



# **Equality Act 2010 briefing**

November 2010

Understanding and supporting  
women and their organisations

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## **About the Women's Resource Centre**

WRC is a charity which supports women's organisations to be more effective and sustainable. We provide training, information, resources and one-to-one support on a range of organisational development issues. We also lobby decision makers on behalf of the women's not-for-profit sector for improved representation and funding.

Our members work in a wide range of fields including health, violence against women, employment, education, rights and equality, the criminal justice system and the environment. They deliver services to and campaign on behalf of some of the most marginalised communities of women.

There are over ten thousand people working or volunteering for our members who support almost half a million individuals each year.

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## Introduction

The new Equality Act brings together and simplifies equality law that has been developed in various Acts and Regulations between 1970 and 2008 relating to Race, Gender and Disability. The Act also covers a range of other characteristics that are now protected from discrimination and a wider range of circumstances in which people are protected. The law protects people with the protected characteristics from discrimination in a wide range of areas, such as public functions, employment and the provision of goods and services.

Many of the provisions of the Act came into force in October 2010. However, there are many other important provisions that the government is still considering whether or not to implement.

This briefing is an overview of the provisions of the Equality Act 2010 that have come into force and those that are still under consideration, with explanations of how the law has changed.

## Existing legislation relating to gender: Gender Equality Duty

The Gender Equality Duty came into force in April 2007 under the Equality Act (2006). The Duty goes further than previous equalities legislation by requiring public authorities to be pro-active in promoting gender equality and by placing a legal responsibility on public authorities to demonstrate that they treat men and women fairly. It places a duty on public authorities with respect to all their public functions, such as providing public services, employment and policymaking.

Under the Act, there is a 'general duty' to pay due regard to the need to:

- **eliminate unlawful sex discrimination and harassment,** and
- **promote equality of opportunity** for women and men.

'Due regard' means that the weight given to gender equality needs to be in proportion to its relevance - this means prioritising the significant areas of gender inequality and focusing efforts on the areas where public bodies can have the most impact (for example, violence against women, women's poverty and economic disadvantage, and support for marginalised groups of women, for example disabled women, BAME women, LGBT, older women and refugee and asylum seeking women). Further, the promotion of equal opportunities between men and women requires public authorities to recognise that the two groups are not starting from an equal footing and identical treatment would not be appropriate.

The legislation also introduced specific duties to assist in meeting the general duty which requires that public bodies:

- **Prepare and publish a gender equality scheme (GES)** (by 30th April 2007) showing how it will meet its general and specific duties and setting out its gender equality objectives
- In formulating its overall objectives, consider the need to include objectives to **address the causes of any gender pay gap**
- **Gather and use information** on how the public authority's policies and practices affect gender equality in the workforce and in the delivery of services
- **Consult stakeholders** (i.e. employees, service users and other key stakeholders, such as trade unions and women's organisations) and take account of relevant information in order to determine its gender equality objectives
- **Assess the impact** of its current and proposed policies and practices on gender equality
- **Implement the actions** set out in its scheme within three years, unless it is unreasonable or impracticable to do so
- **Report against the scheme** every year and **review the scheme** at least every three years.

## **The new legislation: Equality Act 2010**

The new Equality Act brings together and simplifies equality law that has been developed in various Acts and Regulations between 1970 and 2008 relating to Race, Gender and Disability. The Act also covers a range of other characteristics that are now protected from discrimination and a wider range of circumstances in which people are protected.

The nine 'protected characteristics' covered by the Act are:

- age
- disability
- gender reassignment (with a wider definition than previously)
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

The new government now takes responsibility for bringing the Act into force, although the Act was written and approved prior to the General Election. The majority of the Act will come into effect in October. However, there are certain sections of the Act that are still

under discussion, including the public sector equality duty, the socio-economic duty, private and third sector gender pay reporting and political parties publishing diversity data.

The timetable for commencement that was published before the General Election was:

- October 2010 - main provisions
- April 2011 - public sector equality duty, socio-economic duty and combined discrimination protection
- 2012 – ban on age discrimination in provision of services and public functions
- 2013 - private and third sector gender pay reporting and political parties publishing diversity data

Many of the provisions came into force in October. For many of the subsequent provisions, their coming into force will depend on the outcomes of discussions relating to them. For further details, please see [http://equalities.gov.uk/equality\\_bill.aspx](http://equalities.gov.uk/equality_bill.aspx).

## **Provisions that have come into force in October:**

### **Discrimination**

#### ***Protection against discrimination***

For most of the nine protected characteristics the Act prohibits direct discrimination, indirect discrimination, harassment and victimisation. For disability the Act also prohibits discrimination arising from disability and failure to make reasonable adjustments.

For most of these characteristics the protection against discrimination and other unlawful conduct applies to:

- all aspects of employment (including contract workers, public office, qualifications bodies and trade unions and equal pay between women and men)
- the provision of goods, facilities and services
- carrying out public functions
- education (including schools and further and higher education)
- disposal and management of housing and other types of premises
- associations (including clubs and political parties - the provisions extend protection in private clubs to sex, religion or belief, pregnancy and maternity, and gender reassignment).

