

## Summary of key elements of the Equality Act Updated July 2011



The Equality Act 2010 brings together nine separate pieces of legislation into one single act.

The majority of the [Equality Act 2010](#) came into force on 1 October 2010, providing protection from discrimination on the basis of 'protected characteristics'. The Equality Act covers the same groups that were protected by existing equality legislation - age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 includes a new Public Sector Equality Duty which replaces the separate duties relating to race, disability and gender. It consists of a [General duty](#) which came into effect on 5 April and a [Specific](#) duty – details below.

### **The General Duty**

The General Duty applies to local authorities (and other listed public bodies) as well as those other organisations who exercise public functions. The Act defines a public function as a function of a public nature for the purposes of the Human Rights Act 1998.

Public bodies and those subject to the Equality Duty (Schedule S149 of the Act) must have due regard to:

- Eliminate unlawful discrimination, harassment, victimisation and other unlawful conduct prohibited by the Act
- Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.
- Foster good relations between people who share a relevant protected characteristic and people who do not share it.

Having **due regard** means consciously thinking about the three aims of the Equality Duty as part of the process of decision-making. This means that consideration of equality issues must influence the decisions reached by the local authority – such as in how it acts as an employer; how it develops, evaluates and reviews its policy; how it designs, delivers and evaluates services, and how it commissions and procures from others

The Act explains that:

- (a) Having due regard for [Advancing equality](#) involves:
- Removing or minimising disadvantages suffered by people who share a relevant protected characteristic or due to their protected characteristics
  - Taking steps to meet the needs of people who share a relevant protected characteristic where these are different from the needs of other people who do not share it
  - Encourage people from protected groups to participate in public life or in other activities where their participation is disproportionately low
- (b) **Fostering good relations** involves tackling prejudice and promoting understanding between people who share a protected characteristic and others
- (c) Compliance with the duties may involve treating some persons more favourably than others. It is both lawful and a requirement of the general equality duty to consider if there is a need to treat disabled people differently, including more favourable treatment where necessary.

**Taking account of disabled people's disabilities** - The Equality Duty also recognises that disabled people's needs may be different from those of non-disabled people. The local authority should take account of disabled people's impairments when making decisions about policies or services i.e. making reasonable adjustments or treating disabled people better than non-disabled people in order to meet their needs

### **Specific Duties**

The reporting requirements in relation to the duty are set out in the specific duties. To demonstrate compliance with the duty consideration must be given to the impact on equality before a policy is developed, and prior to a decision being taken. A public authority cannot satisfy the duty by justifying a decision after it has been taken. The specific duties are legal requirements designed to help public bodies meet the three aims of the general duties.

On 17 March the Government published a [policy review paper proposing new specific duties to support the general duty](#). The new draft regulations focus on cutting bureaucracy and increasing transparency in order to free up public bodies to do what is appropriate in their circumstances, to take responsibility for their own performance and to be held to account by the public. The consultation concluded on 21 April 2011.

On 28 June 2011 the Government laid before Parliament for approval the

**Equality Act 2010 (Specific Duties) Regulations 2011**. These regulations will promote the better performance of the Equality Duty by requiring those public authorities to publish:-

- equality objectives, at least every four years
- information to demonstrate their compliance with the equality duty, at least annually

The latter will need to include, in particular, information relating to their employees (for authorities with 150 or more staff) and others affected by their policies and practices, such as service users.

The publication of this information will ensure that public authorities are transparent about their performance on equality. This transparency will drive the better performance of the equality duty without burdening public authorities with unnecessary bureaucratic processes, or the production of superfluous documents.

With the exception of schools, public authorities will be required to publish relevant information demonstrating their compliance by 31 January 2012, and their first equality objectives by 6 April 2012. Schools will be required to publish both their information and their equality objectives by 6 April 2012.

## **PROVISIONS OF THE ACT – EFFECTIVE FROM 1 OCTOBER 2010**

### (1) **Protected characteristics**

The Equality Act introduces the concept of “protected characteristics” which encompasses all the existing grounds on which discrimination is prohibited.

- Age
- Disability
- Gender reassignment
- Pregnancy/maternity
- Race – this includes ethnic or national origins, colour or nationality
- Religion or belief – this includes lack of belief
- Sex
- Sexual orientation

The substantive provisions of the Equality Act apply to all these protected characteristics with limited exceptions. It also applies to Marriage and Civil Partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination. **For further details, please see [Part 2 Chapter 1 of the Equality Act 2010](#),**

### (2) **Strengthening protection from discrimination for disabled people**

The Equality Act includes a number of measures which strengthen protection from discrimination for disabled people:

**Protecting disabled people from discrimination in the recruitment process:** The Act makes it unlawful for employers to ask job applicants questions about disability or health before making a job offer, except in specified circumstances. This will prevent employers screening potential employees to avoid recruiting disabled people.

