

## Equality Act 2010: What do we need to know?

The Equality Act 2010 is intending to simplify the current separate Equality legislation (Age, Disability, Gender, Race, Religion or Belief, Sex, Sexual Orientation and Gender Reassignment, etc.) by replacing it with one Act and make it clearer what 'grounds' and 'key concepts' are covered by the act.

The Equality Act 2010 will also include Marriage and Civil Partnership, Pregnancy and Maternity and equal pay with most of the provisions due to come into force in England and Wales on **October 1st 2010**.

The Equalities Act 2010 is made up of 218 clauses and 28 schedules. It is **advisable to consult the relevant sections of the Act and the explanatory notes (as these also provide examples of scenarios)**.

Below is a summary of the key differences from the current legislation and how it may affect an organisation's operation / working life.

As the Equalities Act 2010 is replacing current legislation and including some new and extended protections, there has been an overhaul of the grounds, key concepts, and definitions on which the Act is based:

### **Protected Characteristics (used to be called 'grounds')**

The protective characteristics covered by the Equality Act 2010 (as of **October 1<sup>st</sup> 2010**) are:

- Age \*
- Disability (new definition)
- Gender reassignment (new definition)
- Marriage and civil partnership\*
- Pregnancy and maternity (includes less favourable treatment of a woman who is breastfeeding)\*\*
- Race (which includes colour, nationality, and ethnic or national origins)
- Religion or belief
- Sex
- Sexual orientation

A reference to persons who share "a protective characteristic" means that a group of people share a particular protective characteristic e.g. the same age group (particular age or age group), have the same disability, are of the same racial group (this can be made up of two or more different racial groups); a person who is married would share the same protective characteristics as a person in a civil partnership.

\* Age and Marriage and Civil Partnership are currently not protected from discrimination in relation to service provision except in the case of age

legislation where vocational training will still be covered by anti-discrimination legislation. Age legislation covering service provision is expected to come into effect in 2012.

\*\* Pregnancy and maternity will only apply to certain non-work and work cases.

### Types of discrimination

The following are the seven types of discrimination that will be covered by The Equality Act 2010; they apply to all the protective characteristics unless stated in brackets:

- **direct discrimination**
- **associative discrimination** (direct discrimination) (does not apply to marriage & civil partnership, pregnancy & maternity)
- **perceptive discrimination** (direct discrimination) (does not apply to marriage & civil partnership, pregnancy & maternity)
- **indirect discrimination** (does not apply to pregnancy & maternity)
- **harassment** (does not apply to marriage & civil partnership, pregnancy & maternity)
- **third party harassment** (does not apply to marriage & civil partnership, pregnancy & maternity)
- **victimisation.**

The key changes are:

**Direct discrimination** occurs when a person is treated less favourably than another person because of a **protected characteristic**.

Direct discrimination can also be associative or perceptive discrimination:

- **Associative discrimination - direct discrimination** against a person because they are **associated or linked with another person who posses a protected characteristic**
- **perceptive discrimination - direct discrimination** against a person who is **wrongly perceived to have or thought to have a protected characteristic or is treated as if they do have a protective characteristic.**

**Indirect discrimination** occurs when there is a rule, policy or practice / service provision that applies to everyone but particularly disadvantages people who share a **protected characteristic**. Indirect discrimination can also arise when a disabled person is treated unfavourably because of something connected with their disability, the service provider knew or could reasonably be expected to know that the person is disabled and the unfavourable treatment cannot be justified. e.g. a guide dog or wheelchair.

**Harassment** means unwanted behaviour related to a **protected characteristic** that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. This has been extended. Employees can now complain of behaviour they find offensive even if it is not directed at them.

**Third Party Harassment** - Employees can now complain of behaviour they find offensive that has been made by a third party under the definition of harassment. The legal definition of a third party is someone who is not the employer or the employee, such as a customer or a client.

**Victimisation** occurs when a service provider or employer treats someone badly because they have made or supported a complaint about discrimination or harassment, or because the service provider thinks they may be doing or may do these things or if a service provider treats someone badly because they support someone else who makes a discrimination claim.

## **Actions for organisations**

The following is a suggestive list of key actions that organisation should consider before **1<sup>st</sup> October 2010**.

### **Governing documents**

If your charity has objects which restrict beneficiaries on the basis of any protected characteristic, start thinking about whether you could justify this restriction. The new rule could put charities at risk of a claim if they cannot justify restricting services to people with a particular protected characteristic.