#### ***Association and perception***

Although not written into the text of the Act, the government has made clear that protection against direct discrimination or harassment based on a particular protected characteristic applies *not only* to a person with that characteristic but also to people who may not have that characteristic but are perceived to have it or are associated with someone who has it and are discriminated against for that reason. So, for example, protection is extended to a person who is perceived wrongly to be gay

and to anyone who is associated with homosexuality such as a family member or friend or who is otherwise identified with homosexuality, for example publicly known to be campaigning on behalf of lesbian and gay rights.

### **Women**

The new law allows claims for direct gender pay discrimination where there is no actual comparator and makes pay secrecy clauses unenforceable. Provisions relating to publication of details relating to equal pay are still under discussion (see below).

The Equality Act creates protection against discrimination for a woman because of pregnancy and maternity. An employer must not treat a woman unfavourably because of pregnancy or illness associated with her pregnancy or because she is on statutory maternity leave. A public or private organisation providing services or carrying out public functions, must not treat a woman unfavourably because of her pregnancy or, in the 26 weeks of giving birth, because she has given birth including because she is breastfeeding. After the first 26 weeks a woman who is treated less favourably because she is breast feeding can claim direct sex discrimination.

A man cannot claim sex discrimination when he is not given the same special treatment that is given to a woman in connection with pregnancy or maternity.

The Act also prohibits schools from discriminating against a girl because she is pregnant or a new mother.

There is also clearer protection for breastfeeding mothers, including for the provision of services, which will make it unlawful, for example, to ask a woman to leave a public place because she is breastfeeding.

### ***Discrimination arising from disability***

Discrimination arising from disability is intended to protect disabled people from unfavourable treatment because of something that arises as a consequence of their disability, which the employer or service provider knows or should have known. If the treatment can be justified as a proportionate means of achieving a legitimate aim, then it will not be unlawful. So, for example, if a mental health condition causes behaviour that would otherwise cause a service provider to remove their services, the disability must be taken into account and they must not be treated unfairly because of behaviour arising out of their disability.

There continues to be a duty to make reasonable adjustments.

### ***Protection against age discrimination***

The new law provides protection against age discrimination but applies only to ages 18 and above, save for employment and higher education. The provisions against age discrimination will not come into effect before 2012. The government is undecided as to whether it will bring provisions relating to protection against discrimination in services and public function - such as insurance and health – into force.

In both employment and services it will continue to be possible to justify different treatment for people of different ages, and it is likely that regulations will permit a range of benefits and concessions for older people.

## **Employment**

Employment tribunals, if they uphold a complaint of discrimination, will be able to make a recommendation that the employer take certain action to avoid future breaches of the Act that would benefit not only the complainant but the workforce as a whole.

The Act protects employees from victimisation – this means that they are protected from being subject to a detriment as a result of being treated less favourably than others because they have exercised, or intends to exercise, rights.

Under the Act there is protection from 3<sup>rd</sup> party harassment in employment for all protected characteristics. This means that if you're harassed at work, for example by a colleague, client or someone visiting the premises, your employer will be held responsible if they know that you have been harassed repeatedly by someone like a customer or a client and they do nothing reasonable to stop it happening again.

The Act makes it unlawful for an employer to ask job applicants questions about disability or health before making a job offer except in specified circumstances. Specified circumstances include establishing whether the person can carry out the job with reasonable adjustments, to take positive action or for diversity monitoring.

## **Positive Action**

The Act's new approach to positive action recognises that some equality groups are disadvantaged in some areas of life as a consequence of past or current discrimination and exclusion. The Act enables public, voluntary and private sector employers and providers of services to take steps to help particular groups overcome disadvantage, meet needs that are different from the needs of other groups or increase participation. Service providers include public authorities, schools and colleges, housing providers and associations. Therefore the Act makes it lawful to take positive action measures that involve different treatment of different equality groups which would otherwise be unlawful. Positive Action is voluntary not compulsory. For positive action measures to be considered to be lawful three conditions must be satisfied:

- the employer or service provider must reasonably think that the group in question suffers a disadvantage, has different needs, or has disproportionately low level of participation

- the employer or service provider takes action with the aim of enabling or encouraging the group to overcome or minimise their disadvantage, meeting their needs, or enabling or encouraging participation, and
- the action is a proportionate means of achieving that aim - that is, that the action is both appropriate and necessary to achieve the aim.

Action that involves different treatment that does not meet all three conditions is likely to be unlawful.

The government is still considering whether to implement provisions relating to positive action in recruitment and promotion as they have an issue with the wording of this provision and how it may be implemented. The provision would permit an employer or other person to treat a person from a disadvantaged or under-represented equality group more favourably in recruitment or promotion than a person not from that group with the aim of overcoming the disadvantage or increasing the representation of that group, but only if:

- that person is as qualified as the person not from that group
- the employer does not have a policy of always favouring people from the disadvantaged group
- treating that person more favourably is a proportionate means of achieving that aim.