**Increasing the number of wheelchair-accessible taxis:** The Act means that a local authority that doesn't have enough wheelchair-accessible taxis in its area cannot refuse a licence to such a vehicle solely because it has a policy of controlling the overall number of taxis.

**Making life easier for disabled people at home:** The Act gives disabled people who live in rented homes the right to have reasonable adjustments made to communal areas like entrances and hallways, provided they meet the cost.

**Helping disabled children at school:** Schools will be required to provide auxiliary aids and services for disabled pupils, for example special equipment and large-print books, where reasonable.

(3) **[Gender Reassignment](#)**

Provides protection by changing the definition of gender reassignment by removing the requirement for medical supervision

(4) **[Introduces clear protection for pregnant women and new mothers from discrimination](#)**

Provides protection for mothers who wish to breastfeed their children without being asked to leave places like cafes and shops, and ensures that schools cannot discriminate against pupils who are pregnant or new mothers

(5) **[Making pay secrecy clauses unenforceable](#)**

Employers will be unable to take action against employees talking to their colleagues or trade union representatives regarding how much they get paid

(6) **[Allowing claims for gender pay discrimination](#)** where there is no actual comparator

(7) **[Discrimination](#)**

The Act provides protection across different types of discrimination

- **Direct discrimination** – happens where a person is treated less favourably than another person is (or would be) treated because they have a protected characteristic (all protected characteristics)
- **Indirect Discrimination** – happens when you have a rule or policy that applies to everyone but disadvantages a person with a protected characteristic - Pregnancy and maternity is not covered but policies and practices that would put pregnant women and new mothers at a disadvantage could constitute unlawful indirect sex discrimination
- **Harassment** – behaviour deemed offensive by the recipient – happens where unwanted conduct has the purpose or effect of creating an intimidating, hostile, humiliating environment for a person or violating a person’s dignity where there this is related protected characteristic - (excludes pregnancy/maternity or marriage/civil partnerships)
- **Victimisation** – discrimination against someone because they made or supported a complaint under the Equality Act legislation - There is now no need for a victim to show that they have been less favourably treated than someone who has not made or supported a complaint under the Act. They need only show that they have been treated badly
- **Discrimination by association** – direct discrimination against someone because they associate with another person who possesses a protected characteristic - (excludes pregnancy/maternity or marriage/civil partnerships)
- **Discrimination by perception** – direct discrimination against someone because its is perceived that they possess a particular protected characteristic - (excludes pregnancy/maternity or marriage/civil partnerships)

(8) [Transsexual People](#)

The Act overall expands protection for transsexual people – the requirement to be under medical supervision has been removed; protection from indirect discrimination has been introduced; protection against direct discrimination has been extended to cover situations where a person is treated less favourably because he or she is wrongly perceived to be transsexual, or because of his or her association with a transsexual person, for example, a relative or partner. Protecting people who face discrimination because of their association with transsexual people, for example, as their partner.

(9) [People with religious or philosophical beliefs](#)

The Equality Act requires public bodies to consider the needs of people with different religious and philosophical beliefs when designing and delivering services. This could include considering the need to offer halal and kosher meals as part of a meals on wheels service.

Protecting people from discrimination: The Act carries forward existing laws protecting everyone from discrimination because of religion or philosophical belief, or lack of religion or belief. These protections are not just for minority groups - they extend to Christians, Muslims, Jews, Hindus and members of other religions, as well as humanists and atheists.

## **PROVISIONS OF THE ACT – EFFECTIVE FROM APRIL 2011**

- (1) Introduces [\*\*voluntary provisions for Positive action in recruitment and promotion\*\*](#) - Helps to address the employment gap for people from ethnic minorities by allowing employers to choose to take positive action to appoint a person from an under-represented or disadvantaged group in order to make a workplace better reflect the community it serves. This is a voluntary measure and allows an employer, when faced with making a choice between two or more candidates who are of equal merit to fill a particular vacancy, to take into consideration whether any of the candidates is from a group that is disproportionately under-represented or otherwise disadvantaged within the workforce.
- (2) **Public Sector Equality Duty – General Duties**

