



EQUALITY AND DIVERSITY

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Policy Statement

Since coming into force in October 2010 this legislation is probably the least understood and most widely misrepresented. The Act is phrased in due to its complex and overarching legal framework, replacing over 116 separate pieces of legislation into one single Act. The Act simplifies strengthens and harmonises the current legislation (pre 2010) to provide Britain with a new discrimination law, which protects individual from unfair treatment and promotes a fair and equal society. The 9 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) Regulation 2003
- The Employment Equality (Sexual Orientation) Regulation 2003
- The Equality Act 2006 Part 2
- The Equality Act (Sexual Orientation) Regulation 2007

As an organisation we are aware of the importance of this Act in relation to residents and staff and to the good governance of the organisation generally.



The Policy

The Equality and Human Rights Commission (EHRC) from time to time, publishes guidance, develops different Codes of Practice in line with a timetable set by government. The basis upon which the Equality Act is structured is Protected Characteristics and how they apply both in the workplace and in everyday life.

Protected Characteristics

Definition and Explanation

Age

Means a person or persons belonging to a particular age group. An age group includes people of the same age and people of a particular range of ages. Where people fall in the same age group, they share the protected characteristics of age.

Disability

Within the Act, a person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities. For the purposes of the Act, these words have the following meanings:

‘Substantial’ means more than minor or trivial.

‘Long-term’ means that the effect of the impairment has lasted or is likely to last for at least twelve months (there are special rules covering recurring or fluctuating conditions).

‘Normal day-to-day activities’ includes everyday things like eating, washing, walking and going shopping.

People who have had a disability in the past that meets this definition are also protected by the Act.

Progressive conditions considered to be a disability

There are additional provisions relating to people with progressive conditions. People with HIV cancer or multiple sclerosis are protected by the Act from the point of diagnosis. People with some visual impairments are automatically deemed to be disabled. Where people share the same disability, they share the protected characteristics of disability.



Gender Reassignment

This is defined for the purpose of the Act as where a person has proposed, started or completed a process to change his or her sex. A transsexual person has the protected characteristics of gender reassignment.

A woman making the transition to be a man and a man making the transition to be a woman both share the characteristic of gender reassignment, as does a person who has only just started out on the process of changing his or her sex and a person who has completed the process.

Marriage and Civil Partnership

This refers to people who have the common characteristics of being married or of being civil partners. A heterosexual man and a heterosexual woman who are married to each other and a man and another man who are civil partners and a woman and another woman who are civil partners all share the protected characteristic of marriage and civil partnership.

- People who are not married or civil partners do not have this protected characteristic.
- A person who is engaged to be married is not married and therefore does not have this protected characteristic.
- A divorcee or a person whose civil partnership has been dissolved is not married or in a civil partnership and therefore does not have this protected characteristic.

Pregnancy and Maternity

A woman remains protected in her employment during the period of the pregnancy and any statutory maternity leave to which she is entitled. This is now separate from protection on grounds of sex, which is not available to a woman during her pregnancy and maternity. It is unlawful to take into account an employee's period of absence due to pregnancy related illness when taking a decision about her employment.

Race

For the purposes of the Act 'race' includes nationality and ethnic or national origins. People which have or share characteristics, of colour nationality or ethnic or national origins can be described as belonging to a particular racial group.

Examples:

- Colour includes black or white.
- Nationality includes being a British, Australian or Swiss Citizen.
- Ethnic or national origins include being from a Roma background or of Chinese heritage.
- A racial group could be 'Black Britons' which would encompass those people who are both black and who are British citizens.



Religion or Belief

This covers people with religious or philosophical beliefs. To be considered a religion within the meaning of the Act, it must have a clear structure and belief system.

The Act includes the following examples:

The Baha 'I' faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism.

To be considered a philosophical belief for the purposes of the Act, it must be:

“Genuinely held; be a belief and not an opinion or viewpoint; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others”

The Act cites as examples of philosophical beliefs: Humanism and Atheism.

A cult involved in illegal activities would not satisfy these criteria nor would allegiance to a particular football team.

People who are of the same religion or belief share the protected characteristic of religion or belief.

Sex (formerly gender)

For the purposes of the Act, sex means being a man or a woman. Men share the sex characteristics with other men and women with other women.

Sexual Orientation

This is defined in the Act as a person's sexual orientation towards:

- People of the same sex as him or her (in other words the person is a gay man or a lesbian).
- People of the opposite sex from him or her (the person is heterosexual).
- People of both sexes (the person is bisexual)

People sharing a sexual orientation mean that they are of the same sexual orientation and therefore share the characteristics of sexual orientation.



Types of Discrimination

Direct Discrimination

Direct discrimination occurs when someone is treated less favourably than another person because of a "Protected Characteristic" they have or are thought to have (see perception discrimination below), or because they associate with someone who has a "Protected Characteristic" (see discrimination by association below).