## **Exceptions to the Prohibition of Discrimination**

The existing legislation contains a large number of exceptions that relate to particular characteristics. The Equality Act extends some existing exceptions to apply to all characteristics, modifies or merely restates other exceptions.

### **These exceptions make it legal and appropriate to fund and provide women-only services.**

The following are exceptions relevant to the work of third sector organisations:

- Separate services or single-sex services for men and women. Services are permitted where this can be shown to be the most effective way of providing those services or, in the case of single-sex services; the service is needed by one sex only. **Only in very limited circumstances will it be lawful to exclude trans people.**
- If an organisation normally provides services for one equality group only, it is lawful to continue to do so.

- The Act disallows discrimination by an association with 25 or more members that applies some form of selection of its members. A club or association may restrict their membership to one equality group only but cannot restrict membership to a group defined by colour. Under the Act an association could be only for retired women or only for retired Afro-Caribbean women, but it could not be an association for retired black women.
- A charity may provide benefits to one equality group, other than a group defined by colour, but only if this is within its charitable instrument and is a proportionate means of achieving a legitimate aim or for the purpose of preventing or compensating for a disadvantage linked to that equality group.
- Religion or belief organisations, other than those whose main purpose is commercial, may, subject to specified conditions, restrict who can be a member or who can participate in its activities based on a person's religion or belief or their sexual orientation. It is never lawful to impose restrictions based on sexual orientation where the religion or belief organisation is carrying out a contract with a public authority.
- In recruitment for a job, giving work to a contract worker or appointment to a public office, it will be lawful to require a person to have a particular protected characteristic if, having regard to the nature or the context of the work:
  - to have that characteristic is an required to do that work, and
  - applying that requirement is appropriate and necessary.

## **Provisions the Government is still considering**

### **Public Sector Equality Duty - General Duty**

Potentially the most important part of the Equality Act is the new Public Sector Equality Duty, which is due to come into force in April 2011. The duty applies to 8 protected characteristics:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

The existing separate disability, gender and race equality duties remain in force until the new single duty begins.

The duty applies to all public bodies that listed in Schedule 19 of the Act (Annex 4) and to other bodies, including voluntary sector organisations that carry out public functions. The list includes ministers and central government departments, local councils, police authorities, NHS trusts, primary care trusts, governing bodies of maintained schools and institutions of further and higher education.

Their duty is to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and other conduct that is unlawful under the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between persons who share a protected characteristic and those who do not

The Act indicates that the 'need to advance equality of opportunity' includes the need to:

- remove or minimise disadvantage suffered by particular groups
- take steps to meet different needs of particular groups, and
- encourage participation by particular groups in areas of public life or other activity where they are under-represented.

The Act specifies that the 'need to foster good relations' includes the need to tackle prejudice and promote understanding.

## **Impact of the Public Sector Equality Duty - the General Duty**

The introduction of a single duty is welcome because it is wider in scope, covering a range of equalities group, and serves to simplify equalities legislation, providing greater clarity.

It also serves to better highlight the interrelations between different characteristics and the way that individuals and communities can experience discrimination on multiple grounds – making it easier to address intersectional issues - cases of discrimination that are not based on one single characteristic but to multiple characteristics. For example, a black woman may be passed over for promotion because of both her race and gender. Her employers may be able to prove that they do not discriminate against white women or black men but their behaviour may demonstrate that they treat black women unfairly. Under existing legislation she would not be able to claim discrimination; however, under the new legislation she will be able to argue discrimination on multiple grounds– the fact that she is both black and a woman.

The general duty appears to be strengthened by these provisions. In particular, it makes it clear that treating everyone the same, and therefore allowing inequalities to continue, is not acceptable under this Act. Further, the duty to 'foster good relations' is a welcome addition. Overall, there is greater clarity and stronger obligations due to the fact that the Act sets out what an authority needs to consider in order to fulfil the general duty.

However, although the general duty is stronger, the Government is proposing a set of specific duties (which are intended to ensure better performance of the general duty) that is far weaker than the existing specific duties in the GED. If this goes ahead, the public will have fewer tools with which to hold public bodies to account (see below). Equalities organisations and the public more generally, will be obliged to argue that meeting the requirements of the general duty necessarily entails following thorough and robust processes. However, there will be no specific duties enshrined in law to appeal to when making these arguments.

Further, in relation to gender, there is a concern that gender equality issues will become obscured and not prioritised in relation to the Act. The existence of a duty that was specific to gender ensured that public authorities were held accountable on this specific issue and there is a danger that the scope of the Act will be too broad to ensure that each characteristic is protected. In summary:

- The General Duty is **wider in approach and better highlights the interrelations between different characteristics**
- The General Duty appears to be **stronger** – particularly the duty to 'foster good relations' and **greater clarity** in what an authority needs to consider to meet the general duty
- Although the general duty is stronger, **the regression of the specific duties means that the public has fewer tools with which to hold public bodies to account** in relation to the general duty
- There is a legitimate **concern that gender equality issues will become obscured and not prioritised**

## **Public Sector Equality Duty - Specific Duties**

The Specific Duties set out duties that public authorities will be expected to meet in order to meet their general duty. The draft specific duties relating to the Public Sector Equality Duty differ significantly from the previous legislation and will require public authorities to:

- **Publish data** relating to the performance of the general duty, including impact assessments, any information used in those assessments and any engagement with interested parties. As such, public authorities must publish their reasoning, data and methods of gathering data but the actual process of doing so has not been prescribed.

