

## The Equality Act 2010

The Equality Act 2010 came into force on 1 October 2010 and strengthens and streamlines 40 years of equalities legislation. The stated aim of the Act is to reform and harmonise discrimination law, to help Britain become a fairer society, improve public services and enhance business performance. As part of the University's response to the Act, I would like to draw your attention to the following key requirements of the Act.

The Equality Act 2010 introduced nine '**protected characteristics**', extending protection from discrimination from three to nine equality areas contained below:

- **Age**
- **Disability**
- **Gender Reassignment**
- **Marriage and Civil Partnership**
- **Pregnancy and Maternity**
- **Race**
- **Religion and Belief**
- **Sex**
- **Sexual Orientation**

The protected characteristics are the grounds upon which discrimination is unlawful under the Act, and there are five key areas of unlawful discrimination contained under the umbrella term of '**prohibited conduct**'.

### **Direct Discrimination (Section 13)**

The Act states that direct discrimination occurs when a person treats one person less favourably than they would another because of a protected characteristic. The new definition of direct discrimination extends protection to all of the nine protected characteristics based on association and perception

#### ➤ By Association

A person treats a person less favourably than they would another because of their association with someone who shares a protected characteristic

#### ➤ By Perception

A person treats a person less favourably than they would treat another because they perceive that person to share a protected characteristic

### **Indirect Discrimination (Section 19)**

*Section 19* of the Equality Act applies the European definition of indirect discrimination and extends protection to all of the protected characteristics with the exception of pregnancy and maternity. Indirect discrimination occurs when a provision, criterion or practice is neutral on the face of it but the impact of it disadvantages particular people who share a protected

characteristic. If the person applying the provision, criterion or practice can prove that it can be considered objectively justifiable, i.e. it was a proportionate means of achieving a legitimate aim then liability will not be incurred, however the provision, criterion or practice must not in itself be discriminatory.

### **A detriment which arises from disability (Section 15)**

The Act states that a detriment arising from a disability occurs when

- an employer treats the disabled person unfavourably;
- this treatment is because of something arising in consequence of the disabled person's disability; and
- the employer cannot show that this treatment is a proportionate means of achieving a legitimate aim

The employer will not be liable if he/she does not know, and could not reasonably be expected to know, that the person has the disability

### **Harassment (Section 26)**

The Act defines this form of prohibited conduct as

*'Unwanted conduct which has the purpose or effect of violating the person's dignity or; creating an offensive, intimidating or hostile environment for the complainant'*

An objective test is applied and therefore it must be reasonable for the complainant to have concluded they have been the recipient of the aforementioned unwanted conduct which had the purpose or effect of violating the person's dignity or; created an offensive, intimidating or hostile environment.

There are three types of harassment prohibited under the Act:

**s.26 (1)** harassment 'related' to a protected characteristic

**s.26 (2)** sexual harassment

**s.26 (3)** less favourable treatment of a worker because they submitted to or rejected sexual harassment or harassment related to sex or gender reassignment

### **Third Party Harassment (Section 40)**

The duty on employers to prevent third party harassment arises where the employee or job applicant has been harassed by a third party on at least two previous occasions, and the employer is aware of the harassment but fails to take 'reasonably practical steps' to prevent harassment by a third party happening again. The employer will be liable for harassment by a third party whether or not it is committed by the same third party or another third party.

### **Victimisation (Section 27)**

The Act states that victimisation occurs when

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) Person B does a protected act, or

(b) Person A believes that person B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

### **Education Provisions (*Section 91*)**

**Section 91** of the Act prohibits the governing body of a HEI from discriminating against a person/student in the following ways:

- in the arrangements it makes for deciding who is offered admission as a student
- in the terms on which it offers to admit the person as a student
- by not admitting the person as a student
- in the way it provides education for the student
- in the way it affords the student access to a benefit, facility or service
- by not providing education for the student
- by not affording the student access to a benefit, facility or service
- by excluding the student
- by subjecting the student to any other detriment
- The Act also makes it unlawful for HEIs to victimise or harass students or prospective students.

**Section 91 (3)** applies only in regards to disability discrimination, requires the governing bodies of HEIs to ensure that they do not discriminate against disabled students:

- In the arrangements it makes for deciding upon whom to confer a qualification

- As to the terms on which it is prepared to confer a qualification on the person
- by not conferring a qualification on the person
- by withdrawing a qualification from the person or varying the terms on which the person holds it

### **Employment Provisions (sections 39 40)**

Sections (39) and (40) of the Equality Act provide protection from discrimination in the field of employment.