Example

Paul, a senior manager, turns down Angela's application for promotion to a supervisor position. Angela, who is a lesbian, learns that Paul did this because he believes that the team she applied to manage are homophobic. Paul thought that Angela's sexual orientation would prevent her from gaining the team's respect and managing them effectively. This is direct sexual orientation discrimination against Angela.

Discrimination by Association

Already applies to age, race, religion or belief and sexual orientation, now extended to cover disability, gender reassignment and sex. This is direct discrimination against an individual because they associate with another person who possesses a "Protected Characteristic".

Example

June works as a project manager and is looking forward to a promised promotion. However, after she tells her boss that her mother, who lives at home, has had a stroke, the promotion is withdrawn. This may be discrimination against June because of her association with a disabled person.

1. Perception Discrimination

Already applies to age, race, religion or belief and sexual orientation, now extended to cover disability, gender reassignment and sex. This is direct discrimination against an individual because others think they possess a particular "Protected Characteristic". It applies even if the person does not actually possess that characteristic.

Example

Jim is 45 years old but looks much younger. Many people assume that he is in his mid 20s. He is not allowed to represent his organisation at an international meeting because the Managing Director thinks that he is too young. Jim has been discriminated against on the perception of a "Protected Characteristic".



2. Indirect Discrimination

Already applies to age, race, religion or belief, sex, sexual orientation and civil partnership, now extended to cover disability and gender reassignment.

Indirect discrimination can occur when you have a condition, rule, policy or even a practice in your organisation that applies to everyone but particularly disadvantages people who share a "Protected Characteristic". Indirect discrimination can be justified if you can show that you acted reasonably in managing your organisation, i.e. that it is "a proportionate means of achieving a legitimate aim." A legitimate aim might be any lawful decision you make in running your organisation, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful.

Being proportionate essentially means being fair and reasonable, including showing that you've looked at "less discriminatory" alternatives to any decision you make.

Example

A small finance organisation needs its staff to work late on a Friday afternoon to analyse stock prices in the American finance market. The figures arrive late on Friday because of the global time differences. During the winter some staff would like to be released early on a Friday afternoon in order to be home before sunset – a requirement of their religion. They propose to make the time up later during the remainder of the week.

The organisation is not able to agree to this request because the American figures are necessary to carry on the business, they need to be worked on immediately and the organisation is too small to have anyone else able to do the work.

The requirement to work on Friday afternoon is not unlawful indirect discrimination as it meets a legitimate business aim and there is no alternative means available.

3. Harassment

Harassment is "unwanted conduct related to a relevant "Protected Characteristic", which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual."

Harassment applies to all "Protected Characteristics" except for pregnancy and maternity, and marriage and civil partnership. Employees will now be able to complain of behaviour they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception and association.

Example(s)

Paul is disabled and is claiming harassment against his line manager after she frequently teased and humiliated him about his disability. Richard shares an office



with Paul and he too is claiming harassment, even though he is not disabled, as the manager's behaviour has also created an offensive environment for him.

Steve is continually being called gay and other related names by a group of employees at his work. Homophobic comments have been posted on the staff notice board about him by people from this group. Steve was recently physically pushed to the floor by one member of the group but is too scared to take action. Steve is not gay but heterosexual; furthermore, the group know he isn't gay. This is harassment because of sexual orientation.

4 Victimization

Victimization occurs when an employee is treated badly because they have made or supported a complaint; or raised a grievance under the *Equality Act*, or because they are suspected or doing so. An employee is not protected from victimization if they have maliciously made or supported an untrue complaint.

There is no longer a need to compare treatment of a complaint with that of a person who has not made or supported a complaint under the Act.

Example

Anne makes a formal complaint against her manager because she feels that she has been discriminated against because of marriage. Although the complaint is resolved through the organisation's grievance procedures, Anne is subsequently ostracised by her colleagues, including her manager. She could claim victimization.

5. Pregnancy and Maternity

The "Protected Characteristics" are the same as under the old *Sex Discrimination Act 1975*. Women who are pregnant are protected against unfair workplace practices because of their pregnancy.

Example

Lydia is pregnant and works at a call centre. The manager disciplines her for taking too many toilet breaks as they would any other member of staff, despite knowing that she is pregnant. This is discrimination because of pregnancy and maternity, as this characteristic does not require the normal comparison or treatment with other employees.

"Protected Characteristics": Key Notes

Set out below is a guide to any changes under each of the headings of "Protected Characteristics."

Age (No change)



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, i.e. if it can be demonstrated as a proportionate means of meeting a legitimate aim. Age is the only "Protected Characteristic" that allows employers to justify direct discrimination.

The Act continues to allow employers to have a default retirement age of 65 until April 2011. After April 2011, all employers should have a clear policy regarding the employment of Retirees. This could include fitness to work checks, review date of fitness to work, yearly extension of contract etc. Women have a graduated transition to retirement at 65 years if born after 1st April 1950.