- **Set one or more Equality Objectives** that take into account the information above and that objective must be measurable. There is no requirement for public bodies to set objectives on each of the protected characteristics nor for each of the three aims of the Equality Duty; objectives can be set according to the priority issues for that organisation and where need is identified.
- There is **no requirement to publish an equality scheme** or detailed action plan. The emphasis is on outcomes as opposed to process. However, there is also no duty for public authorities to fulfil their objectives (despite the duty to review every 4 years).
- The **primary obligation is to meet the general duty**. The purpose of the specific duties is to ensure better performance of the general duty.

Under the existing Gender Equality Duties, public authorities must prepare a Gender Equality Scheme, gather and use information, consult stakeholders, assess impact, implement the actions set out, report and review the scheme – these measures have been removed under the proposed Public Sector Specific Duties. In relation to assessing impact, there is a duty to publish impact assessments relating to the general duty but no prescribed process. However, as the general duty is strong (arguably stronger than previous equality duties), equality organisations will be in a position to argue that these processes are necessary in order for public authorities to fulfil this general duty.

The WRC recommends the Gender Equality Duty as an example of well-drafted equalities legislation. The legislation was developed to ensure a balance between process and outcomes, in response to concerns about other equalities legislation that was viewed as too process driven. As such, this legislation had already addressed the problem of process-driven legislation, so, arguably, it is not necessary to address this further in the draft Specific Duties. Overall, the purpose of the Equality Act 2010 has been to simplify equalities legislation. To this end, a balanced approach must be taken and the regression of the proposed Specific Duties in comparison to existing legislation has gone too far.

## **Potential impact of the proposed Specific Duties**

### **Regression of existing specific duties in the GED**

The government wishes to empower the public to hold public authorities to account and scrutinise their equalities data. However, the proposed Specific Duties are regressive and fail to impose duties upon public bodies that would ensure that the public has the tools and mechanisms with which to hold public authorities to account.

As stated earlier, the existing specific duties relating to the Gender Equality Duty were designed to create balance between process and outcomes and WRC recommends these duties as an exemplary approach.

WRC is particularly concerned that if there is no obligation to set objectives for each equality strand there will no longer be obligations to set objectives relating to gender. This could have a potentially devastating impact on the ability to achieve gender equality goals meaning that important issues won't be addressed, such as violence against women and girls, women and girls access to services that meet their needs, and women's representation in decision making.

There is an existing lack of awareness and understanding of the importance of women's only services, which has resulted in the women's organisations being expected to provide services to men regardless of whether this is appropriate. Without the obligation to set gender objectives and conduct gendered impact assessments, the power to hold public bodies to account will significantly weaken.

**Call for action: The existing duties relating to gender should be retained to ensure that the issues surrounding gender are not further marginalised and to protect the provision of women only services.**

### **Process**

If the current specific duties within the GED are replaced by these proposed specific duties, it is far less likely that outcomes will be achieved, as robust and thorough processes are necessary for the achievement of equalities outcomes. The Government must support public authorities to develop processes and support equalities organisations to scrutinise these processes. It must be ensured that public authorities understand their duties, their importance and the positive impact that promoting equalities makes on their own organisations. Public bodies should be encouraged to engage with experts on women's equality such as women's voluntary and community organisations.

**Call for action: It is necessary to follow robust and thorough processes in order to achieve equalities outcomes. Organisations should be supported by government to develop these processes through the use of tools such as best practice guides, incentives, training and awareness raising.**

The Gender Equality Duty and its Specific Duties are invaluable tools for individuals and communities to ensure that gender inequality is being adequately addressed. Public authorities can be held to account due to their failure to follow the processes prescribed. Removing the procedural element of the duties will significantly reduce the public's ability to hold public authorities to account. Scrutinising Gender Equality Schemes and Equality Impact Assessments have been particularly effective methods of ensuring public authorities that gender is taken account of in policy and planning processes.

**Call for action: The processes already prescribed in the existing duties should be maintained so that the specific duties under race, gender and disability are harmonised and strengthened. Particularly important are Equality Impact Assessments, Equality Schemes and the duty to consult, which are invaluable tools for organisations wishing to hold public authorities to account.**

## Objectives

In order to identify need and set objectives, public authorities need to ensure that they are well informed. This means that there should be scrutiny of the data public authorities rely on and a duty to collect data, which is disaggregated by each of the equality groups, rather than rely on the data that is already available, which may be limited or unreliable.

