclusion of disabled customers and service users in advance (this provision previously existed in the educational sector only).

If an adjustment is considered to be reasonable, failure to make the reasonable adjustment cannot be legally justified.

Positive action

The Equality Act 2010 clarifies and extends the provisions for positive action in employment or in the delivery of services. Some individuals or groups of people with protected characteristics have experienced disadvantage or exclusion, or are under-represented in employment or in the uptake of particular services or activities. They may also have specific needs which need to be met in order to encourage greater participation or inclusion. Positive action refers to a range of activities which can be undertaken to encourage participation and inclusion of people from these under-represented groups, or to meet their specific needs.

The law clarifies that in situations when a person or organisation reasonably thinks that people who share a particular characteristic experience disadvantage, have needs which are not being met, or where their participation in a service is disproportionately low, they can take proportionate action to encourage participation or to meet the particular needs.

Options for positive action in employment have been extended – see the section below on employment.

Provisions relevant to employment

There are a number of changes which impact on employment. These are described in the Acas guide, [The Equality Act -- What's new for employers?](#)

Some of the significant changes which impact recruitment and employment are:

- Extending protection from associative discrimination to those who care for disabled or older people, which has implications for flexible working and leave arrangements;
- Restricting the circumstances when you can ask health-related questions in recruitment before an individual has been offered a job;
- Extension of employment tribunal powers so that employment tribunals can make recommendations that an organisation takes steps to eliminate or reduce the effect of employees beyond the claimant;
- Banning pay secrecy clauses, and permitting equal pay claims to be made even when no comparator can be found; and
- Clarification and extension of options for positive action, particularly in recruitment, where under-representation can be taken into account if two candidates for a job are otherwise equally matched.

In recruitment, you can only ask health-related questions prior to offering the individual the post when necessary to help you to:

- Decide whether you need to make any reasonable adjustments in the interview, assessment or selection process;
- Decide whether the applicant can carry out a function that is essential ('intrinsic') to the job;
- Monitor diversity of applicants for jobs;
- Take positive action to assist disabled people (eg, the guaranteed interview scheme);

- Assure yourself that a candidate has the disability where there is a genuine occupational requirement that the postholder has that disability.

Changes to the public sector equality duty – Expected in 2011

The Equality Act 2010 will extend the general duty on public bodies, requiring that, in the exercise of their functions, public bodies have due regard to the need to:

- eliminate discrimination, harassment and victimisation;
- advance equality of opportunity, and
- foster good relations between people who share a protected characteristic and people who do not share it.

This new 'general duty' will extend to all the protected characteristics. The current proposal is that this duty would come into effect in April 2011, but the timescale may change.

Until the new public sector duties come into effect, the existing duties will continue to apply.

The Equality Act clarifies the definition of 'public functions', which is particularly relevant when public bodies commission services from private or voluntary sector organisations or invest public funds in private sector organisations. The Equality Act clarifies that in such cases, the general duties as outlined above would be expected to transfer to the body which is providing the service or public function, so that they would be expected to carry out this function in accordance with these requirements. This will have implications for governing bodies of sport, and for any organisation working in partnership with local authorities or other public bodies to deliver services.

Public bodies will also be subject to a series of specific duties, which will include duties around identifying and making progress toward equality objectives, consulting and involving diverse groups, equality impact assessment, procurement, monitoring and reporting. The power to lay specific duties on Scottish public bodies is devolved to Scottish Ministers, which means that the details of the specific duties are likely to differ between the home countries.

Where to find further information

The Government Equalities Office has published a series of short, user-friendly guides on what the Equality Act 2010 means for you as an individual and for organisations. They can be accessed at

http://www.equalities.gov.uk/equality_act_2010/equality_act_2010_what_do_i_n.aspx

The EHRC has published non-statutory guidance on the provisions of the Equality Act which can be found here: <http://www.equalityhumanrights.com/legislative-framework/equality-bill/equality-act-2010-guidance/>