Disability (New Definition and Changes)

The Act has made it easier for a person to show that they are disabled and to be protected from disability discrimination. Under the Act, a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities, which would impact such activities as using a telephone, reading a book or using public transport.

As previously, the Act puts a duty on you as an employer to make reasonable adjustments for your staff to help them overcome disadvantage resulting from an impairment (e.g. by providing assistive technologies to help visually impaired staff to use computers effectively).

The Act includes a new protection from discrimination arising from disability. This states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability (e.g. a tendency to make spelling mistakes arising from dyslexia). This type of discrimination is unlawful where the employer or other person acting on behalf of the employer knows, or could reasonably be expected to know, that the person has a disability. This type of discrimination is only justifiable if the employer can show that it is a proportionate means of achieving a legitimate aim.

Additionally, indirect discrimination now covers disabled persons. This means that a job applicant or employee could claim that a particular rule or requirement you have in place disadvantages persons with the same disability. Unless you could justify this, it would be unlawful.

The Act also includes a new provision which makes it unlawful, except in certain circumstances, for employers to ask questions about a candidate's health before offering them work. *

Please note:

The Department of Health issued Code of Practice for Health and Adult Social Care on the Prevention and Control of Infections and Related guidance, Criterion 10 states clearly that all services deemed as regulated activities under the *Health and Social Care Act 2008* should ensure that all staff fill in a pre-employment health questionnaire



and give information about residence overseas, previous and current illness and immunisation against relevant infections.

Gender Reassignment (New Definition)

The Act provides protection for transsexual persons. A transsexual person is someone who proposes to, starts or has completed a process to change his or her gender. The Act no longer requires a person to be under medical supervision to be protected; therefore, a woman who decides to live as a man but does not undergo any medical procedures would be covered.

If transsexual persons propose to undergo, are undergoing or have undergone gender reassignment, then it would be discrimination to treat them less favourably for a work absence than if they were absent due to illness or injury.

Marriage and Civil Partnership (No Change)

The Act protects employees who are married or in a civil partnership against discrimination. Single persons are not protected.

Pregnancy and Maternity (No Change)

A woman is protected against discrimination on the grounds of pregnancy and maternity 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. See Annex 1 for an example. You must not take into account an employee's period of absence due to pregnancy-related illness when making a decision about her employment.

Race (No Change)

For the purposes of the Act 'race' includes colour, nationality and ethnic or national origins.

Religion or Belief (No Change)

In the *Equality Act*, religion includes *any* religion. It also includes a lack of religion; in other words, employees or jobseekers are protected if they do not follow a certain religion or have no religion at all. Additionally, a religion must have a clear structure and belief system. Belief means any religious or philosophical belief, or a lack of such belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief. Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief. Druids and Pagans are now seen as religions for the purposes of the Act.

Sex (No Change)

Both men and women are protected under the Act.



Sexual orientation (No Change)

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

It is important that staff are aware of the changes in the act and of their role in relation to residents and colleagues. Within the social care sector, services are often provided which are of a sensitive and private nature. Staff must be made aware of the cultural and ethnic needs of the residents in the delivery of the care to the individual concerned.

Please Note

This organisation is aware of the specific guidance which is now available to small businesses via the Equality and Human Rights website. Under their "Advice and Guidance" heading there are now specific guidance notes which assist small businesses and are example led for different situations. This advice and guidance are aimed at all service providers and includes guidance about ISSP.

If you provide services through a website such as direct marketing or advertising you are known as an Information Society Service Provider (ISSP).

This organisation takes the advice and guidance regarding discriminatory advertising seriously and regularly reviews any marketing or advertising on its website.

Related Policies

Adult Safeguarding

Equal Opportunities

Dignity and Respect

Female Genital Mutilation

Maternity, Paternity, Adoption and Shared Leave

Meeting Needs

Recruitment and Selection

Religion and Belief

Sexuality

Social Inclusion



Related Guidance

- Equality Act Codes of Practice <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
- Protected Characteristics <https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>
- Discrimination: your rights <https://www.gov.uk/discrimination-your-rights>
- The Human Rights Act <https://www.equalityhumanrights.com/en/human-rights/human-rights-act>
- Skills for Care Equality and Diversity <https://www.skillsforcare.org.uk/Learning-development/ongoing-learning-and-development/equality-and-diversity/Equality-and-diversity.aspx>
- Report Hate Crime <https://www.gov.uk/report-hate-crime>
- SCIE Equality, diversity and human rights <https://www.scie.org.uk/training/co-production/equality-diversity-human-rights>

Training Statement

All staff, during induction are made aware of the organizations policies and procedures, all of which are used for training updates. All policies and procedures are reviewed and amended where necessary and staff are made aware of any changes. Observations are undertaken to check skills and competencies. Various methods of training are used including one to one, on-line, workbook, group meetings, individual supervisions and external courses are sourced as required.