**Call for action: There should be a duty to collect data, which should be disaggregated by gender and other equality groups, when developing an evidence base upon which to make equalities decisions**

## Outcomes

To be outcomes focussed, clear objectives must be set and worked towards. The duty to set objectives under the draft legislation is too vague and should be strengthened to include the duty to take a proportionate approach to the number and nature of objectives. This would ensure that organisations are unable to set too few and too limited objectives.

**Call for action: There should be a duty to take a proportionate approach to setting objectives, subject to the resources of the organisation but ensuring that there are not too few or too limited objectives being set . This should include a requirement to set gender equality objectives.**

The Specific Duties are not action or outcome focussed enough and should be much stronger if they are going to have a real impact on embedding equality within public bodies. The requirements to:

- publish data on any impact assessments carried out,
- to set objectives, to review objectives every 4 years, and
- to set out how progress towards these objectives should be measured

are not accompanied by requirements to take measures to actually achieve these objectives and equality outcomes more generally. This is inadequate in comparison to the Gender Equality Specific duties, which require public authorities to publish a Gender Equality Scheme and implement the actions set out in the scheme. As such, there is a missed opportunity to empower people to hold public bodies to account. In practice, the proposed approach would allow organisations to do nothing to work towards the objectives they have set out. This is not consistent with an outcomes focussed approach.

**Call for action: Require public authorities to take action to fulfil their objectives. Be outcomes and ACTION focussed. Mechanisms of accountability need to be built into the Specific Duties so that there are consequences for failing to pursue/achieve objectives.**

## **Procurement**

Many services are contracted out, and this is likely to increase under the Big Society, it is therefore of great concern that procurement has not been included in the draft specific duties.

**Call for action: Ensure that procurement is included to ensure that the equality impact is fully considered when services are contracted out by public bodies, particularly LSPs.**

## **Also not yet implemented:**

### **The Socio-economic Duty on public bodies**

This duty would require public bodies to 'when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.'

In other words, this puts a duty of on public bodies to consider the socio-economic impact of the decisions they make and take steps to reduce inequalities. This would potentially be a useful tool for women's organisations to hold public bodies to account as women continue to be economically and socially disadvantaged.

**We are very disappointed that it has been decided this provision will not be implemented.**

### **Dual/combined discrimination**

Protection from combined discrimination was added to the Equality Act in response to strong and persistent lobbying by equality organisations who will be concerned that the government has not yet decided on whether to implement this provision.

Combined discrimination occurs when, because of a combination of two protected characteristics, a person is treated less favourably than others whose circumstances are the same but who do not share both characteristics. For example, a Muslim man is refused a job for which he is suitably qualified. He knows that that company employs Muslim women so he has not been discriminated against because of his religion, and the company employs non-Muslim men so he has not been discriminated against because of his sex. He could claim discrimination because of the combination of religion and sex.

## Gender pay gap information

Regulations may require employers to publish information relating to the pay of employees for the purpose of showing whether there are differences in the pay of male and female employees. This would make some progress towards tackling the gender pay gap by increasing the transparency of women's and men's pay. Public sector employers would be required to report on the median pay of women and men. Private and voluntary sector employers would be encouraged to do so voluntarily (and may, in 2013, have a statutory duty to do so).

Despite 40 years of equal pay legislation, there is still a gender pay gap. These provisions would be a step in the right direction to redressing this balance, as the equal pay legislation alone has not been sufficient. WRC strongly supports the campaign to ensure that this provision is implemented, and urges the government to take further steps to address the gender pay gap.

## Further provisions under consideration

- **Family property** (making the laws more equal, such as abolishing the husband's duty to maintain the wife)
- **Civil partnerships on religious premises** (would allow religious premises to conduct civil partnership ceremonies if they wished – there would be no requirement to do so).
- **Diversity reporting by political parties**
- **Provisions relating provisions for disabled people: auxiliary aids in schools and taxi accessibility**
- **Positive action in recruitment and promotion (discussed above)**
- **Prohibition on age discrimination in services and public functions (discussed above)**

## Further information

WRC thanks the National Equality Partnership for use of their briefing on the Equality Act 2010, from which sections of this briefing have been extracted:

[http://www.wrc.org.uk/includes/documents/cm\\_docs/2010/n/2\\_nep\\_equality\\_act\\_brief\\_june\\_2010.pdf](http://www.wrc.org.uk/includes/documents/cm_docs/2010/n/2_nep_equality_act_brief_june_2010.pdf)

For information on the proposed Public Sector Equality Duty Specific Duties:

[http://www.wrc.org.uk/resources/briefings\\_and\\_consultations/past\\_briefings\\_and\\_consultations/equalities/equality\\_act.aspx](http://www.wrc.org.uk/resources/briefings_and_consultations/past_briefings_and_consultations/equalities/equality_act.aspx)

For information on how to use the Gender Equality Duty while it is still in force:  
[http://www.wrc.org.uk/resources/tools\\_to\\_engage\\_and\\_influence/gender\\_equality\\_duty/default.aspx](http://www.wrc.org.uk/resources/tools_to_engage_and_influence/gender_equality_duty/default.aspx)

