

OVERVIEW OF THE EQUALITY ACT 2010

1. Context

A new Equality Act came into force on 1 October 2010. The Equality Act brings together over 116 separate pieces of legislation into one single Act. Combined, they make up a new Act that provides a legal framework to protect the rights of individuals and advance equality of opportunity for all.

The Act is intended to simplify, strengthen and harmonise the current legislation to provide Britain with a new discrimination law that protects individuals from unfair treatment and promotes a fair and more equal society.

The nine main pieces of legislation that have merged are:

- the Equal Pay Act 1970
- the Sex Discrimination Act 1975
- the Race Relations Act 1976
- the Disability Discrimination Act 1995
- the Employment Equality (Religion or Belief) Regulations 2003
- the Employment Equality (Sexual Orientation) Regulations 2003
- the Employment Equality (Age) Regulations 2006
- the Equality Act 2006, Part 2
- the Equality Act (Sexual Orientation) Regulations 2007

The timeline for the different parts of the Act to be brought into force is currently proposed as follows:

October 2010: the main sections of the Act relating to employment, equal pay and services, public functions and associations, education (further and higher education) will come into effect, replacing relevant sections of current anti-discrimination legislation covering these areas.

April 2011: the public sector equality duty will be brought into force, replacing the current public sector duties in the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006.

2012: the ban on age discrimination in the provision of goods, facilities, services and public functions will come into effect.

The Act's employment provisions largely reflect the current law and cover all workers. As with current legislation the scope of the Act is broad enough so that protection from discrimination may extend to people who are not necessarily employees. This could include contract workers and, in some circumstances, volunteers.

The categories of people covered by the Act's further and higher education institution provisions are:

- Prospective students (in relation to admissions arrangements)
- Students at the institution (including those absent or temporarily excluded)
- Former students (if there is a continuing relationship based on them having been a student at the institution)
- Disabled people who are not students at the institution but who hold or have applied for qualifications conferred by the institution

The governing body (i.e. Council) is liable for any breaches of the Equality Act, unless it can show that it took 'all reasonable steps' to prevent the discrimination, harassment or victimisation from taking place. In some circumstances an employee or agent (someone who works for you on your behalf) of the institution may be personally liable for acts of discrimination, harassment or victimisation.

2. The Protected Characteristics

The Act applies to nine 'protected characteristics' – the grounds upon which discrimination is unlawful. These are:

Age

The Act protects people of all ages. However, different treatment because of age is not unlawful direct or indirect discrimination if it can be justified as a proportionate means of meeting a legitimate aim. The default retirement age (that was set at 65) was abolished from 6 April 2011.

Disability

A person has a disability if s/he has a physical or mental impairment that has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities. The University is still under a legal duty to make reasonable adjustments for disabled staff and students.

Gender reassignment

This covers a transsexual person who proposes to, starts or has completed the gender reassignment process. The Act no longer requires a person to be under medical supervision to be protected. Transgender people such as cross-dressers who do not plan a permanent gender transition are not protected by the Act. Any absence relating to treatment connected to the gender reassignment process should be treated as any other absence due to illness or injury, and not as a 'lifestyle' choice.

Marriage and civil partnership

Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters. Single people are not protected as they do not share this protected characteristic. Being married or in a civil partnership is **NOT** a protected characteristic for the further and higher education provisions and so does not extend to cover students.

Pregnancy and maternity

Protection is afforded to women during the period of her pregnancy and any statutory maternity leave to which she is entitled. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination. Any period of absence due to pregnancy-related illness cannot be taken into account when making a decision about her employment. An employer cannot refuse to employ a woman because she is pregnant, on maternity leave or because she has (or has had) an illness related to her pregnancy.

To claim pregnancy or maternity discrimination a female student must show that she has been treated unfavourably because of her pregnancy or maternity. It is not direct discrimination against a male student to offer a female student special treatment in connection with her pregnancy or childbirth.