## **PROVISIONS OF THE ACT THE GOVERNMENT STILL CONSIDERING**

- (1) [\*\*Civil partnerships on religious premises\*\*](#)

In February the Government Equalities Office announced their commitment to enabling civil partnerships to be registered on the religious premises of those faith groups who wished to host them. This will be done by implementing Section 202 of the Equality Act 2010. [\*\*Civil partnerships on religious premises: a consultation\*\*](#) sets out detailed proposals for this voluntary measure. The proposals are designed to enable faith groups to opt in, respect the different decision-making structures of different faith groups, minimise the risk of successful legal challenges and be straightforward for local authorities to operate. The law will make clear that faith groups are not obliged to host civil partnerships. It would also be unlawful for a civil partnership to be registered on religious premises that had not been approved for the purpose by the local authority. That approval will be given only with the approval of the faith group concerned.

- (2) **Prohibition on age discrimination in services and public**

## functions

The Equality Act 2010 includes provisions enabling a ban on age discrimination in the provision of services to be introduced. These provisions were not commenced on 1 October 2010. On 3 March 2011 the Government commenced a consultation, which provides further details about implementation of the age discrimination ban. Link to consultation

[http://www.equalities.gov.uk/equality\\_act\\_2010/age\\_consultation\\_2011.aspx](http://www.equalities.gov.uk/equality_act_2010/age_consultation_2011.aspx)

## OTHER RELEVANT PROVISIONS OF THE ACT

The power to ban caste discrimination Caste discrimination and harassment has not been explicitly covered by British discrimination legislation. The Government-commissioned research into the prevalence of caste prejudice and discrimination undertaken by the National Institute of Economic and Social Research (NIESR) was published in December 2010 and can be found ([Caste Discrimination and Harassment in Great Britain Research](#)). A summary of the report is available [here](#).

The Government has not yet taken a decision on whether or not to provide explicit legal protection for caste discrimination. Ministers are currently considering the findings and implications of the report by the National Institute for Economic and Social Research (NIESR) and are committed to ensuring that the decision they make will be the most effective and proportionate method of dealing with any caste-based prejudice and discrimination in our society.

### **The legislative timetable for implementing the Act is as follows:**

<b>October 2010:</b>	The majority of the Acts provisions came into force
<b>January 2011</b>	Non Statutory Guidance on the Public Sector Equality Duty Issued
<b>April 2011:</b>	Public Sector General Equality Duty came into force
<b>July 2011</b>	Proposed timescale for introducing specific duties
<b>January 2012</b>	Publish information in respect of equalities
<b>April 2012</b>	Set Equality Objectives
<b>2013</b>	Private and Voluntary Sector Gender Pay Transparency Regulations

## RESOURCES

The EHRC have produced five non statutory guidance documents on the [Public Sector Equality Duty](#). The guidance currently has no legal standing, but sets out suggested approaches which will demonstrate how to comply with the general equality duty.

- [Essential guide to the public sector equality duty](#)
- [Equality analysis and the equality duty](#) and the equality duty
- [Engagement](#) and the equality duty
- [Equality objectives](#) and the equality duty
- [Equality information](#) and the equality duty

## **RELEVANT LINKS**

**Further details on the Equalities Act can be found through the links below:**

Equality and Human Rights Commission:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act>

Equality and Human Rights Commission link to guidance documents:

<http://www.equalityhumanrights.com/ea2010>

Equality and Human Rights Commission

<http://www.equalityhumanrights.com/legislative-framework/equality-bill/draft-code-of-practice-on-equal-pay/>

Equality and Human Rights

[http://www.equalityhumanrights.com/uploaded\\_files/Equality%20Bill/revised\\_employment\\_code1.pdf](http://www.equalityhumanrights.com/uploaded_files/Equality%20Bill/revised_employment_code1.pdf)

Equality and Human Rights

[http://www.equalityhumanrights.com/uploaded\\_files/Equality%20Bill/services\\_code1.pdf](http://www.equalityhumanrights.com/uploaded_files/Equality%20Bill/services_code1.pdf)

The Government Equalities Office website for information about the legislation

- [http://www.equalities.gov.uk/equality\\_bill.aspx](http://www.equalities.gov.uk/equality_bill.aspx)

Acas – Quick Start Guide For Employers – Equality Act 2010

<http://www.acas.org.uk/index.aspx?articleid=3017>

Local Government Improvement and Development

<http://www.idea.gov.uk/idk/core/page.do?pagelD=8890195>

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