For further information on the Equality Act 2010 and links to GEO and Equality and Human Rights Commission guides to the Act:  
[http://www.wrc.org.uk/includes/documents/cm\\_docs/2010/m/microsoft\\_word\\_psed\\_specific\\_duties\\_consultation\\_briefing.pdf](http://www.wrc.org.uk/includes/documents/cm_docs/2010/m/microsoft_word_psed_specific_duties_consultation_briefing.pdf)

## **Annex 1: The Equality Act**

### **Overview of the structure of the Act<sup>1</sup>**

*These notes refer to the Equality Act 2010 (c15) which received Royal Assent on 8 April 2010*

The Act consists of 16 Parts and 28 Schedules. Not all of these provisions have come into force as yet.

The general arrangement of the Act is as follows:

#### **Part 1**

Imposes a duty on certain public bodies to have due regard to socioeconomic considerations in making strategic decisions.

#### **Part 2** including Schedule 1

Establishes the key concepts on which the Act is based including:

- the characteristics which are protected (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- the definitions of direct discrimination (including because of a combination of two relevant protected characteristics), discrimination arising from disability, indirect discrimination, harassment and victimisation.

These key concepts are then applied in the subsequent Parts of the Act.

#### **Part 3** including Schedules 2 and 3

Makes it unlawful to discriminate against, harass or victimise a person when providing a service (which includes the provision of goods or facilities) or when exercising a public function.

#### **Part 4** including Schedules 4 and 5

Makes it unlawful to discriminate against, harass or victimise a person when disposing of (for example, by selling or letting) or managing premises.

#### **Part 5** including Schedules 6,7, 8 and 9

Makes it unlawful to discriminate against, harass or victimise a person at work or in employment services. Also contains provisions relating to equal pay between men and women; pregnancy and maternity pay; provisions making it unlawful for an employment contract to prevent an employee disclosing his or her pay; and a power to require private sector employers to publish gender pay gap (the size of the difference between men and women's pay expressed as a percentage) information about differences in pay between men and women. It also contains provisions restricting the

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<sup>1</sup> Taken from the explanatory notes to the Act:  
[http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpgaen\\_20100015\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpgaen_20100015_en.pdf)

circumstances in which potential employees can be asked questions about disability or health.

**Part 6** including Schedules 10, 11, 12, 13 and 14

Makes it unlawful for education bodies to discriminate against, harass or victimise a school pupil or student or applicant for a place.

**Part 7** including Schedules 15 and 16

Makes it unlawful for associations (for example, private clubs and political organisations) to discriminate against, harass or victimise members, associates or guests and contains a power to require political parties to publish information about the diversity of their candidates.

**Part 8** Prohibits other forms of conduct, including discriminating against or harassing an ex-employee or ex-pupil, for example: instructing a third party to discriminate against another; or helping someone discriminate against another. Also determines the liability of employers and principals in relation to the conduct of their employees or agents.

**Part 9** including Schedule 17

Deals with enforcement of the Act's provisions, through the civil courts (in relation to services and public functions; premises; education; and associations) and the employment tribunals (in relation to work and related areas, and equal pay).

**Part 10**

Makes terms in contracts, collective agreements or rules of undertakings unenforceable or void if they result in unlawful discrimination, harassment or victimisation.

**Part 11** including Schedules 18 and 19

Establishes a general duty on public authorities to have due regard, when carrying out their functions, to the need: to eliminate unlawful discrimination, harassment or victimisation; to advance equality of opportunity; and to foster good relations. Also contains provisions which enable an employer or service provider or other organisation to take positive action to overcome or minimise a disadvantage arising from people possessing particular protected characteristics.

**Part 12** including Schedule 20

Requires taxis, other private hire vehicles, public service vehicles (such as buses) and rail vehicles to be accessible to disabled people and to allow them to travel in reasonable comfort.

**Part 13** including Schedule 21

Deals with consent to make reasonable adjustments to premises and improvements to let dwelling houses.

**Part 14** including Schedules 22 and 23

Establishes exceptions to the prohibitions in the earlier parts of the Act in relation to a range of conduct, including action required by an enactment; protection of women; educational appointments; national security; the provision of benefits by charities and sporting competitions.

**Part 15** Repeals or replaces rules of family property law which discriminated between husbands and wives.

**Part 16** including Schedules 24, 25, 26, 27 and 28

Contains a power for a Minister of the Crown to harmonise certain provisions in the Act with changes required to comply with EU obligations. It contains general provisions on application to the Crown, subordinate legislation, interpretation, commencement and extent.

It also contains amendments to the Civil Partnership Act 2004 to allow civil partnership registrations to take place on religious premises that are approved for that purpose.

