

The Equality Act

The aim of the Act is to reform and harmonise discrimination law and to strengthen the law to support progress on equality. The new law replaces all existing equality legislation.

The new duty came into effect in October 2010 and covers eight **protected characteristics**:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual Orientation

It also applies to **marriage and civil partnership** but only in terms of the need to eliminate discrimination in employment.

The key changes from previous equality law are:

- **Direct discrimination** in employment has been extended to cover disability (it now covers all protected characteristics including marriage and civil partnership). Different treatment regarding age can still be justified if it is a proportionate means of achieving a legitimate aim – this justification is likely to be difficult to meet in most scenarios in HE. The ban on age discrimination in the provision of goods, facilities and services will not come into effect until 2012.
- **Discrimination by association and perception** has been extended to include disability, age, gender re-assignment and sex (it now covers all the protected characteristics apart from pregnancy and maternity and marriage and civil partnership)
- **Indirect discrimination** has been extended to include disability and gender re-assignment (it now covers all protected characteristics apart from pregnancy and maternity)
- **Harassment** – applies to all protected characteristics apart from pregnancy and maternity and marriage and civil partnership.

There is no specific prohibition on harassment related to religion or belief or sexual orientation but if someone with either of these protected characteristics is harassed and consequently treated less favourably than someone else, this would be counted as unlawful direct discrimination.

People are protected from harassment if they are perceived to have, or associate with someone with, a protected characteristic.

- **Victimisation** – there is now no need for a victim to show that they have been treated less favourably than someone else – they need only show that they have been treated badly.
- **Positive action** – the new provision enables public sector organisations to take proportionate steps to help people with a protected characteristic who are disadvantaged, under-represented or have particular needs linked to their characteristic, overcome their disadvantages or meet their needs.

***Definitions of these terms can be found in Appendix 1**

Public sector equality duty

The Equality Act also brought in new public sector general equality duty requirement. This replaces the original separate duties relating to race, disability and gender equality and comes into force on **5 April 2011**.

a) The General Duty

The general duty covers all protected characteristics apart from marriage and civil partnership and requires HEIs to have **due regard** to the need to:

- **Eliminate unlawful discrimination**, harassment and victimisation and other conduct prohibited by the Act

To reduce the likelihood of discrimination occurring against students because they are pregnant or have recently given birth, an HEI introduces a policy on supporting students during pregnancy and maternity. It provides training for staff in academic and pastoral roles to ensure effective implementation of the policy.

- **Advance equality of opportunity** between people from different groups
To advance equality of opportunity involves considering the need to:
 - removing or minimising disadvantages suffered by people due to their protected characteristics
 - meet the needs of people with protected characteristics
 - encourage people from protected groups to participate in public life or in other activities where their participation is disproportionately low

To encourage more women into engineering and advance equality of opportunity between men and women, an HEI reviews its marketing materials and ensures that female staff are present at open days. It also develops a programme for girls in local schools aimed at attracting them into engineering and provides mentoring to successful female applicants throughout their course.

- **Foster good relations** between people from different groups
Fostering good relations involves tackling prejudice and promoting understanding between people from different groups.

A member of staff who has transitioned to their preferred gender reports support from their immediate colleagues but mixed attitudes from other staff members. With the aim of fostering good relations, the HEI makes links with a local Trans organisation and with its input develops an awareness-raising campaign and materials for use in staff training.

Having **due regard** means consciously thinking about the three aims of the general duty as part of the process of decision-making. This means that consideration of equality issues must influence the decisions reached by HEIs in:

- how they act as employers
- how they develop, evaluate and review policy
- how they design, deliver and evaluate services
- how they commission and procure from others.

Third parties - any third parties exercising public functions are required to comply with the duty. The duty rests with the University even if we have delegated any functions to a third party.

When working with a third party accommodation provider an HEI makes sure that the provider's policies and practices are compliant with the duty. They highlight the provider's responsibilities under the Equality Act in the contract and have regular dialogue on equality and diversity issues with the provider.

Complying with the general duty may involve treating some people better than others, as far as this is allowed by discrimination law. The general duty also explicitly recognizes that disabled people's requirements may be different from those of non-disabled people. HEIs are required to take account of disabled people's impairments and should make reasonable adjustments for disabled people.

b) Specific Duties

The specific duties regulations require higher education institutions (HEIs) to publish:

- One or more equality objectives by 6 April 2012, and thereafter at least every four years. Equality objectives must be specific and measurable and relate to the achievement of the equality duty.
- Information to demonstrate their compliance with the equality duty by 31 January 2012 and thereafter, at least annually.

The information that HEIs are required to publish must relate to employees and others affected by their policies and practices such as students and other service users who share a relevant protected characteristic.

The information must be published in a manner that is accessible to the public and can be published within another published document.

The government has made clear in its policy review paper [Equality Act 2010: The public sector Equality Duty: reducing bureaucracy](#) that:

'... under the requirements of the general duty to have 'due regard' to the matters set out in the Act, public bodies will need to understand the effect of their policies and practices on equality – this will involve looking at evidence, engaging with people, staff, service users and others and considering the effect of what they do on the whole community.'

Summary

We will need to demonstrate within our organisation as an educational establishment, as an employer and as a part of the wider community that we are committed to:

- Eliminating discrimination and harassment
- Advancing equality of opportunity
- Fostering good relationships

Appendix 1 Definitions

Direct discrimination

Less favourable treatment of a person compared with another person because of a protected characteristic

Perception

In the Act, the belief that someone has a protected characteristic, whether or not they do have it

Associated with

Where a victim of discrimination does not have a protected characteristic but is discriminated against because of their association with someone who does e.g. the parent of a disabled child.

Indirect discrimination

The use of an apparently neutral practice, provision or criterion which puts people with a particular protected characteristic at a disadvantage compared with others who do not share that characteristic , and applying the practice, provision or criterion cannot be objectively justified

Harassment

Unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment.

Victimisation

Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act.

Definitions taken from the Equality and Human Rights Commission website

www.equalityhumanrights.com

This Briefing is based on:

- *The Essential Guide to the Public Sector Equality Duty*; Vol. 1 of 5: Equality Act Guidance for English Public Bodies; EHRC, January 2011 www.equalityhumanrights.com
- Equality Act 2010: public Sector equality Duty –What do I need to know? A quick start guide for public sector organisations; Government Equalities Office, January 2011 www.equalities.gov.uk
- The public sector equality duty: England – Implications for higher education institutions; Equality Challenge Unit, March 2011 www.ecu.ac.uk