



EQUALITY ACT 2010



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BACKGROUND

For many years successive Governments have introduced anti-discrimination laws both to create and to respond to changes in society, to promote civil rights and equality. From the first Race Relations Acts back in the 1960s, through to legislation on race and gender equality in the 1970s and disability rights in the 1990s, to more recent new laws on religion or belief, sexual orientation and age, Great Britain has a strong framework of equality legislation. Progress has been made in making Britain a fairer nation, but inequality and discrimination persist today.

The Equality Act 2010 replaces the existing anti-discrimination laws with a single Act. It simplifies the law, removing inconsistencies and makes it easier for people to understand and comply with it. It provides a framework for simpler, smarter and more streamlined processes. It also strengthens the law in important ways to help us tackle the discrimination and inequalities which still exist in our society.

The new Act is not the end of the story. It now needs to be implemented and enforced, to make sure it is effective in helping to work towards a fairer and more equal society.

WHAT THE EQUALITY ACT 2010 DOES

The Equality Act makes the current equality laws simpler and stronger.

Clear and consistent protection

- 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; allowing a woman who is being provided with goods, facilities or services to breastfeed her child if she so wishes.
- Levelling up protection from discrimination in private members' clubs and other associations which have rules about membership and select their members and have more than 25 members.
- Extending the scope to use positive action. This enables public sector organisations to take proportionate steps to help people overcome the disadvantages they may experience due to their protected characteristic or to meet their needs. However, there is no requirement to take positive action. Nevertheless, there is no restriction on treating disabled people more favourably than non-disabled people.

Giving people better access to their rights

- Simpler, clearer law and guidance so that employers and service providers are clear what they need to do to comply.
- Giving employment tribunals powers to make recommendations in more cases, to help employers improve their practices and their compliance.
- Protecting people from dual discrimination – direct discrimination because of a combination of two protected characteristics.

The protected characteristics are:

1. Age
2. Disability
3. Gender reassignment
4. Race
5. Religion or belief
6. Sex
7. Sexual orientation
8. Marriage and civil partnership
9. Pregnancy and maternity

Better, more inclusive public services which help people achieve their potential

- A new integrated Equality Duty on public bodies that brings together the three existing duties and extends them to include gender reassignment, age, sexual orientation and religion and belief.
- Using public procurement to improve equality. Public procurement is the process by which government departments or agencies purchase goods and services from the private sector. It takes place at both a national and regional level. The procurement process will usually be subject to specific rules and policies covering how the relevant decisions are made.

Fairer services for older people

- Banning age discrimination in service and public functions.

More transparency

- A power to require gender pay and employment equality publishing by public bodies.
- Encouraging businesses to publish their gender pay gap, with a power to require this if insufficient progress is made voluntarily.
- Stopping employers using pay secrecy clauses to prevent employees discussing their own pay.

More rights for disabled people

- A new right for disabled people, who live in leased homes to have reasonable adjustments made to communal areas like entrances and hallways, provided they meet the cost.
- Requiring schools to provide auxiliary aids and services for disabled pupils, for example special equipment and large-print books, where reasonable.
- Preventing employers asking job applicants questions about disability or health before making a job offer, except in specified circumstances.
- Increasing the number of wheelchair-accessible taxis.

WHAT HAPPENS NEXT?

The Equality Act 2010 received Royal Assent on 8 April 2010.

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 carefully prepare for them.

Consultation on some of the detailed secondary legislation which will be needed to implement some of the new measures – for example, the integrated public sector Equality Duty and the ban on age discrimination in services and public functions will take place over the coming months.

Provisions from 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.**

For example, a black woman is waiting in a queue at the bus stop and overhears the bus driver making abusive comments about foreign people. As these comments made her feel degraded, she is able to bring a claim of harassment against the driver.

- **Changing the definition of gender reassignment, by removing the requirement for medical supervision.**

For example, a man who decides to live permanently as a female but does not undergo any medical procedures would still be protected.

- **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.**

For example, if an applicant for a job had a disabled son, made the organisation aware of this during the interview, and then was refused a job offer solely because there was a lot of travelling involved, this would be direct discrimination by association.