## **Annex 2: Section 149 of the Equality Act 2010**

### **Public sector equality duty 149 Public sector equality duty**

**(1)** – A public authority must, in the exercise of its functions, have due regard to the need to –

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**(2)** – A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

**(3)** – Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

**(4)** – The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

## **Annex 3: Draft Statutory Instrument**

### **DRAFT STATUTORY INSTRUMENTS**

#### **2010 No. xxx EQUALITY**

#### **The Equality Act 2010 (Statutory Duties) Regulations 2011**

**The Secretary of State, in exercise of the powers conferred by sections 153(1), 155(1) and 207 of the Equality Act 2010(1), makes the following Regulations:**

#### **Citation, commencement and interpretation**

1.—

(1) These Regulations may be cited as the Equality Act 2010 (Statutory Duties) Regulations 2011 and shall come into force on 4 April 2011.

(2) In these Regulations— “section 149(1) duty” means the duty under section 149(1) of the Equality Act 2010.

#### **Publication of information**

2.—

(1) A public authority must publish information relating to its performance of the section 149(1) duty—

(a) not later than 4 April 2011; and

(b) subsequently at intervals of not more than one year beginning with the date of publication of the last set of information.

(2) The information shall include, in particular—

(a) information relating to the protected characteristics of its employees, if the public authority has 150 employees or more;

(b) assessments of the impact of its policies and practices, and the likely impact of its proposed policies and practices, on the furtherance of the aims set out in paragraphs (a) to (c) of the section 149(1) duty;

(c) information that it took into account when it assessed the impact of its policies and practices, and the likely impact of its proposed policies and practices, on the furtherance of the aims set out in paragraphs (a) to (c) of the section 149(1) duty; and

(d) details of any engagement that it undertook with persons whom it considered to have an interest in furthering the aims set out in paragraphs (a) to (c) of the section 149 duty.

(3) Before publishing the information required by paragraph (1) the public authority shall consider such matters as may be specified by a Minister of the Crown from time to time.

#### **Equality objectives**

3.—

(1) Not later than 2 April 2012 a public authority must prepare and publish one or more objectives which it reasonably thinks that it should achieve in order to further one or more of the aims set out in paragraphs (a) to (c) of the section 149(1) duty.

(2) The public authority must—

(i) ensure that the objectives that it sets in compliance with paragraph (1) are specific and measurable; and

(ii) set out how progress towards the objectives should be measured.

(3) Before taking the action required by paragraph (1) the public authority must consider the information that it published in compliance with Regulation 2 (1).

(4) The public authority must repeat the requirements of paragraph (1) subsequently not later than the end of each successive period of four years beginning with 2 April 2012.

### **Publication**

4.—

(1) The public authority must comply with any duty to publish under Regulations 2 and 3 by publishing the information in a manner that is reasonably accessible to the public.

(2) The public authority may comply with any duty to publish under Regulations 2 and 3 by setting out the information within another published document.

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations impose duties on public authorities that will be listed in a Schedule to the Regulations. The purpose of the duties is to ensure better performance by the public authorities concerned of their duty to have due regard to the aims set out in paragraphs (a) to (c) of section 149(1) of the Equality Act 2010 (“the Act”).

Regulation 2 requires the public authorities that will be listed in the Schedule to publish information relating to how they have performed the duty under section 149(1) of the Act. The information should be published at least annually. The Regulation also expands on some of information that the listed public authorities should publish. Before publishing the relevant information the listed public authorities must consider any matters that a Minister of the Crown may set out elsewhere.

Regulation 3 requires the same listed public authorities to prepare and publish one or more objectives which it thinks that it should achieve in order to further one or more of the aims set out in the section 149(1) duty.

Regulation 4 explains that the information that these Regulations require the listed public authorities to publish can be published as part of another document and that the information should be provided in a manner that is reasonably accessible to the public.

## **Annex 4: Schedule 19**

### SCHEDULE 19

#### **Public authorities Part 1**

Public authorities: general

##### *Ministers of the Crown and government departments*

A Minister of the Crown.

A government department other than the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

##### *Armed forces*

Any of the armed forces other than any part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

##### *National Health Service*

A Strategic Health Authority established under section 13 of the National Health Service Act 2006, or continued in existence by virtue of that section.

A Primary Care Trust established under section 18 of that Act, or continued in existence by virtue of that section.

An NHS trust established under section 25 of that Act.

A Special Health Authority established under section 28 of that Act other than NHS Blood and Transplant and the NHS Business Services Authority.

An NHS foundation trust within the meaning given by section 30 of that Act.

##### *Local government*

A county council, district council or parish council in England.

A parish meeting constituted under section 13 of the Local Government Act 1972.\*

Charter trustees constituted under section 246 of that Act for an area in England.\*

The Greater London Authority.

A London borough council.

The Common Council of the City of London in its capacity as a local authority or port health authority.

The Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in that person's capacity as a local authority.\*

The London Development Agency.

The London Fire and Emergency Planning Authority.

Transport for London.

The Council of the Isles of Scilly.

The Broads Authority established by section 1 of the Norfolk and Suffolk Broads Act 1988.\*

A regional development agency established by the Regional Development Agencies Act 1998 (other than the London Development Agency).