Charities will continue to be able to restrict benefits to people who share a protected characteristic, if this is in line with their governing document. But under the new provision, they will be able to do this only if it is a proportionate means of achieving a legitimate aim (in other words, it can be objectively justified) or is intended to prevent or compensate for a disadvantage.

**Associations for people with a shared characteristic** An exception to the above allows an association to limit its membership to people who share a protected characteristic (but not the characteristic of being of a particular colour).

**Members and associates.** For the purposes of the Act an association is defined as a body with 25 or more members, where access to membership is controlled by rules and involves a selection process. An association may be incorporated or unincorporated, and may operate for profit or on a not for profit basis.

An association will not be able to discriminate against or victimise an existing or potential member or associate because of race, disability and sexual orientation, sex, age, religion / belief, pregnancy / maternity, and

gender reassignment (but not marriage / civil partnership). Consider whether your organisation's membership provisions or membership benefits are discriminatory.

**Religion/belief** As at present, non-commercial organisations based on religion / belief or set up to promote good relations between people of different religions / beliefs will be able to restrict membership and access to activities, services or facilities on the basis of religion / belief, where this is necessary to comply with the purpose of the organisation or to avoid causing offence to members of the religion / belief. Provided they have done so at all times since before 18 May 2005, charities will be able to continue to require members, applicants for membership or people wanting to use a benefit, facility or service to confirm that they accept a religion or belief.

Such organisations will also continue to be able to discriminate on the basis of sexual orientation in order to avoid conflict with the strongly held convictions of members of the religion / belief, but not in relation to any activity carried out on behalf of a public body under a contract with that body.

The Charity Commission has said it will issue supplementary guidance on the Equality Act 2010, shortly.

## **Equality, Equal opportunities, Diversity and other policies**

Every organisation should review its policies and be making changes prior to October 2010.

- check any definitions that you may have on Discrimination and update these to the Equality Act 2010 ones
- Equality Act 2010 will replace key equality legislation, Age, Sex, etc in policies.
- Check that you have all the protected characteristics listed.
- Provide examples of discrimination (see resource list at the end of this article).
- Remember changes to definitions, etc, may also need to be replicated in other policies e.g. a harassment policy.

## **Recruitment policy / application process**

Pre-employment questions about health Remove any questions on health unless it falls under a specific circumstance or can be justified:

- to find out whether an applicant would be able to participate in an assessment to test their suitability for the work
- to make reasonable adjustments to enable the disabled person to participate in the recruitment process

- to find out whether an applicant would be able to undertake a function that is intrinsic to the job, with reasonable adjustments in place as required
- to monitor diversity in applications for jobs
- to support positive action in employment for disabled people
- to enable an employer to identify suitable candidates for a job where there is a genuine occupational requirement for the person to be disabled.
- where they are needed in the context of national security vetting.

### **Job/role descriptions - Genuine occupational requirements (GOR).**

Check where you might want to limit recruitment to people with a particular characteristic or characteristics. A role or job description which previously fell within the genuine occupational requirement or genuine occupational qualification provisions might not fall within the new rules. The genuine occupational requirement provisions for all the protected characteristics will be standardised, while continuing to allow specific exemptions where these are justified. Any requirement that a person be of a particular sex, race, disability, religion / belief, sexual orientation or age, or must not be a transsexual person, married or a civil partner, will have to be crucial to the post and must be proportionate to achieve a legitimate aim.

## **Employment**

### **Discussions about pay**

Remove any prohibitions on discussing pay. The Equalities Act 2010 will introduce a ban on secrecy clauses which prevent employees discussing their own pay or asking colleagues about their pay, where the purpose is to find out whether there is a connection between any difference in pay and a protected characteristic, e.g. differences in pay / pay rises or bonuses between male and female staff.

## **Activities and events**

### **Services for a particular protected characteristic**

If you provide a service to certain groups, for example, providing services only to people with a particular protected characteristic, take advice about whether it will be lawful to continue to do so. All charities can continue to provide services, activities or facilities specifically for people who share a specific protected characteristic, provided this is a proportionate way to alleviate disadvantage, reduce under-representation or meet their particular needs. Keep an eye out for the Charity Commission guidance due on their website in September 2010.

## **Training**

Vocational training will not be able to be restricted to people who share a particular characteristic, except where supported employment is provided to people with the same disability or disabilities.

## **New Mum's**

Consider whether it is possible to provide breastfeeding facilities for women attending your organisation's activities or services.