- **Clearer protection for breastfeeding mothers.**

For example, if a woman in the housing waiting area is asked by a security guard to stop feeding her baby or go to the ladies' toilets to feed in privacy, this is unlawful discrimination

- **Applying the same definition of indirect discrimination to all protected characteristics such as age, marriage and civil partnership, sex, sexual orientation, race, religion or belief, disability and gender reassignment.**
- **Extending protection from indirect discrimination to disability.**

For example, a department organises a team away day at an outdoor centre. On safety grounds all staff are asked to get a medical certificate to ensure they are in good health and able to participate in all of the day's activities. One member of staff complains that she cannot get a certificate because she suffers from depression and is not considered to be in good health. Although ensuring health and safety is a legitimate objective, the broad application of the policy is unlikely to be justified because some conditions such as mental health problems do not in practice impede the ability to undertake strenuous exercise safely.

- **Introducing a new concept of "discrimination arising from disability" which replaces protection under previous legislation lost as a result of a legal judgment.** Direct discrimination occurs when a service provider treats someone less favourably because of the disability itself. In the case of discrimination arising from disability, the question is whether the disabled person has in practice been treated unfavourably because of something connected with their disability.

For example, a mother seeks admission to a crèche for her son who has a disability which means that he does not have full bowel control. The crèche says that they cannot admit her son because he is not toilet trained and the children at the crèche are required to be. The refusal to admit her son is not because of his disability itself but he is experiencing detrimental treatment as a consequence of his incontinence, which is something arising from his disability. The mother could challenge this exclusion on her son's behalf by making a claim in the county court. The exclusion would be unlawful discrimination arising from disability unless the crèche could demonstrate to the court that it did not know that the boy was disabled, or could demonstrate that its action was justified.

- **Applying the detriment model to victimisation protection.** This means treating an employee less favourably than would otherwise been the case because they had exercised or intended to exercise their rights under the legislation by making a complaint about discrimination or harassment. A person is not protected from victimisation if they have maliciously made or supported an untrue complaint.

For example, if a member of staff at a day centre supported a colleague to make a complaint about harassment and was ostracised by her manager, this is victimisation.

- **Harmonising the thresholds for the duty to make reasonable adjustments for disabled people.** Service providers must think ahead and take steps to address barriers that hinder disabled people i.e. where a disabled person would be at a substantial disadvantage compared with a non disabled person if the adjustment was not made. In doing this, it is a good idea to consider the range of disabilities that actual or potential service users might have. It is not acceptable to wait until a disabled person experiences difficulties using a service, as this may make it too late to make the necessary adjustment.

For example. A member of a consultation team is arranging a consultative forum to discuss a new school building. A number of venues are looked at to find one that has good physical adaptations with accessible toilets, an induction loop and places for people to eat their lunch at tables if they want to. The speakers and participants are contacted beforehand to ask if they have any disability-related requirements, such as a sign language interpreter or information in alternative formats. This is best practice.

- **Extending protection from third party harassment to all protected characteristics.**

For example, A team leader at a One Stop Shop is told by a member of his team that he is feeling unhappy after a customer made racist remarks. The team leader who witnessed this is concerned and decides to monitor the situation. Within a few days the customer returns and makes further offensive remarks. The team leader speaks to the claimant, pointing out that this behaviour is unacceptable and follows it up with a letter to him stating that he will ban him if this happens again. The team leader keeps his team member in the picture with the actions he is taking. The team leader is taking reasonable steps to protect his staff from third party harassment.

- **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.** You can only ask disability related questions to decide whether an applicant can carry out a function that is essential to the job.

For example, if the print shop has a job that requires a lot of heavy manual handling, the interviewer could ask a candidate with mobility impairment whether they could manage handling heavy goods. However, the interviewer could not ask the person how their impairment would affect them in getting to the workplace, because this is not something that is essential to the job itself.