A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004, or a scheme to which section 4 of that Act applies, for an area in England.

An internal drainage board which is continued in being by virtue of section 1 of the Land Drainage Act 1991 for an area in England.\*

A National Park authority established by an order under section 63 of the Environment Act 1995 for an area in England.

A Passenger Transport Executive for an integrated transport area in England (within the meaning of Part 2 of the Transport Act 1968).

A port health authority constituted by an order under section 2 of the Public Health (Control of Disease) Act 1984 for an area in England.\*

A waste disposal authority established by virtue of an order under section 10(1) of the Local Government Act 1985.\*

A joint authority established under Part 4 of that Act for an area in England (including, by virtue of section 77(9) of the Local Transport Act 2008, an Integrated Transport Authority established under Part 5 of that Act of 2008).\*

A body corporate established pursuant to an order under section 67 of the Local Government Act 1985.

A joint committee constituted in accordance with section 102(1) (b) of the Local Government Act 1972 for an area in England.

A joint board which is continued in being by virtue of section 263(1) of that Act for an area in England.\*

#### *Other educational bodies*

The governing body of an educational establishment maintained by an English local authority (within the meaning of section 162 of the Education and Inspections Act 2006).

The governing body of an institution in England within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992).

The governing body of an institution in England within the higher education sector (within the meaning of section 91(5) of that Act).

#### *Police*

A police authority established under section 3 of the Police Act 1996.

The Metropolitan Police Authority established under section 5B of that Act.

The Common Council of the City of London in its capacity as a police authority.

\* Indicates those bodies in Part 1 of Schedule 19 that we do not propose should be subject to the specific duties.

Bodies that we propose to add to Schedule 19:

#### **Bodies to be added to Part 1 and which will be subject to the specific duties**

The Advisory, Conciliation and Arbitration Service (Acas)

The Audit Commission for Local Authorities and the National Health Service in England and Wales

The Bank of England, in respect of its public functions

The BBC, excluding activities related to the provision of a content service, 1 and its commercial activities

The British Transport Police The Care Quality Commission

Channel 4, excluding activities related to the provision of a content service, and its commercial activities

The chief constable for the Ministry of Defence Police appointed by the Secretary of State under section 1(3) of the Ministry of Defence Police Act 1987

A chief constable of a police force maintained under section 2 of the Police Act 1996

The Chief Inspector of the UK Border Agency

The Child Maintenance and Enforcement Commission

The Civil Aviation Authority

The Civil Nuclear Police Authority

The Commission for Equality and Human Rights

The Commissioner of Police for the City of London

The Commissioner of Police of the Metropolis

The Financial Services Authority  
The General Council of the Bar in respect of its public functions  
The Health and Safety Executive  
HM Crown Prosecution Service Inspectorate  
HM Inspectorate of Constabulary  
HM Inspectorate of Prisons

HM Inspectorate of Probation  
The Independent Police Complaints Commission  
The Independent Regulator of NHS Foundation Trusts  
The Information Commissioner's Office  
The Law Society in respect of its public functions  
The Legal Services Commission  
A local authority with respect to the pupil referral units it establishes and maintains by virtue of section 19 of the Education Act 1996  
The National Assembly for Wales Commission/Comisiwn Cynulliad Cenedlaethol Cymru  
The National Audit Office  
The National DNA Database  
Natural England  
Ofcom  
The Office of the Immigration Services Commissioner  
The Olympic Delivery Authority  
The Parole Board  
A probation trust, established under section 5(1) of the Offender Management Act 2007  
The proprietor of a City Technology College, City College for Technology or the Arts, or an Academy  
The Scottish Parliamentary Corporate Body  
The Serious Organised Crime Agency  
S4C, excluding activities related to the provision of a content service, and its commercial activities  
The Standards Board for England  
The Tenant Services Authority  
The Youth Justice Board for England and Wales

**Bodies to be added to Part 4 and which will be subject to the specific duties**

The Environment Agency  
NHS Blood and Transplant  
NHS Patient Safety Agency

**Bodies to be added to Schedule 19 but which will not be subject to the specific duties**

The Association of Authorised Public Accountants in respect of its public functions  
The Association of Certified Chartered Accountants (ACCA) in respect of its public functions  
The Association of International Accountants in respect of its public functions  
The Chartered Institute of Patent Attorneys in respect of its public functions  
The Competition Commission  
The Council for Licensed Conveyancers in respect of its public functions  
The Insolvency Practitioners Association in respect of its public functions  
The Institute of Chartered Accountants in England and Wales in respect of its public functions  
The Institute of Legal Executives in respect of its public functions  
The Institute of Trade Mark Attorneys in respect of its public functions  
The Local Government Ombudsman, excluding their case working functions  
The Parliamentary and Health Service Ombudsman, excluding their case working functions

A Port Police Force established under an order made under section 14c of the Harbours Act 1964

A Port Police Force established under section 79 of the Harbours, Docks and Piers Clauses Act 1847

The Port Police Force established under Part X of the Port of London Act 1968