**s. 39** Employers must not discriminate against or victimise job applicants in:

- the arrangements they make for deciding who should be offered employment;
- in the terms on which they offer employment; or
- by not offering employment to the applicant

**s.39 (2)** Employers must not discriminate against or victimise an employee:

- as to the terms of employment;
- in the way they make access to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- by dismissing the employee; or
- subjecting them to any other detriment

**s.39 (5)** Employers Duty to make reasonable adjustments

**s.40** Employers have a duty not to harass job applicants or their employees

### **Provision of Services and the exercise of Public Functions**

The Act states that it is unlawful for a service provider to discriminate against a person requiring (or seeking to obtain or use) a service by not providing that person with the service.

**s.29(1)** In this context, a reference to a service provider not providing a service includes:

- the service provider refusing to provide the person with the service;
  - the service provider not providing the person with the service of the quality that is usually provided to the public (or the section of the public that includes that person);
- or

- the service provider not providing the person with the service in the manner or on the terms which are usually provided to the public (or the section of the public that includes that person)

**s.29 (2)** It is also unlawful for a service provider to discriminate against a person:

- in relation to the terms on which the service is provided to that person;
- by terminating the service to that person; or
- by subjecting that person to any other detriment

**s.29 (7)** Failure to make a reasonable adjustment in service provision and the exercise of a Public Function

### **Defence of 'objective justification'**

A person will not be liable for discrimination if he/she can prove 'objective justification' and that this was proportionate means of achieving a legitimate aim.

### **Public Sector Equality Duty**

The public sector equality duty created under section (149) of the Equality Act 2010 came in to force on 6 April 2011. The new duty comprises of a general duty which is underpinned by a number of specific duties. The duty applies to public bodies and bodies which perform public functions. *Schedule 19* of the Act sets out the bodies who are subject to both the general and specific duties (listed bodies). Universities in England and the Higher Education Funding Council for England (HEFCE) are considered to be listed bodies and therefore subject to both the general and specific duties. The new duty extends the scope of the three previous public sector equality duties for race, gender and disability to include all of the nine protected characteristics comprising of age, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion and belief, and sexual orientation.

The Act states that the governing body of the University is responsible for compliance with the general and specific duties.

### **The Equality Duty**

The Equality Act 2010 section (149) has created a new Public Sector Equality Duty (PSED), which repeals the race, gender and disability equality duties contained in the Race Relations Amendment Act, the Disability Discrimination Act 2005 and the Equality Act 2006. *Schedule 27* contains a detailed list of the legislation which has been repealed or revoked by the coming into force of the new Act.

The Equality Duty has three aims for which the University should have 'due regard' to, which are as follows:

- **To eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.**
- **Advance equality of opportunity between people who share a protected characteristic and those who do not.**
- **Foster good relations between people who share a protected characteristic and those who do not.**

The meaning of the legal term 'due regard' is described as:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

### **The specific duties**

Section (153) of the Act gives the Government power to impose specific duties on certain public bodies. A list of public bodies to which section (153) applies is contained in *Schedule 19* of the Act. The Higher Education Funding Bodies for England and all UK Universities are listed. The purpose of the specific duties is to facilitate compliance with the Equality Duty by improving focus and transparency. The specific duties involve the publication of information which demonstrates compliance with the general duty, and the preparation and publication of strategic equality objectives.

### **Publish Information**

The University is expected to publish information to demonstrate compliance with the Equality Duty across business functions on 31 January and annually thereafter, having regard to the Public Data Principles.

<http://data.gov.uk/opendataconsultation/annex-2>

- Information on the effect that policies and practices have had on people who share a relevant protected characteristic, and to demonstrate the extent to which the aims of the general duty have been furthered. The term policy is broad and includes strategy and policies for the purposes of the Act.
- For employers with more than 150 employees, publication of information about employees.

*'The Equality Duty requires public bodies to consider how their activities as employers affect people who share protected characteristics'* Government Equalities Office

Published information can also include details of policies and programmes that have been put in place to address equality concerns within the workforce, and information from staff surveys.

*'The Equality Duty requires public bodies to consider how the decisions that they make , and the services they deliver , affect people who share different protected characteristics, and could require public bodies to publish information to show they did this.'* Government Equalities Office

## **Equality objectives**

In accordance with the specific duty requirements the University is required to set strategic equality objectives which are specific and measurable. The intention of the Equality Duty is that equality considerations are embedded into the business planning and decision-making processes; and that the objectives are proportionate and aligned to the organisational strategy. This means that the strategic equality objectives which are set must be compatible with the business objectives of the University and add value. Where possible this process should be integrated into the University business planning cycle. Equality objectives should be reviewed at least every four years.

## **Territorial Scope**

The Equality Act 2010, unlike its predecessors makes no express provision for its territorial scope, and in the explanatory notes it states that this is not an oversight. If an act of discrimination is considered to be within the scope of British equalities legislation, it will be also be subject to the separate rules governing jurisdiction.