- **Allowing hypothetical comparators for direct gender pay discrimination.** This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still has to be made by comparison with a real person of the opposite sex in the same employment. However, a change in the Equality Act allows a claim of direct pay discrimination to be made, even if no real person comparator can be found. This means that a claimant who can show evidence that they would have received better remuneration from their employer if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work in the organisation. This would be a claim under sex discrimination.

- **Making pay secrecy clauses unenforceable.** The Act makes it unlawful for you to prevent or restrict your employees from having a discussion to establish if differences in pay exist that are related to protected characteristics. It also makes terms of the contract of employment that require pay secrecy unenforceable.
- **Extending protection in private clubs to sex, religion or belief, pregnancy and maternity, and gender reassignment.**

For example, a transsexual man in the process of undergoing gender reassignment from female to male enquires about going to his local lunch club. He is told that the other people who use the lunch club would feel uncomfortable if he attended because he is a transsexual person, so he is asked to keep away. This is direct discrimination because of gender reassignment.

- **Introducing new powers for employment tribunals to make recommendations which benefit the wider workforce.** It will now be possible for a tribunal to make recommendations that an organisation takes steps to eliminate or reduce the effect of discrimination on other employees, not only on the claimant.

For example, the tribunal might specify that an employer needs to train all staff about the organisation's bullying and harassment policy or fairness at work policy. This power does not apply to equal pay cases.

- **Harmonising provisions allowing voluntary positive action.**

For example, Housing and Community Care becomes aware of a series of homophobic incidents taking place within a particular housing estate, most of which seem to be going unreported. Consultation with the local lesbian, gay and bisexual (LGB) community reveals that it has little confidence that any complaints raised will be investigated fully or that they will be taken seriously enough. The department appoints a specific housing liaison officer from the LGB community to act as the first point of contact between the service and the affected LGB residents when incidents occur and the first point of contact where possible when an LGB customer comes to request housing because they have had a family

Provisions the Government is still considering and could be phased in over the next three years

- Dual discrimination.
- The duty to make reasonable adjustments to common parts of leasehold and common hold premises and common parts in Scotland.
- Gender pay gap information.
- Provisions relating to auxiliary aids in schools.
- Diversity reporting by political parties.
- Positive action in recruitment and promotion.
- Provisions about taxi accessibility.
- Prohibition on age discrimination in services and public functions.
- Family property.
- Civil partnerships on religious premises.

Ministers' decisions about how to implement the remaining provisions in the best way for business and for others with rights and responsibilities under the Act will be communicated shortly.

WHAT'S NEW AND WHAT HAS CHANGED

Types of discrimination	Protected characteristics									
	Age	Disability	Gender reassignment	Race	Religion or belief	Sex	Sexual orientation	Marriage and civil partnership	Pregnancy and maternity	
Direct Discrimination Someone is treated less favourably than another person because of a protected characteristic (PC)	NC	NC	NC	NC	NC	NC	NC	NC	NC	
Associated Discrimination Direct discrimination against someone because the others think they possess a particular characteristic (PC)	N	N	N	NC	NC	N	NC	SNC	SNC	
Discrimination by Perception Direct discrimination against someone because others think they have a particular characteristic (PC)		N	N	NC	NC	N	NC	SNC	SNC	
Indirect Discrimination Can occur when you have a rule or policy that applies to everyone but disadvantages a particular characteristic (PC)		N	N	NC	NC	NC	NC	NC	SNC	
Harassment Employees can now complain about behaviour that they find offensive even if it is not directed at them	C	C	C	C	C	NC	C	SNC	SNC	
Harassment by a Third Party Employers are potentially liable for harassment of their staff by people they don't employ	N	N	N	N	N	NC	N	SNC	SNC	
Victimisation Someone is treated badly because they have made/supported a complaint or grievance under the Act	C	C	C	C	C	C	C	C	C	
Positive Action Enables public sector organisations to take proportionate steps to help people overcome their disadvantages or to meet their needs	N	C	C	C	C	C	C	C	N	

NC : characteristic covered in existing legislation – no charges

C : Characteristic covered in existing legislation – but some changes

N : Characteristic now covered

SNC : Characteristic not covered in existing legislation – still not covered



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