## **Disability and the Duty to make adjustments**

Under the Equality Act 2010 there is only one threshold: that a disabled person is put at a substantial disadvantage in relation to a provision, criterion or practice, a physical feature, or the lack of auxiliary aids or services that would remove the disadvantage. Consider whether the new threshold in relation to service delivery means you will need to make adjustments to procedures or premises, or will need to provide auxiliary aids or services.

The Act says that information should be provided in accessible formats if a disabled person is placed at a substantial disadvantage by failure to do so. This includes websites as well as information provided on paper or in other electronic media.

Except where the Equality Act explicitly allows, the cost of a reasonable adjustment cannot be passed on to the disabled person.

## **Sport**

A new provision will allow single-sex activities for the purpose of promoting or supporting a charity, such as a women-only fun run.

Single-sex competitions will continue to be allowed where one sex is generally at a disadvantage because of physical strength, stamina or physique. It will remain lawful to restrict participation of transsexuals where this is necessary to uphold fair or safe competition, but not otherwise.

Nationality, place of birth or length of time a person has lived in a particular place can continue to be used as a basis for selection for sports, games or other competitive activities, where the person will be representing a particular place or where the rules of the competition include those eligibility criteria.

## Resources:

Acas guide on The Equality Act - what's new for employers?

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

## Government Equalities Office

Voluntary and Community organisations

Equality Act 2010: What do I need to know? A summary guide for voluntary and community sector service providers

[http://www.equalities.gov.uk/pdf/401727\\_GEO\\_EqualityLaw\\_Community\\_acc3.pdf](http://www.equalities.gov.uk/pdf/401727_GEO_EqualityLaw_Community_acc3.pdf)

Equality Act 2010: What do I need to know? A quick start guide to positive action in service provision for voluntary and community organisations

[http://www.equalities.gov.uk/pdf/401727\\_EqualityAct2010\\_PositiveAction\\_acc.pdf](http://www.equalities.gov.uk/pdf/401727_EqualityAct2010_PositiveAction_acc.pdf)

Equality Act 2010: What do I need to know? A quick start guide for voluntary and community sector associations

[http://www.equalities.gov.uk/pdf/401727\\_EqualityAct2010\\_VoluntaryCommunitySector\\_acc.pdf](http://www.equalities.gov.uk/pdf/401727_EqualityAct2010_VoluntaryCommunitySector_acc.pdf)

Equality Act 2010: What do I need to know? Quick start guide to discrimination by association and perception for voluntary and community organisations

[http://www.equalities.gov.uk/pdf/401727\\_EqualityAct2010\\_Discrimination\\_acc.pdf](http://www.equalities.gov.uk/pdf/401727_EqualityAct2010_Discrimination_acc.pdf)

## Public Sector

Equality Act 2010: What do I need to know? A summary guide for public sector organisations

[http://www.equalities.gov.uk/pdf/401727\\_GEO\\_EqualityLaw\\_PublicSector\\_acc.pdf](http://www.equalities.gov.uk/pdf/401727_GEO_EqualityLaw_PublicSector_acc.pdf)

## Businesses which provide goods and services

Equality Act 2010: What do I need to know? A summary guide for businesses who sell goods and services

[http://www.equalities.gov.uk/pdf/GEO\\_EqualityLaw\\_Business\\_acc2.pdf](http://www.equalities.gov.uk/pdf/GEO_EqualityLaw_Business_acc2.pdf)

Equality Act 2010: What do I need to know? Quick-start guide for businesses who sell goods and services

[http://www.equalities.gov.uk/pdf/401727\\_GEO-BCC\\_QuickGuide2\\_acc.pdf](http://www.equalities.gov.uk/pdf/401727_GEO-BCC_QuickGuide2_acc.pdf)

## Equality of Human rights guidance

<http://www.equalityhumanrights.com/advice-and-guidance/equality-act-guidance/>

The Act is at [www.opsi.gov.uk/acts/acts2010/plain/ukpga\\_20100015\\_en](http://www.opsi.gov.uk/acts/acts2010/plain/ukpga_20100015_en).

Very long but extremely useful explanatory notes are at [www.opsi.gov.uk/acts/acts2010/en/plain/ukpgaen\\_20100015\\_en](http://www.opsi.gov.uk/acts/acts2010/en/plain/ukpgaen_20100015_en). The explanatory notes provide examples of how the legislation applies.