

# Equality Act 2009

The Government's Equality Bill with its 205 clauses was first published on the 27th. April 2009 and was passed on the 6<sup>th</sup>. April 2010, receiving Royal Assent on the 8<sup>th</sup>. April. The main components of the Act will come into force in October 2010, see below for the timetable of implementation.

*These are some of the principle components of the Act.*

## **Simplification and Protected Characteristics**

There will now be new common basic definitions of direct and indirect discrimination (see below) which will apply to the protected characteristics.

The Act defines discrimination in terms of nine "protected characteristics":

age; disability; gender; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief and sexual orientation.

It context of the Act it will be against the law to discriminate on any of these grounds.

## **Public sector equality duty**

The Act is to extend the new public sector equality duty to now include:

age; disability; gender; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief and sexual orientation.

This will make it clear that public bodies will need to take due regard to be positive and proactive in tackling discrimination re the protected characteristics.

## **Public sector duty regarding socio-economic inequalities**

The Act also creates a new public sector duty on public authorities, when making decisions of a strategic nature, about how to exercise their functions to "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."

## **Equality Impact Assessments**

Public bodies will continue to need to assess the impact on equality of what they do, and this now needs to include the impact on all characteristics protected under the equality duty. Further guidance will be issued.

## **Transparency**

The new, expanded, single public sector equality duty will make our public bodies more transparent. Public bodies will need to report on important equality areas. This in practice will most likely mean public bodies (and by inference those who services are procured by public bodies) will need to monitor across the protected characteristics.

Political parties will be required to publish anonymised information on the diversity of their candidate selections (the right to have all-female shortlists has also been extended)

### **Public body procurement**

The Act makes it clear that public bodies should use procurement to drive equality. The government is to set out how public bodies should go about doing so through a National Equality Standard. Poor equality performers should not benefit from public sector procurement and this message should be made clear by public authorities when considering who to invite to bid for contracts and to potential suppliers when considering bidding

### **Enforcement**

The Equality and Human Rights Commission will work with Ombudsmen e.g. Ofsted and Audit Commission, to ensure that they are equipped to deal more effectively with discrimination complaints which they receive, in cooperation with the relevant bodies. The powers of employment tribunal are also to be strengthened to make recommendations in discrimination cases that benefit the wider workforce as well as the individual claimant.

### **Gender pay reports**

Requiring gender pay and employment equality publishing;

- In the public sector - require public bodies with 150 or more staff to publish their gender pay gap.
- In the private sector and voluntary sector employers with at least 250 employees to publish details of their gender pay gap. The government will only do this from 2013 if insufficient voluntary progress has been made.
- Ban pay secrecy clauses, which conceal inequality.

The Equality and Human Rights Commission has been asked to develop a “set of metrics for gender pay reports”. Hypothetical comparators are now to be permitted where there is no colleague doing equal work.

### **Age discrimination outside the workplace**

It will become unlawful to discriminate against adults aged 18 and over because of their age when providing goods, facilities and services and carrying out public functions; the Act will not prevent the differential provision of products or services for people of different ages where this is justified.

### **Positive action**

That employers, where they feel it is appropriate, will be able to take under-representation into account when selecting for appointment or promotion between two equally qualified candidates. However, making decisions irrespective of merit (i.e. quotas) or having an automatic policy of favouring those from under-represented groups will remain unlawful.

## Strengthening protection for disabled people

i. makes it unlawful for employers to ask job applicants questions about disability or health before making a job offer, except in specified circumstances; ii. gives disabled people who live in rented homes the right to have reasonable adjustments made to communal areas like entrances and hallways; iii. the word 'substantial' has been redefined as meaning more than minor or trivial; an impairment must have a "substantial" adverse effect on a person's ability to carry out normal day-to-day activities, then the duty of reasonable adjustment is triggered; iv. the term 'long-term' re impairment has been omitted; v. those to whom the act applies must take reasonable steps to provide information in an accessible format where disabled people would otherwise be at a substantial disadvantage in the way that information is being provided.

*Other clauses include –*

**Protection by association** - carers will be protected from direct discrimination because of their association with people who are protected from discrimination themselves i.e. now extended to cover all protected characteristics.

**Dual discrimination** - protecting people from direct discrimination because of a combination of two protected characteristics e.g. as a black woman or an older gay person.

**Breastfeeding** - mothers will have stronger protection when breastfeeding

**Discrimination in private clubs** – where exempted before most private clubs will now be covered by the Act.

**Caste discrimination** – the Act introduces the power to ban caste discrimination, if after further research, the need for it is established. If so caste will be added to the definition of Race.

**Civil partnership registrations** - removes the prohibition of registrations taking place on religious premises.

**Gender reassignment definition** – revised to make it clear that a trans person does not have to be under medical supervision to be protected from discrimination and harassment.

**Mistaken identity** – the Act provides new protection if you experience discrimination because you are wrongly thought to have a protected characteristic.

**Education** – The provisions of the Act apply to schools with the exclusion of the protected characteristics of age; pregnancy & maternity and marriage & civil partnership. For further and higher education only the latter is excluded.

## Timetable:

- **October 2010:** Main provisions.
- **April 2011:** The integrated public sector Equality Duty, the Socio-economic Duty and dual discrimination protection.
- **2012:** The ban on age discrimination in provision of goods, facilities, services and public functions.
- **2013:** Private and voluntary sector gender pay transparency regulations (if required) and political parties publishing diversity data

## New common definitions:

### Direct Discrimination:

A person discriminates against another if, because of a protected characteristic, that person treats the other less favourably than they treat or would treat others.

### Indirect Discrimination:

A person discriminates against another if they apply to another a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of the other person(s).

### Disability Discrimination:

A person discriminates against a disabled person if that person treats the other unfavourably because of something arising in consequence of their disability, and they cannot show that the treatment is a proportionate means of achieving a legitimate aim.

### Harassment:

A person harasses another if that person engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect in violating the others dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

### Victimisation:

Victimisation takes place where one person treats another badly because they, in good faith, have taken, intends to take or have supported any action taken for the purposes of the Act

[www.publications.parliament.uk/pa/cm200809/cmbills/085/09085\\_iw/09085\\_iw\\_en\\_2.htm](http://www.publications.parliament.uk/pa/cm200809/cmbills/085/09085_iw/09085_iw_en_2.htm)

If you require further information on the contents of the Act or are interested in briefing sessions or tailored diversity & equality training please contact us.

