University of Leicester

Report to Equal Opportunities Committee 6th October 2010.

An Overview of The Equality Act 2010

Introduction

1. This report outlines the main aspects of The Equality Act 2010 (the Act) and draws attention to any provision that have significant implications for the University.

2. The Act consolidates current anti-discrimination legislation and seeks to harmonise pre-existing legislation. As such many provisions already exist and the University will not need to make many changes to accommodate them. There are also new elements relevant to higher education. The report will pay particular attention to them.

3. The provisions relating to employment and the provision of education come into effect on 1st October 2010. Many of these provisions are already addressed. One significant change (relating to enquiries about disability and health) is dealt with through a separate paper to this Committee and about which HR have already been briefed.

4. Most of the remaining provisions including those relating to the public sector equality duty are scheduled to come into force in April 2011. Much of these provisions have been anticipated by the University through its Single Equality Scheme.

General Implications

5. **Protected characteristics.** The Act (Section 4) introduces the concept of protected characteristics (previously often called equality strands). Protected characteristics are the grounds upon which discrimination is unlawful. They are:
   - Age
   - Disability
   - Gender Reassignment
   - Marriage & Civil Partnership
   - Pregnancy & Maternity
   - Race
   - Religion or Belief (including lack of belief)
   - Sex
   - Sexual Orientation

   As with current legislation it is permissible to treat a disabled person more favourably than a non disabled person.

6. **Definitions of discrimination.** The Act gives new unified definitions for direct and indirect discrimination (Sections 13 & 19 respectively). **Direct discrimination** occurs when a person treats one person less favourable than they would another because of a protected characteristic. With respect to age different treatment can be justified if it is a proportionate means of meeting a legitimate aim. Protection is also extended to include that based on association and perception.
7. **Combined discrimination – dual characteristics.** This is a new provision (Section 14). It offers protection from discrimination on the basis of two combined protected characteristics (not including marriage & civil partnership and pregnancy & maternity). Currently a person who believes they have been discriminated against on the grounds of more than one protected characteristic must bring separate claims (e.g. for sex and race discrimination). This provision allows for one claim dealing with the particular characteristics of any two combined protected characteristics.

8. **Indirect discrimination.** The Act provides a unified definition applicable to all protected characteristics other than pregnancy and maternity. Under the Act indirect discrimination occurs when a provision, criterion or practice is neutral on the face of it, but its impact particularly disadvantages people with a protected characteristic, unless the person applying the provision can justify it as a proportionate means of achieving a legitimate aim.

9. **Harassment.** The Act outlines three types of harassment (Section 26)
   - Unwanted conduct that has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant’s dignity. (Does not apply to marriage & civil partnership and pregnancy & maternity).
   - Unwanted conduct of a sexual nature.
   - Treating a person less favourably than another person because they have wither submitted to or did not submit to, sexual harassment or harassment related to sex or gender reassignment.

10. **Public sector equality duty (Section 149).** A new single public duty is introduced by the Act covering all protected characteristics with the exception of marriage and civil partnership. The duty will require all public bodies to have due regard to the need to:
   - Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act.
   - Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.
   - Foster good relations between people who share a relevant protected characteristic and people who do not share it.

   To advance equality of opportunity, there is need to have due regard to the need to:
   - Remove or minimise disadvantages suffered by people who share a relevant protected characteristic that are connected to that characteristic.
   - Take steps to meet the needs of people who share a relevant protected characteristic that are different from the needs of people who do not share it.
   - Encourage people who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such people is disproportionally low.

11. The government is consulting on this part of the Act which will be implemented via secondary legislation. Section 153 of the Act gives the relevant minister the power to impose specific duties on public bodies designed to implement the single public equality duty outlined above. These will replace the current specific duties (applicable only to race, disability and gender) which include, for instance, the need to produce an equality scheme. The proposed new specific duties are briefly as follows:
   - Setting, consulting and reviewing equality objectives.
   - Assessing equality impact of key policy and service initiatives.
   - Publication of specified equality data.
12. These proposed duties are largely reflected in our current practices. Although there will not be the need to publish a specified equality scheme our existing Single Equality Scheme is framed in such a way that, with minor amendments, it is likely to fulfil the proposed new duties. It sets broad equality objectives, it sets out how those objectives are being achieved, it outlines how policies are assessed for equality impact and it contains an equality data management scheme.

**Issues relating to specific protected characteristics**

13. **Age.** (Schedule 9, paragraph 10) is designed to ensure that employers do not need to justify differences in pay or benefits that have arisen from service of up to five years.

14. **Disability.** The Act creates a new type of discrimination namely discrimination arising from disability. This replaces the current disability related discrimination and is designed to remedy the impact of previous case law that had the effect of severely restricting the scope to claim for less favourable treatment. A provision relating to pre employment health screening is the subject of a separate paper.

15. **Gender reassignment.** The definition of this is amended so that people no longer have to be under medical supervision to be protected.

16. **Marriage and civil partnership.** Section 8 simply replaces similar provisions in the Sex Discrimination Act 1975.

17. **Pregnancy and maternity.** Section 17 expands existing protection to higher education. The effect of this is likely to mean that the University should not refuse an applicant entry because they are pregnant. Furthermore consideration will need to be given for the provision of arrangements to ensure a woman is not treated less favourable as a result of pregnancy or maternity, e.g. allowing suitable arrangements for breastfeeding.

18. **Sex.** It is proposed that a specific duty is introduced to require public bodies to publish information on their gender pay gap and to consider the implications of the data. Section 71 introduces provisions to allow an equal pay claim without a comparator. Direct sex discrimination would still need to be evidenced.

19. **Race, Religion or belief, Sexual orientation.** The new provisions effectively replicate existing law.

**Conclusion & Recommendation**

20. As the University has anticipated this legislation and because it is a consolidation act, there are no significant changes that the University needs to make in order to implement at this stage. There will certainly be the need to alter the wording of documents and I will perform an audit of existing literature to draw attention to changes that are required. The changes to the public equality duties are as yet not finalised and I will therefore keep the Committee informed of developments. There will be a need to amend our Single Equality Scheme in detail but it can continue to provide the main route through which the University fulfils its new public equality duties.

21. The Committee is asked to note this report and raise any issues about which it feels further information or action is necessary or desirable.

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