

## The Equality Act 2010 – Briefing Note

### 1. Introduction

The Equality Act 2010 introduces new equality legislation covering employment, facilities, goods and services and education, including the admission and treatment of students.

The stated aim of the Act is to reform and harmonise discrimination law, and to strengthen the law to support progress on equality. As the Act is brought into force, it will replace almost all existing equality legislation, including the Equal Pay Act (1970). The Part-time Workers Regulations and Fixed-term Employees Regulations are untouched by the Act and will remain in force.

This briefing note highlights the main changes that will be brought into force, relating to employment, service delivery and admission and treatment of students, on 1 October 2010. The government is currently consulting on the specific duties for England of the general public sector duty due to commence in April 2011.

### 2. Key changes

As of October 2010 there are 9 distinct areas upon which discrimination is unlawful, referred to as the 'protected characteristics':

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief (including lack of belief)
- Sex
- Sexual orientation

#### 2.1 Change in definition of direct discrimination and harassment

The new definitions of direct discrimination and harassment extend protection to discrimination based on association and perception and covers age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation and, in relation to direct discrimination only, marriage and civil partnership.

- Discrimination by *association* – a person being discriminated against due to their connection to someone who has one of the protected characteristics e.g. a mother is denied a promotion because managers thought her child's disability may interfere with her work.
- Discrimination by *perception* – a person being discriminated against because it is believed they have one of the protected characteristics e.g. a man being harassed at work because it is believed he is gay, even though he is not.

This means that a person will be able to claim direct discrimination or harassment even if they themselves do not have the relevant protected characteristic, but they nevertheless suffer less favourable treatment "because of a protected characteristic".

## 2.2 Change in definitions or protections of specific protected characteristics

The definition of **disability** will be extended to cover people who have had a disability in the past. In addition there is extended protection for disabled people:

- Indirect discrimination protection is extended to disability. Indirect discrimination can occur when you have a provision, criterion or practice that applies to everyone but particularly disadvantages disabled people.
- A new protection for discrimination arising from disability will be introduced. This replaces disability-related discrimination as currently found in the Disability Discrimination Act (DDA). It will be unlawful to treat someone unfavourably "because of something arising in consequence of" their disability, for example, their sickness absence or a student with diabetes, carrying medication related to their condition, is refused entry to an event with a no drugs policy. You will be able to justify the treatment where it is a proportionate means of achieving a legitimate aim. The Act makes it clear that an employer will not be liable if the employer did not know, and could not reasonably be expected to have known, of the disability.
- The duty to make reasonable adjustments for disabled people where a provision, criterion, practice or physical feature places a disabled person at a substantial disadvantage has been extended beyond employment to include education and the provision of services. Previously, the duty to make reasonable adjustments in the provision of services only applied when it was 'impossible or unreasonably difficult for a disabled person to work, study or use a service'.

**2.2.1** The definition of **gender reassignment** has been extended to cover people who have proposed, started or completed a process to change their sex but are not necessarily under medical supervision.

**2.2.2 Breastfeeding** is now explicitly protected. In providing services, and in education, a woman who is breastfeeding is now explicitly protected from 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.

### **2.3 New limitations on the use of health related questions during staff recruitment and selection exercises.**

The Act introduces new provisions which make it unlawful for an employer to ask about the health of a job applicant either before offering work to an applicant, or before including an applicant in a pool of shortlisted candidates from whom the employer intends to select a person to whom to offer work.

The question asking how many days sickness absence an applicant has had, should not be asked on an application form. The question may only be asked after a provisional job offer has been made. Offers should be subject to health clearance satisfactory to the University of Manchester.

We are still permitted to ask if a person has a disability for the purpose of making reasonable adjustments at interview and for monitoring purposes.

### **2.4 New protection from third party harassment**

The Act makes the employer liable in the case of harassment of its employees by third parties, such as maintenance contractors over whom the employer does not have direct control, unless the employer has taken reasonable steps to prevent the third party from doing so. Students may also be considered a third party. There is a "three strikes" rule that applies – so an employer will only be liable (1) where its employee has been harassed by a third party on at least two occasions (not necessarily by the same person), (2) the employer is aware of this and (3) the employer does not take reasonably practicable steps to prevent it happening again.

### **2.5 Increased tribunal powers to make recommendations**

Employment tribunals will be able to make recommendations that benefit the wider workforce where an employer is found to have discriminated. This compares with the current position where it can only make a recommendation which benefits the claimant. Although recommendations are not binding, a failure to comply could result in an inference of discrimination in subsequent discrimination proceedings.

### **2.6 Removal of secrecy clause in discussing pay**

The Act introduces protection to 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. It also makes terms of employment or appointment that prevent or restrict discussions relating to pay unenforceable.

## **3. Admission and treatment of students**

The Act prohibits HEIs from discriminating against a person/student in the following ways:

- in the arrangements it makes for deciding who is offered admission as a student
- in the terms on which it offers to admit the person as a student
- by not admitting the person as a student
- in the way it provides education for the student
- in the way it affords the student access to a benefit, facility or service
- by not providing education for the student
- by not affording the student access to a benefit, facility or service
- by excluding the student
- by subjecting the student to any other detriment

This largely reflects current law. The Act also makes it unlawful for HEIs to victimise or harass students or prospective students.

Protection on grounds of pregnancy and maternity are also extended to students. A student who is pregnant, or has given birth within the last 26 weeks, is now explicitly protected from unfavourable treatment

HEIs must also ensure that they do not discriminate against disabled students through either:

- the arrangements it makes for deciding upon whom to confer a qualification
- the terms on which it is prepared to confer a qualification on the person
- by not conferring a qualification on the person
- by withdrawing a qualification from the person or varying the terms on which the person holds it

Similarly, HEIs must ensure that they do not victimise disabled students in any of the ways described above.

The Act imposes the duty to make reasonable adjustments on HEIs in respect of disabled students and applicants. Competence standards are exempted from this duty. For example, the University of Manchester may need to consider offering alternative formats through which a disabled student can apply for a course; it does not need to lower the level of prior attainment required to study the programme.

There is no specific exemption related to the concept of academic freedom in the Act, but there is reference to the curriculum. The purpose of this is to ensure that the Act does not inhibit HEIs from including a full range of issues, ideas and materials from multiple perspectives in their curriculum.

Teaching methods, delivery and related issues such as assessment all need to comply with the main provisions of the Act, including those relating to direct and indirect discrimination, harassment and the duty to make reasonable adjustments for disabled students.

#### **4. Further Information**

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Acas (2010) The Equality Act – what's new for employers?  
[www.acas.org.uk/index.aspx?articleid=3017](http://www.acas.org.uk/index.aspx?articleid=3017)

ECU (2010) *Equality Act 2010: implications for higher education institutions*.  
[www.ecu.ac.uk/publications/equality-act-2010](http://www.ecu.ac.uk/publications/equality-act-2010)

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