Race

Race includes colour, nationality (including citizenship) and ethnic or national origins. A racial group can be made up of two or more different racial groups (for example, Black Britons).

Religion and belief

Religion includes any religion with a clear structure and belief system, and also a lack of religion. Belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). For a belief to be protected by the Equality Act:

- It must be genuinely held.
- It must be a belief and not an opinion or viewpoint based on information available at the moment.
- It must be a belief as to a weighty and substantial aspect of human life and behaviour.
- It must attain a certain level of cogency, seriousness, cohesion and importance.
- It must be worthy of respect in a democratic society.
- It must be compatible with human dignity and not conflict with the fundamental rights of others.

Sex

Both men and women are protected.

Sexual orientation

The Act protects bisexual, gay, heterosexual and lesbian people.

All protected characteristics (with the exception of marriage and civil partnership) will be subject to the general public sector equality duty from April 2011 which will require us to have due regard to:

- **Eliminate discrimination**
- **Advance equality of opportunity**
 - Remove/minimise disadvantage
 - Meet different needs of protected groups
 - Encourage participation in public life where low
- **Foster good relations**
 - Tackle prejudice (where tensions arise, address those tensions)
 - Promote understanding

3. Key Changes

Change in definition of direct discrimination

The new definition of direct discrimination extends protection based on association and perception to include:

- age
- disability
- gender reassignment
- sex
- pregnancy and maternity

This is already applicable to race, sexual orientation and religion or belief.

This change means that those providing care for someone due to a protected characteristic would be protected because of their association

Extended protection for disabled people

Protection for disabled people has been extended:

- Indirect discrimination protection will be extended to disability.
- A new protection for discrimination arising from disability will be introduced.
- The duty to make reasonable adjustments for disabled people has been extended to when a disabled person experiences a 'substantial disadvantage'. The previous duty applied when it was 'impossible or unreasonably difficult' for a disabled person to work, study or use a service.

Abolition of Default Retirement Age

The default retirement age (that was set at 65) was abolished from 6 April 2011. It will no longer be possible to subject employees to compulsory retirement on or after 1 October 2011, unless the retirement can be justified in the particular circumstances. The University is no longer able to reject job applications from external candidates who are over 65; such applicants should be treated in the usual way. Age-related factors must not be used as a criteria for non-selection.

Breastfeeding now explicitly protected

A woman who is breastfeeding is now explicitly protected from unfavourable treatment in the areas of education and provision of services. This covers unfavourable treatment within a period of 26 weeks from when she has given birth. Outside of this 26-week period, a breastfeeding woman may be protected by the sex discrimination provisions.

Protection on the grounds of pregnancy and maternity extended to students

From 1 October 2010, a student who is pregnant, or has given birth within the last 26 weeks, is now explicitly protected from unfavourable treatment.

New limitations on asking health related questions during staff recruitment and selection

The new provisions make it unlawful for an employer to ask about the health of a job applicant:

- before offering work to an applicant
- before including an applicant in a pool of shortlisted candidates from which the employer intends to select a person to offer work to

Third party harassment

The Equality Act 2010 makes the employer liable in the case of harassment of its employees by third parties unless the employer has taken reasonable steps to prevent the third party from doing so. Third parties could include:

- Students
- Contractors over whom the institution does not have direct control (for example maintenance contractors)

This only applies if the employer knows that the employee has been harassed on at least two previous occasions. The employee does not need to have been harassed by the same person on each occasion. *Please note that the government announced in March 2011 that this provision will be repealed; until such time we must continue to meet this requirement.*

Removal of secrecy clause in discussing pay

The Equality Act 2010 introduces protection for people from victimisation by their employer if they discuss their pay with colleagues with a view to establishing differences in pay that may exist because of a protected characteristic. Employers will not be able to enforce any terms of employment or appointment that prevent or restrict discussions relating to pay.

4. Additional information

If you require any guidance related to the requirements of the Equality Act please contact:

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